



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB2236

Introduced 2/18/2009, by Rep. LaShawn K. Ford

#### SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-3.1 from Ch. 23, par. 10-3.1  
730 ILCS 5/3-6-9 new  
750 ILCS 5/510.5 new

Amends the Illinois Public Aid Code, the Unified Code of Corrections, and the Illinois Marriage and Dissolution of Marriage Act. Provides that an incarcerated person obligated to pay child support who has gross income of less than \$200 per month is presumed to have no ability to pay child support. Provides that the Department of Human Services shall initiate an action to modify a support obligation if either the obligor or the obligee receives child support enforcement services. Provides that the Department of Corrections shall develop and establish a program in the Adult Division designed to permit committed persons who are obligors to request assistance from the Department of Health care and Family Services in obtaining a child support order modification.

LRB096 08683 AJO 18813 b

1 AN ACT concerning child support.

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 changing Section 10-3.1 as follows:

6 (305 ILCS 5/10-3.1) (from Ch. 23, par. 10-3.1)

7 Sec. 10-3.1. Child and Spouse Support Unit. The Illinois  
8 Department shall establish within its administrative staff a  
9 Child and Spouse Support Unit to search for and locate absent  
10 parents and spouses liable for the support of persons resident  
11 in this State and to exercise the support enforcement powers  
12 and responsibilities assigned the Department by this Article.  
13 The unit shall cooperate with all law enforcement officials in  
14 this State and with the authorities of other States in locating  
15 persons responsible for the support of persons resident in  
16 other States and shall invite the cooperation of these  
17 authorities in the performance of its duties.

18 In addition to other duties assigned the Child and Spouse  
19 Support Unit by this Article, the Unit may refer to the  
20 Attorney General or units of local government with the approval  
21 of the Attorney General, any actions under Sections 10-10 and  
22 10-15 for judicial enforcement of the support liability. The  
23 Child and Spouse Support Unit shall act for the Department in

1 referring to the Attorney General support matters requiring  
2 judicial enforcement under other laws. If requested by the  
3 Attorney General to so act, as provided in Section 12-16,  
4 attorneys of the Unit may assist the Attorney General or  
5 themselves institute actions in behalf of the Illinois  
6 Department under the Revised Uniform Reciprocal Enforcement of  
7 Support Act; under the Illinois Parentage Act of 1984; under  
8 the Non-Support of Spouse and Children Act; under the  
9 Non-Support Punishment Act; or under any other law, State or  
10 Federal, providing for support of a spouse or dependent child.

11 The Illinois Department shall also have the authority to  
12 enter into agreements with local governmental units or  
13 individuals, with the approval of the Attorney General, for the  
14 collection of moneys owing because of the failure of a parent  
15 to make child support payments for any child receiving services  
16 under this Article. Such agreements may be on a contingent fee  
17 basis, but such contingent fee shall not exceed 25% of the  
18 total amount collected.

19 An attorney who provides representation pursuant to this  
20 Section shall represent the Illinois Department exclusively.  
21 Regardless of the designation of the plaintiff in an action  
22 brought pursuant to this Section, an attorney-client  
23 relationship does not exist for purposes of that action between  
24 that attorney and (i) an applicant for or recipient of child  
25 support enforcement services or (ii) any other party to the  
26 action other than the Illinois Department. Nothing in this

1 Section shall be construed to modify any power or duty  
2 (including a duty to maintain confidentiality) of the Child and  
3 Spouse Support Unit or the Illinois Department otherwise  
4 provided by law.

5 The Illinois Department may also enter into agreements with  
6 local governmental units for the Child and Spouse Support Unit  
7 to exercise the investigative and enforcement powers  
8 designated in this Article, including the issuance of  
9 administrative orders under Section 10-11, in locating  
10 responsible relatives and obtaining support for persons  
11 applying for or receiving aid under Article VI. Payments for  
12 defrayment of administrative costs and support payments  
13 obtained shall be deposited into the DHS Recoveries Trust Fund.  
14 Support payments shall be paid over to the General Assistance  
15 Fund of the local governmental unit at such time or times as  
16 the agreement may specify.

17 With respect to those cases in which it has support  
18 enforcement powers and responsibilities under this Article,  
19 the Illinois Department may provide by rule for periodic or  
20 other review of each administrative and court order for support  
21 to determine whether a modification of the order should be  
22 sought. The Illinois Department shall provide for and conduct  
23 such review in accordance with any applicable federal law and  
24 regulation.

