

**INCOME SHARING CHILD SUPPORT**  
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On July 1, 2017, a massive change for calculating child support has taken effect. Last year, Public Act 99-764 was enacted. The Legislation amended the Illinois Marriage and Dissolution of Marriage Act to replace the guideline formula with the income shares model for calculating child support. This significant change brings Illinois in line with thirty-nine (39) other States and the District of Columbia, which already use the new income shares model. (*See 750 ILCS 5/505(a)(1)(D)*).

Since 1984, Illinois has used the percentage guideline formula to determine child support. This model is now considered outdated because it does not reflect actual child-rearing costs or allocate those costs between the parents. (See <http://bit.ly/2qYq8Rr>). Rather, the old formula required the payors to simply pay a percentage of their net income regardless of the actual child-rearing costs, which is not always equitable and accurate. It often led to discord between the parents and an overall distrust of the child support system. On the other hand, the income shares model uses economic data of child-rearing costs based, in part, on the income level of the parents. Most income shares States obtain child-rearing financial data from the Bureau of Labor Statistics, as discussed in the next paragraph. Calculating child support based on actual child-rearing costs maintain the standard of living the child/ren would have enjoyed if the parents had not divorced or separated.

The new income shares model is based on real data that takes factors into account other than just the income of one parent. It attempts to reflect a family's actual child-rearing expenses and how they were shared by the parents prior to their separation or divorce, hopefully reducing the negativity under the guideline child support, out-dated system. It calculates child support using actual child-rearing costs that are based in part on data from the Bureau of Labor Statistics. The Illinois Department of Health Care and Family Services use that data to publish its Schedule of Basic Child Support Obligation. The Schedule was updated on April 6, 2017 to reflect an increase in the cost of the standard of living. (<http://bit.ly/2pDO2wW>).

In establishing child support, you will need worksheets for calculating the child support and a table to show the percentage of the combined net income the parents living in the same

household in this State ordinarily spend on their children, called “child-rearing”. The Schedule of Basic Support Obligation will be promulgated by the Illinois Department of Healthcare and Family Services (“HFS”) and updated periodically for Illinois. The actual Schedule of Basic Support Obligation is not a part of the new child support statute. It is maintained by HFS, which is on their website. These HFS worksheets and the expenditure tables are updated, they will continue to be posted on the website. These worksheets will be needed to determine if a parent will receive more or less child support than the current amount. Here is a website maintained by HFS, in which you can find these worksheets and tables:

<https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeSharesScheduleBasedonNetIncome.pdf>

The statute additionally provides that the Act itself does not constitute a substantial change of circumstances, warranting a modification of child support. This provision was included to prevent Petitions for Modification based solely on the new law from being filed after the effective date of July 1, 2017.

<b>THE NEW COMPUTATION IS BASED ON SEVERAL FACTORS</b>
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Gross income is defined as, for child support purposes, “the total of all income from all sources” with the following exceptions: (750 ILCS 5/505(a)(3)(A))

1. Government benefits, such as Social Security Disability (SSI), Supplemental Nutritional Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) are not included as income.
2. Benefits and income received by the parent for other children in the household. *Id.*, otherwise called, “support for a non-shared child”. These types of payments include, but not limited to, child support, survivor benefits, and foster care payments.

Net income is defined as, (per the statute, 750 ILCS 5/505(a)(3)(B)) “gross income minus taxes, to be determined by using either a standardized tax amount or an individualized tax amount.”

750 ILCS 505(a)(3)(D), 5/505(a)(3)(E) states that the individualized tax amount is the aggregate (total) of the following taxes: (NOTE: most Courts use the standardized tax amount and for the purposes of here, same is being used, too)

1. Federal and State income taxes with properly withheld calculated withholding or estimated payments;
2. Social security tax (if none, mandatory retirement contributions required by law or as a condition of employment); and
3. Medicare tax to be calculated at the Federal Insurance Contributions Act rates.

The Act allows the parties to use any of the three (3) different tax-based formulas to determine net income (the default formula is the standardized deduction, #1 below):

1. A simplified “standardized tax amount” formula means the “total of federal and state income taxes for a single person claiming the standard tax deduction, one personal exemption, and the applicable number of dependency exemptions for the minor children, social security and Medicare”. A gross-to-net-income conversion chart can be found at <http://bit.ly.2pENHtM>.

