

Child Support Enforcement — The New Vehicle Suspension of Driver's License Privileges

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Executive Summary:

Suspension of driver's privileges is an underused vehicle to try to obtain compliance with an arrearage in child support. This is due, in part, to the fact that the law is new and most lawyers are not familiar with it. The second reason is that most lawyers handling family law cases focus only on the provisions of the Illinois Marriage and Dissolution of Marriage Act (or the provisions of the Illinois Parentage Act). The provisions of these statutes seem to indicate that driver's license privileges are to be suspended only in cases where a payor is held in contempt of court. However, many times it is difficult to locate a potential obligor to serve him (or her) with a rule to show cause. It may be possible to avoid the service of the rule to show cause by requesting the court to suspend driver's license privileges by mailing the notice to the obligor's last known address. To understand how this is done you should understand the overall statutory scheme.

1. Provisions of IMDMA and the Illinois Parentage Act of 1984:

Section 505(b) of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") and the corresponding provisions of the Illinois Parentage Act ("IPA") of 1984 (750 ILCS 45/15) first address cases where a support obligor is held in contempt. Each statute provides:

Failure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt [as in other cases of failure to comply under the "Illinois Marriage and Dissolution of Marriage Act", as now or hereafter amended.] In addition to other penalties provided by law the Court may, after finding the parent in contempt order that the parent be: *** [The statute then addresses the ability of the court to probation sentences, imprisonment, etc. However, a newer section of the statute is inserted, addressed separately, which deals with those cases where the ownership veil is pierced.]

The provisions of IMDMA Section 505(b) and IPA Section 15(b)(3) are also identical with the exception of the fact that the IMDMA did not break out the provisions regarding the license suspension to make crystal clear that the intention was to be a subparagraph of the contempt sanctions. It is worthwhile noting that many of the provisions of IMDMA Section 505(b) are not numbered and thus it is a bit more difficult to construe the legislative intent. After the probation and periodic imprisonment provisions, IPA Section 15(b) and IMDMA Section 505(b) both provide (with emphasis added):

The court may also order **in cases where the parent is 90 days or more delinquent in payment of support or has been adjudicated in arrears in an amount equal to 90 days obligation or more**, that the parent's Illinois driving privileges be suspended until the court determines that the parent is in compliance with the order of support. The court may also order that the parent be issued a family financial responsibility driving permit that would allow limited driving privileges for employment and medical purposes in accordance with Section 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit court shall certify the order suspending the driving privileges of the parent or granting the issuance of a family financial responsibility driving permit to the Secretary of State on forms prescribed by the Secretary. Upon receipt of the authenticated documents, the Secretary of State shall suspend the parent's driving privileges until further order of the court and shall, if ordered by the court, subject to the provisions of Section 7-702.1 of the Illinois Vehicle Code, issue a family financial responsibility driving permit to the parent.

Query: Does Section 505(b) regarding suspension of driving privileges require that a party be first held in contempt of court? It is my position that this order is proper, but it is not the only way to have driving privileges suspended.

2. Provisions of the Illinois Vehicle Code Providing for License Suspension:

a. Introduction:

Section 505(b) refers to Article 7 of the Illinois Vehicle Code, which is titled “Family Financial Responsibility Law.” 625 ILCS 5/7 et seq. This legislation addresses in further detail the law regarding suspension of driver's licenses where there is a delinquency or an arrearage of more than 90 days. Remember: an arrearage is a court ordered finding while a delinquency does not require a court ordered determination. As discussed below, this portion of the legislation (i.e., Article 7) does not require a party to necessarily be held in contempt of court, but merely requires an adjudication of an arrearage of more than 90 days.

Section 701 of the preamble to this law (which was effective in 2000) states:

The General Assembly finds that the timely receipt of adequate financial support has the effect of reducing poverty and State expenditures for welfare dependency among children, and that the timely payment of adequate child support demonstrates financial responsibility. Further, the General Assembly finds that the State has a compelling interest in ensuring that drivers within the State demonstrate financial responsibility, including family financial responsibility, in order to safely own and operate a motor vehicle. To this end, the Secretary of State is authorized to establish systems to suspend driver's licenses for failure to comply with court orders of support.

b. Two Provisions for Suspension — Is there a Contempt Order? Is There No Contempt Order, But a Finding of Arrearage?:

625 ILCS 5/7-702 is broken down into two subsections. Subsection (a) relates to cases in which a payor has been held in contempt, while subsection (b) relates to cases in which a payor has not been held in contempt of court. The statute provides (with emphasis added) as follows:

Sec. 7-702. Suspension of driver's license for failure to pay child support:

(a) The Secretary of State shall suspend the driver's license issued to an obligor upon receiving an authenticated report provided for in **subsection (a)** of Section 7-703, that the person is 90 days or more delinquent in court ordered child support payments or has been adjudicated in arrears in an amount equal to 90 days obligation or more, **and has been found in contempt by the court** for failure to pay the support.

(b) The Secretary of State shall suspend the driver's license issued to an obligor upon receiving an authenticated document provided for in **subsection (b)** of Section 7-703, that the person has been **adjudicated in arrears** in court ordered child support payments in an amount equal to 90 days obligation or more, **but has not been held in contempt of court**, and that the court has ordered that the person's driving privileges be suspended. The obligor's driver's license shall be suspended until such time as the Secretary of State receives authenticated documentation that the obligor is in compliance with the court order of support. When the obligor complies with the court ordered child support payments, the circuit court shall report the obligor's compliance with the court order of support to the Secretary of State, on a form prescribed by the Secretary of State, and shall order that the obligor's driver's license be reinstated.

