



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2330

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-3.1	from Ch. 23, par. 10-3.1
305 ILCS 5/10-12.5 new	
730 ILCS 5/3-6-9 new	
730 ILCS 5/5-3-1	from Ch. 38, par. 1005-3-1
730 ILCS 5/5-3-2	from Ch. 38, par. 1005-3-2
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.

LRB098 10536 DRJ 40774 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 changing Section 10-3.1 and adding Section 10-12.5 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. The Illinois Department's program for review and
25 modification of orders for support in cases in which support
26 enforcement services are being provided under this Article X

1 shall include, but not be limited to, cases in which a
2 responsible relative who is committed to the custody of the
3 Department of Corrections or the Department of Juvenile Justice
4 requests review and modification of the order for support. The
5 Illinois Department shall enter into cooperative agreements
6 with the Department of Corrections and the Department of
7 Juvenile Justice to facilitate receipt of such requests from
8 committed persons.

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

20 The Illinois Department may send a written request for the
21 same information to the relative's employer. The employer shall
22 respond to the request for information within 15 days after the
23 date the employer receives the request. If the employer
24 willfully fails to fully respond within the 15-day period, the
25 employer shall pay a penalty of \$100 for each day that the
26 response is not provided to the Illinois Department after the

1 15-day period has expired. The penalty may be collected in a
2 civil action which may be brought against the employer in favor
3 of the Illinois Department.

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

23 In a case receiving child support enforcement services, the
24 Illinois Department may request and obtain information from a
25 particular employer under this Section no more than once in any
26 12-month period, unless the information is necessary to conduct

1 a review of a court or administrative order for support at the
2 request of the person receiving child support enforcement
3 services.

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

1 days after the explanation has been provided by the Child and
2 Spouse Support Unit or within 60 days after the time for
3 providing the explanation has expired.

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

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

1 participate in the action or inaction being reviewed.

2 The Office of the Administrator shall conduct a conference
3 and inform all interested parties, in writing, of the results
4 of the conference within 60 days from the date of filing of the
5 request for a conference.

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

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

13 (305 ILCS 5/10-12.5 new)

14 Sec. 10-12.5. Suspension of child support obligation
15 during period of incarceration. Unless otherwise agreed by the
16 parties in a written agreement set forth in a court or
17 administrative order for support or unless otherwise approved
18 by a court, an obligation to pay child support is suspended by
19 operation of law during any period of time in which the person
20 owing a duty of support is committed to the custody of the
21 Department of Corrections or the Department of Juvenile
22 Justice.

23 Section 10. The Unified Code of Corrections is amended by
24 changing Sections 5-3-1 and 5-3-2 and adding Section 3-6-9 as

1 follows:

2 (730 ILCS 5/3-6-9 new)

3 Sec. 3-6-9. Assistance in requesting review and
4 modification of support orders. The Department shall develop
5 and establish a program to assist committed persons who are
6 obligors under support orders in cases in which child support
7 enforcement services are being provided by the Department of
8 Healthcare and Family Services under Article X of the Illinois
9 Public Aid Code in requesting review and modification of such
10 support orders as provided for under that Code. The Department
11 shall enter into a cooperative agreement with the Department of
12 Healthcare and Family Services to facilitate transmittal of
13 such requests from committed persons.

14 (730 ILCS 5/5-3-1) (from Ch. 38, par. 1005-3-1)

15 Sec. 5-3-1. Presentence Investigation. A defendant shall
16 not be sentenced for a felony before a written presentence
17 report of investigation is presented to and considered by the
18 court. A defendant who owes a child support obligation shall
19 not be sentenced for a misdemeanor before a written presentence
20 report of investigation is presented to and considered by the
21 court.

22 However, other than for felony sex offenders being
23 considered for probation, the court need not order a
24 presentence report of investigation where both parties agree to

1 the imposition of a specific sentence, provided there is a
2 finding made for the record as to the defendant's history of
3 delinquency or criminality, including any previous sentence to
4 a term of probation, periodic imprisonment, conditional
5 discharge, or imprisonment.

6 The court may order a presentence investigation of any
7 defendant.

8 (Source: P.A. 93-616, eff. 1-1-04; 93-970, eff. 8-20-04.)