OR

2. An individualized tax amount formula. This considers the actual filing status of the parties, their dependency allocations, tax credits, and several itemized deductions.

OR

3. Although a bit unusual, the Court may find it to be conscionable for the parties to also agree on a third formula.

There are certain adjustments to gross income when computing support as follows: (750 ILCS 5/505(a)(3)(F)) as follows:

1. Spousal maintenance (750 ILCS 5/504 and 5/505(a)(3)). Maintenance is included in the receiving spouse’s income and deducted in the paying spouse’s income: this means that if a party is receiving spousal maintenance either from a divorcing spouse or from a prior relationship, then that amount is factored into the net income. Likewise, a party that is paying spousal maintenance to the party of the current

- relationship or from a prior relationship has that amount deducted from his/her net income. (NOTE: the tax implications of the spousal maintenance are usually determined by using a computer software program in determining net income.).
2. Child support for non-shared children, (750 ILCS 5/505(a)(3)(A)). If a parent is paying Court-ordered support, the full amount of the payment is allowed as an adjustment from gross income. If a parent is paying financial support not by Court Order, the allowed deduction is at the amount actually paid or at 75% of the amount that would be ordered under guidelines, whichever is less. The multiple family adjustment should be made after, not before, the tax computation, since child support is not tax deductible. This is why it is a good reason to obtain a child support Order for non-shared children of the parties.
  3. If the parent is disabled or retired, (750 ILCS 5/505(a)(3)). Gross income includes social security benefits and retirement benefits paid for the benefit of the child in calculating that parent's gross income. The parent receiving those benefits is entitled, however, to a child support credit for the amount of benefits paid to the other parent.
  4. Determining business income (per 750 ILCS 5/505(a)(3.1)). Business income is also defined in the new statute. It is defined as "gross receipts minus ordinary and necessary expenses required to carry on the trade or business." The term "business" broadly defined to include, without limitation, "sole proprietorships, closely held corporations, partnerships, other flow through business entities, and self-employment. *Id.* To determine business income for support, the owner cannot deduct as a business expense accelerated component of depreciation and any business expense found to be "inappropriate or excessive." *Id.* Further, any personal expense paid by the business that are significant and reduce the owner's personal expenses shall be added to the income of the recipient's gross income, if not already included. Some items, for example, company car, reimbursed meals, free housing and housing allowance.

If a parent is voluntarily unemployed or underemployed (750 ILCS 5/505(a)(3.2)), a Court is to impute income to that party (obligor) based on his/her “potential income” and “probable earnings”, which is to be determined by considering the following:

- a. Work history;
- b. Occupational qualifications;
- c. Prevailing job opportunities;
- d. Ownership by a parent of a substantial non-income producing asset; and
- e. Earning levels in the community.

If a Court cannot determine one’s employment potential and probable earnings level as a result of an insufficient work history, then there is a rebuttable presumption that the income is “75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person.”

Minimum Orders (750 ILCS 5/505(a)(3.3)). There is also, “a rebuttable presumption” that a minimum child support obligation of \$40.00 per month per child is the child support for a parent with actual or imputed income of 75% of the poverty guidelines (see the above Paragraph) or less. In no event shall the parent be ordered to pay more than \$120.00 per month to be divided equally among all of his/her children. If a parent has no gross income due to a medical disability, institutionalization or incarceration, there rebuttable presumptions that the parent owes nothing for child support. (*See United States Department of Health and Human Services*). (750 ILCS 5/505(a)(3.3)).

5. Deviation from child support guidelines (750 ILCS 5/505(a)(3.4)). While guidelines are presumed appropriate for all temporary, permanent, or modification proceedings involving child support, the Court may deviate from the guidelines if application would be “inequitable, unjust, or inappropriate.” In determining whether to deviate, the Court must make written findings specifying its reasons and the proper amount of

support if guidelines are applies. In determining whether to deviate the Court may consider:

- a. Extraordinary medical expenditures necessary to preserve the life or health of either party or their children;
  - b. Additional expenses for a child who has special medical, physical, or developmental needs; and
  - c. Any other appropriate factor affecting the best interest of a child.
6. High-income situations (750 ILCS 5/505(a)(3.5)). When the combined adjusted gross income of the parents exceeds the uppermost levels of the child support obligations under the HFS Schedule, the Court may use its discretion in setting support. Presumptively, the support is not to be less than the amounts to be paid for the highest level of adjusted gross income published in the HFS Schedule.