25 If either the obligor or the obligee receives child support  
26 enforcement services under this Article, the Illinois

1 Department shall initiate an action to modify a support  
2 obligation because of incarceration where the obligor is an  
3 incarcerated obligor, as defined in Section 510.5 of the  
4 Illinois Marriage and Dissolution of Marriage Act and the  
5 obligor has requested a modification due to incarceration.

6 As part of its process for review of orders for support,  
7 the Illinois Department, through written notice, may require  
8 the responsible relative to disclose his or her Social Security  
9 Number and past and present information concerning the  
10 relative's address, employment, gross wages, deductions from  
11 gross wages, net wages, bonuses, commissions, number of  
12 dependent exemptions claimed, individual and dependent health  
13 insurance coverage, and any other information necessary to  
14 determine the relative's ability to provide support in a case  
15 receiving child support enforcement services under this  
16 Article X.

17 The Illinois Department may send a written request for the  
18 same information to the relative's employer. The employer shall  
19 respond to the request for information within 15 days after the  
20 date the employer receives the request. If the employer  
21 willfully fails to fully respond within the 15-day period, the  
22 employer shall pay a penalty of \$100 for each day that the  
23 response is not provided to the Illinois Department after the  
24 15-day period has expired. The penalty may be collected in a  
25 civil action which may be brought against the employer in favor  
26 of the Illinois Department.

1           A written request for information sent to an employer  
2 pursuant to this Section shall consist of (i) a citation of  
3 this Section as the statutory authority for the request and for  
4 the employer's obligation to provide the requested  
5 information, (ii) a returnable form setting forth the  
6 employer's name and address and listing the name of the  
7 employee with respect to whom information is requested, and  
8 (iii) a citation of this Section as the statutory authority  
9 authorizing the employer to withhold a fee of up to \$20 from  
10 the wages or income to be paid to each responsible relative for  
11 providing the information to the Illinois Department within the  
12 15-day period. If the employer is withholding support payments  
13 from the responsible relative's income pursuant to an order for  
14 withholding, the employer may withhold the fee provided for in  
15 this Section only after withholding support as required under  
16 the order. Any amounts withheld from the responsible relative's  
17 income for payment of support and the fee provided for in this  
18 Section shall not be in excess of the amounts permitted under  
19 the federal Consumer Credit Protection Act.

20           In a case receiving child support enforcement services, the  
21 Illinois Department may request and obtain information from a  
22 particular employer under this Section no more than once in any  
23 12-month period, unless the information is necessary to conduct  
24 a review of a court or administrative order for support at the  
25 request of the person receiving child support enforcement  
26 services.

1           The Illinois Department shall establish and maintain an  
2 administrative unit to receive and transmit to the Child and  
3 Spouse Support Unit information supplied by persons applying  
4 for or receiving child support enforcement services under  
5 Section 10-1. In addition, the Illinois Department shall  
6 address and respond to any alleged deficiencies that persons  
7 receiving or applying for services from the Child and Spouse  
8 Support Unit may identify concerning the Child and Spouse  
9 Support Unit's provision of child support enforcement  
10 services. Within 60 days after an action or failure to act by  
11 the Child and Spouse Support Unit that affects his or her case,  
12 a recipient of or applicant for child support enforcement  
13 services under Article X of this Code may request an  
14 explanation of the Unit's handling of the case. At the  
15 requestor's option, the explanation may be provided either  
16 orally in an interview, in writing, or both. If the Illinois  
17 Department fails to respond to the request for an explanation  
18 or fails to respond in a manner satisfactory to the applicant  
19 or recipient within 30 days from the date of the request for an  
20 explanation, the applicant or recipient may request a  
21 conference for further review of the matter by the Office of  
22 the Administrator of the Child and Spouse Support Unit. A  
23 request for a conference may be submitted at any time within 60  
24 days after the explanation has been provided by the Child and  
25 Spouse Support Unit or within 60 days after the time for  
26 providing the explanation has expired.

1           The applicant or recipient may request a conference  
2 concerning any decision denying or terminating child support  
3 enforcement services under Article X of this Code, and the  
4 applicant or recipient may also request a conference concerning  
5 the Unit's failure to provide services or the provision of  
6 services in an amount or manner that is considered inadequate.  
7 For purposes of this Section, the Child and Spouse Support Unit  
8 includes all local governmental units or individuals with whom  
9 the Illinois Department has contracted under Section 10-3.1.