9 (730 ILCS 5/5-3-2) (from Ch. 38, par. 1005-3-2)

10 Sec. 5-3-2. Presentence Report.

11 (a) In felony cases, the presentence report shall set
12 forth:

13 (1) the defendant's history of delinquency or
14 criminality, physical and mental history and condition,
15 family situation and background, economic status,
16 education, occupation and personal habits;

17 (1.5) information about any child support obligation
18 owed by the defendant and recommendations concerning the
19 payment of that obligation; this information shall also be
20 set forth in any presentence report prepared in connection
21 with a misdemeanor case involving a defendant who owes a
22 child support obligation;

23 (2) information about special resources within the
24 community which might be available to assist the
25 defendant's rehabilitation, including treatment centers,

1 residential facilities, vocational training services,
2 correctional manpower programs, employment opportunities,
3 special educational programs, alcohol and drug abuse
4 programming, psychiatric and marriage counseling, and
5 other programs and facilities which could aid the
6 defendant's successful reintegration into society;

7 (3) the effect the offense committed has had upon the
8 victim or victims thereof, and any compensatory benefit
9 that various sentencing alternatives would confer on such
10 victim or victims;

11 (4) information concerning the defendant's status
12 since arrest, including his record if released on his own
13 recognizance, or the defendant's achievement record if
14 released on a conditional pre-trial supervision program;

15 (5) when appropriate, a plan, based upon the personal,
16 economic and social adjustment needs of the defendant,
17 utilizing public and private community resources as an
18 alternative to institutional sentencing;

19 (6) any other matters that the investigatory officer
20 deems relevant or the court directs to be included; and

21 (7) information concerning defendant's eligibility for
22 a sentence to a county impact incarceration program under
23 Section 5-8-1.2 of this Code.

24 (b) The investigation shall include a physical and mental
25 examination of the defendant when so ordered by the court. If
26 the court determines that such an examination should be made,

1 it shall issue an order that the defendant submit to
2 examination at such time and place as designated by the court
3 and that such examination be conducted by a physician,
4 psychologist or psychiatrist designated by the court. Such an
5 examination may be conducted in a court clinic if so ordered by
6 the court. The cost of such examination shall be paid by the
7 county in which the trial is held.

8 (b-5) In cases involving felony sex offenses in which the
9 offender is being considered for probation only or any felony
10 offense that is sexually motivated as defined in the Sex
11 Offender Management Board Act in which the offender is being
12 considered for probation only, the investigation shall include
13 a sex offender evaluation by an evaluator approved by the Board
14 and conducted in conformance with the standards developed under
15 the Sex Offender Management Board Act. In cases in which the
16 offender is being considered for any mandatory prison sentence,
17 the investigation shall not include a sex offender evaluation.

18 (c) In misdemeanor, business offense or petty offense
19 cases, except as specified in subsection (d) of this Section,
20 when a presentence report has been ordered by the court, such
21 presentence report shall contain information on the
22 defendant's history of delinquency or criminality and shall
23 further contain only those matters listed in any of paragraphs
24 (1) through (6) of subsection (a) or in subsection (b) of this
25 Section as are specified by the court in its order for the
26 report.

1 (d) In cases under Sections 11-1.50, 12-15, and 12-3.4 or
2 12-30 of the Criminal Code of 1961 or the Criminal Code of
3 2012, the presentence report shall set forth information about
4 alcohol, drug abuse, psychiatric, and marriage counseling or
5 other treatment programs and facilities, information on the
6 defendant's history of delinquency or criminality, and shall
7 contain those additional matters listed in any of paragraphs
8 (1) through (6) of subsection (a) or in subsection (b) of this
9 Section as are specified by the court.

10 (e) Nothing in this Section shall cause the defendant to be
11 held without bail or to have his bail revoked for the purpose
12 of preparing the presentence report or making an examination.

13 (Source: P.A. 96-322, eff. 1-1-10; 96-1551, Article 1, Section
14 970, eff. 7-1-11; 96-1551, Article 2, Section 1065, eff.
15 7-1-11; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

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

18 (750 ILCS 5/510) (from Ch. 40, par. 510)

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

22 (a) Except as otherwise provided in paragraph (f) of
23 Section 502 and in subsection (b), clause (3) of Section 505.2,
24 the provisions of any judgment respecting maintenance or

1 support may be modified only as to installments accruing
2 subsequent to due notice by the moving party of the filing of
3 the motion for modification. An order for child support may be
4 modified as follows:

5 (1) upon a showing of a substantial change in
6 circumstances; 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) Unless otherwise agreed by the parties in a written
20 agreement set forth in the judgment or otherwise approved by
21 the court, an obligation to pay child support is suspended by
22 operation of law during any period of time in which the person
23 owing a duty of support is committed to the custody of the
24 Department of Corrections or the Department of Juvenile
25 Justice.

26 (e) The right to petition for support or educational

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

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

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