<b>CALCULATING CHILD SUPPORT</b>
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1. Once the individual net monthly incomes are determined, they are added together.
2. This combined income amount is then matched to its corresponding entry on the Schedule, which is based on the number of children from one (1) to five (5).
  - a. **EXAMPLE:** if a divorcing couple has a combined adjusted monthly net income of \$10,000.00 and only have one child together, their basic support obligation for that child is \$1,445.00 per month.
3. Once the basic support obligation is determined, the percentage contributions of each parent's income are determined on a pro rata basis. The parent's monthly net income is divided by the combined monthly incomes.
  - a. **EXAMPLE:** using the above example, if the parties' combined monthly net income is \$10,000.00 with one parent earning \$2,500.00 and the other earning \$7,500.00, their percentage contributions would be 25% and 75% respectively.

4. The parent with the majority of the parenting time receives the child support payment, which is calculated by multiplying the basic support obligation by the payor's income share.
  - a. EXAMPLE: If the parent earning \$2,500.00 per month has the majority of the parenting time, then s/he will receive \$1,083.75 per month in child support, which is the other parent's 75% contribution multiplied by the \$1,445.00 basic support obligation. The payee will be presumed to spend her/his own percentage contribution to care for the child, which is the 25% percent contribution or \$361.25 per month, too, of the basic support obligation.
5. Both parents' contributions to the support obligations are acknowledged and used.

#### STEPS WHEN BOTH PARENTS HAVE 146 OR MORE PARENTING OVERNIGHTS/YEAR

Other factors can adjust the support obligation. When both parents have 146 parenting overnights per year (approximately 40% of parenting time), or more, then the shared parenting adjustment kicks in. The shared parenting adjustment is a two-step calculation:

1. The basic support obligation is multiplied by 1.5 thus accounting for the increased child-rearing costs for both parents. The parents' pro rata contributions are then determined.
2. After the parents' contributions are then determined, said amounts are adjusted by the percentage of parenting time allocated to the other parent.
  - A. EXAMPLE: if the Schedule reflects \$3,000.00 per month of child-rearing expenditures, the shared parenting multiplier amount would be \$4,500.00 per month. The percentage of the parents' income shares is determined. Those allocated amounts are then cross-multiplied by the percentage allocation of parenting time to the other parents, and are set-off by subtracting the lesser support obligation from the greater.

ADDITIONAL CONTRIBUTION TO THE FOLLOWING CHILD/REN'S EXPENSES NOT COVERED BY CHILD SUPPORT and ITS AFFECTS ON CHILD SUPPORT

The Court may also order a pro rata contribution to the following child/ren's expenses not covered by child support:

1. Extracurricular and school activities (750 ILCS 5/505(a)(3.6)). A parent may be ordered to contribute to "reasonable" extracurricular and school expenses in addition to his/her ordinary support obligation when said expenditures are intended to "Enhance the educational, athletic, social, or cultural development of the child." *Id.*
2. Child-care expenses (day care and camps when school is not in session) (750 ILCS 5/505(a)(3.7)).
  - a. The choice and costs of same is unique to every family.
  - b. The Court may order either parent or both parents with a child support obligation to contribute additional sums for "reasonable" child-care expenses. These include before and after school care and securing placement in a child care program. The expenses may be paid to one of the parties or to the provider directly while the parents work, receive educational or vocational training for employment, or search for employment.
  - c. The new statute has more guidance than the former child support statute, which offered little direction on this important issue to many families.
  - d. In calculating child-care expenses, the Court is to rely on actual family expenses (if available). If not available, the Court must determine the expense based on what is reasonable and necessary for the child/ren. If expenses vary, the Court is to average the expenses based on the preceding twelve (12) months. (750 ILCS 5/505(a)(3.7)(D)).
  - e. "The value of the federal income tax credit, if allowed, shall be subtracted from the actual cost to determine the net child care costs." *Id.*
3. Healthcare expenses. (750 ILCS 5/505(a)(4)). Child support now includes contribution for basic out-of-pocket medical expenses. Additionally, however, the

Court may order either parent or both parents to provide health insurance benefits, including medical, dental or vision insurance policies. If dental or vision coverage is not included in a parent's medical insurance plan, then that parent can be ordered to provide separate coverage at the discretion of the Court. The Court may also order additional contributions for uncovered medical needs for the children, including but not limited to, unreimbursed medical, dental, orthodontic, and vision expenses and prescription medication.