10           Upon receipt of a timely request for a conference, the  
11 Office of the Administrator shall review the case. The  
12 applicant or recipient requesting the conference shall be  
13 entitled, at his or her option, to appear in person or to  
14 participate in the conference by telephone. The applicant or  
15 recipient requesting the conference shall be entitled to be  
16 represented and to be afforded a reasonable opportunity to  
17 review the Illinois Department's file before or at the  
18 conference. At the conference, the applicant or recipient  
19 requesting the conference shall be afforded an opportunity to  
20 present all relevant matters in support of his or her claim.  
21 Conferences shall be without cost to the applicant or recipient  
22 requesting the conference and shall be conducted by a  
23 representative of the Child or Spouse Support Unit who did not  
24 participate in the action or inaction being reviewed.

25           The Office of the Administrator shall conduct a conference  
26 and inform all interested parties, in writing, of the results



1 of the conference within 60 days from the date of filing of the  
2 request for a conference.

3 In addition to its other powers and responsibilities  
4 established by this Article, the Child and Spouse Support Unit  
5 shall conduct an annual assessment of each institution's  
6 program for institution based paternity establishment under  
7 Section 12 of the Vital Records Act.

8 (Source: P.A. 91-24, eff. 7-1-99; 91-613, eff. 10-1-99; 92-16,  
9 eff. 6-28-01; 92-590, eff. 7-1-02.)

10 Section 10. The Unified Code of Corrections is amended by  
11 adding Section 3-6-9 as follows:

12 (730 ILCS 5/3-6-9 new)

13 Sec. 3-6-9. Assistance in obtaining modification of child  
14 support orders. The Department shall develop and establish a  
15 program in the Adult Division designed to permit committed  
16 persons who are obligors under child support orders to request  
17 the Department of Healthcare and Family Services to assist in  
18 obtaining modifications of those orders pursuant to Section  
19 510.5 of the Illinois Marriage and Dissolution of Marriage Act.

20 Section 15. The Illinois Marriage and Dissolution of  
21 Marriage Act is amended by adding Section 510.5 as follows:

22 (750 ILCS 5/510.5 new)

1       Sec. 510.5. Special circumstances regarding incarcerated  
2 obligors.

3       (a) Definitions. For purposes of establishing or modifying  
4 a support order, the following definitions apply:

5           (1) "Correctional facility" means any place used for  
6 the confinement of persons charged with or convicted of a  
7 crime or otherwise confined under a court order, and  
8 includes but is not limited to a youth correction facility.

9           (A) "Correctional facility" applies to a State  
10 hospital only as to persons detained therein charged  
11 with or convicted of a crime, or detained therein after  
12 acquittal of a crime by reason of mental defect;

13           (B) "Correctional facility" includes alternative  
14 forms of confinement, such as house arrest or  
15 confinement, where an obligor is not permitted to seek  
16 or hold regular employment.

17       (2) "Incarcerated obligor" means a person who:

18           (A) is or may become subject to an order  
19 establishing or modifying child support; and

20           (B) is, or is expected to be, confined in a  
21 correctional facility for at least 6 consecutive  
22 months from the date of initiation of action to  
23 establish a support order, or from the date of a  
24 request to modify an existing order.

25       (b) For purposes of computing a monthly support obligation  
26 for an incarcerated obligor, all provisions contained in

1 Section 505 will apply except as otherwise specified in this  
2 Section.

3 (c) The incarcerated obligor's income and assets are  
4 presumed available to the obligor, unless such income or assets  
5 are specifically restricted, assigned, or otherwise  
6 inaccessible pursuant to State or federal law or rule regarding  
7 the income and assets of incarcerated obligors.

8 (d) If the incarcerated obligor has gross income less than  
9 \$200 per month, there shall be a presumption that the obligor  
10 has no ability to pay support.

11 (e) If either the obligor or the obligee receives child  
12 support enforcement services from the Illinois Department  
13 under Article X of the Public Aid Code, the Child and Spouse  
14 Support Unit of the Department of Healthcare and Family  
15 Services shall initiate an action to modify a support  
16 obligation because of incarceration, where the obligor is an  
17 incarcerated obligor, as defined in paragraph (1) of subsection  
18 (b) and the obligor has requested a modification due to  
19 incarceration.

20 (f) An order entered pursuant to this Section that modifies  
21 a support order because of the incarceration of the obligor, is  
22 effective only during the period of the obligor's incarceration  
23 and for 60 days after the obligor's release from incarceration.  
24 The previous support order is reinstated by operation of law on  
25 the 61st day after the obligor's release from incarceration.