If a spouse or partner of the parent provides the insurance for the family, including coverage for the other's child, then that parent is entitled to credit for the contribution as though s/he paid the premium.

If neither parent has private insurance available, then the Court may order either parent to provide insurance when it becomes available to him/her or order the parent with primary physical responsibility to apply for public health insurance coverage subject to the other parent being responsible for contributing a reasonable amount towards the costs.

The Court may order "cash medical support", defined as "an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another person through employment or otherwise or for other medical costs not covered by insurance." (750 ILCS 5/505(a)(4)(C)). If the Court does order some form of cash medical support, then the Court may provide that if in the future private healthcare coverage becomes available to that party, it may be used instead of paying cash medical support.

If a Court orders contributions toward health insurance premiums, then the amount of the policy for the child is added to the total child support obligation. If that individual amount cannot be determined, then the total cost of the premium is to be divided by the total number of persons covered by the policy, and the medical support is determined based on the number of children subject to be covered. This amount is then added to the basic child support obligation and divided between the parties in proportion to their adjusted gross incomes. NOTE: presumably, this is a

mistake, and the legislature intended the support to be based on the ration of net incomes.

After adding the medical support to the base child support and determining each party's obligation based on proportions of income, if the obligor/payor is providing health insurance, his/her share of child support owed to the oblige/payee is to be reduced by any sums the oblige/payee owes for said medical support.

There may not be any healthcare Orders that exceed 5% of the paying parent's gross income. If a parent has a net income below 133% of federal poverty guidelines or if a parent's child is covered by Medicaid based on that parent's income, then that parent may not be ordered to contribute towards private coverage; although the insurance may be ordered at no costs to that parent. (750 ILCS 5/505(a)(4)(G)).

ADDITIONAL COMMENTS/EXPLANATIONS:
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A huge, potential issue may be the actual parenting time schedule the parties follow compared to the parenting time schedule as set forth in the Allocation Judgment. Case law will give us guidance as the Appellate and/or Supreme Courts of Illinois provide further law in resolving this issue; however and in the meantime, you might want to consider some drafting and built-in modification provisions if the actual schedule and the written schedule do not match for more than a certain time frame. These we can label "safety valves: for the parties.

For example, using right of first refusal for overnights may be a possible solution and if so many times same is executed, then child support is automatically modified in the Marital Settlement Agreement. However and since child support and parenting time are technically two (2) separate issues per the Courts and the law (despite the 146 overnight initiation of using the 1.5 calculation of child support), the Allocation Judgment may be written to state that if the actual schedule and the written schedule do not match for more than a certain time frame, then the parties agree to return to either mediation or the Collaborative process.

Another massive, potential issue may be the incentive behind enacting the parenting time plan. This new statute provides a financial incentive for parents to seek 146 overnights, minimum, rather than focusing on what parenting plan may be in the children's best interests. It can easily be foreseen that one parent will strenuously argue against the other parent reaching up to 146 overnights and vice versa. A Judge may be the person to be in the position to determine the motivation for a parent seeking 146 overnights is truly simply to reduce child support or for reasons in the child/ren's best interest.

Since 146 nights is essentially 40% parenting time of overnights, it is important to identify and discuss with the parents (and each other) factors and questions to determine the a parent's reason and motivation in seeking same, especially for a parent, who is usually, for example, the "working parent" and/or the "breadwinner", while the other parent is more of the "caregiver" parent.

Since we generally want to commence mediation and/or the Collaborative process with coming up with a parenting plan, we do not want to focus on child support and steer away from the topic, even if you think that reducing the child support is the sole reason for requesting 146 overnights. To help determine that parent's reasons and motivations, try to focus on that parent's needs as well as the children's needs. The following are factors/questions to consider on a case-by-case basis to help find out a parent's reason for requesting 146 overnights (or more) when one would not expect same:

1. That parent's work schedule.
2. Does that parent travel for work and if so, what does that look like?
3. Time and demands of that parent's job?
4. Past-primary caregiver?
5. Past "schedules"?
6. The child/ren's activities.
7. The child/ren's age(s).
8. If the child/ren is/are in high school, do/does s/he/they have a say?
9. Where each parent resides?
10. When a parent does not reside near the other parent.