To simplify matters:

- Section 702(a) addresses cases where there is either a delinquency or an arrearage **and there is contempt finding**.
- Section 702(b) addresses cases where there is **no contempt finding**, but there is an **adjudication** of an arrearage.

Each of these cases then refers to the appropriate paragraphs of Section 703 (a) or (b).

c. Role of the Clerks in Reporting Suspension: Section 703 of the Illinois Vehicle Code also describes the role of the clerk of the court in cases involving the suspension of driving privileges. Section 703 states:

Sec. 7-703. Courts to report non-payment of court ordered support.

(a) The clerk of the circuit court, as provided in subsection (b) of Section 505 of the Illinois Marriage and Dissolution of Marriage Act or as provided in Section 15 of the Illinois Parentage Act of 1984, shall

forward to the Secretary of State, on a form prescribed by the Secretary, an authenticated document certifying the court's order suspending the driving privileges of the obligor. For any such certification, the clerk of the court shall charge the obligor a fee of \$5 as provided in the Clerks of Courts Act.

(b) If an obligor has been **adjudicated in arrears in court** ordered child support payments in an amount equal to 90 days obligation or more **but has not been held in contempt of court**, the circuit court **may** order that the obligor's driving privileges be suspended. If the circuit court orders that the obligor's driving privileges be suspended, it shall forward to the Secretary of State, on a form prescribed by the Secretary, an authenticated document certifying the court's order suspending the driving privileges of the obligor. The authenticated document shall be forwarded to the Secretary of State by the court no later than 45 days after entry of the order suspending the obligor's driving privileges.

d. Family Financial Responsibility Driving Permits:

Illinois law does provide for the issuance of a “family financial responsibility driving permit” in accordance with Section 702.1 of the Illinois Vehicle Code. 625 ILCS 5/7-702.1. This Section states (with emphasis added):

Sec. 7-702.1. Family financial responsibility driving permits.

Following the entry of an order that an obligor has been found in contempt by the court for failure to pay court ordered child support payments or upon a motion by the obligor who is subject to having his or her driver's license suspended pursuant to subsection (b) of Section 7-703, the court may enter an order directing the Secretary of State to issue a family financial responsibility driving permit for the purpose of providing the obligor the privilege of operating a motor vehicle between the obligor's residence and place of employment, or within the scope of employment related duties; or for the purpose of providing transportation for the obligor or a household member to receive alcohol treatment, other drug treatment, or medical care. **The court may enter an order directing the issuance of a permit only if the obligor has proven to the satisfaction of the court that no alternative means of transportation are reasonably available for the above stated purposes.** No permit shall be issued to a person under the age of 16 years who possesses an instruction permit.

Upon entry of an order granting the issuance of a permit to an obligor, the court shall report this finding to the Secretary of State on a form prescribed by the Secretary. This form shall state whether the permit has been granted for employment or medical purposes and the specific days and hours for which limited driving privileges have been granted.

The family financial responsibility driving permit shall be subject to cancellation, invalidation, suspension, and revocation by the Secretary of State in the same manner and for the same reasons as a driver's license may be cancelled, invalidated, suspended, or revoked.

The Secretary of State shall, upon receipt of a certified court order from the court of jurisdiction, issue a family financial responsibility driving permit. In order for this permit to be issued, an individual's driving privileges must be valid except for the family financial responsibility suspension. This permit shall be valid only for employment and medical purposes as set forth above. The permit shall state the days and hours for which limited driving privileges have been granted.

Any submitted court order that contains insufficient data or fails to comply with any provision of this Code shall not be used for issuance of the permit or entered to the individual's driving record but shall be returned to the court of jurisdiction indicating why the permit cannot be issued at that time. The Secretary of State shall also send notice of the return of the court order to the individual requesting the permit.

The above-referenced provisions impose upon the obligor parent the burden of proving “to the satisfaction of the court that no alternative means of transportation are reasonably available for the above stated purposes” and, if said burden is met, the court may then enter an order directing the issuance of a family financial responsibility driving permit.

e. Clerk's Role in Providing Notice to Payor:

Before forwarding the authenticated document (referred to in Section 703), the clerk must also serve notice on the payor of its intention to suspend a driver's license for being adjudicated in arrears in court ordered support for 90 days. Section 705.1 of the Illinois Vehicle Code specifies what must be contained in the notice:

Sec. 7-705.1. Notice of noncompliance with support order.

Before forwarding to the Secretary of State the authenticated document under subsection (b) of Section 7-703, the circuit court must serve notice upon the obligor of its intention to suspend the obligor's driver's license for being adjudicated in arrears in court ordered child support payments in an amount equal to 90 days obligation. The notice must inform the obligor that:

- (a) If the obligor is presently unable to pay all past-due support, the obligor may come into compliance with the support order by executing a written payment agreement with the court, as provided in Section 7-702.2, and by complying with that agreement;
- (b) The obligor may contest the issue of compliance at a hearing;
- (c) A request for a hearing must be made in writing and must be received by the clerk of the circuit court;
- (d) If the obligor does not request a hearing to contest the issue of compliance within 45 days after the notice of noncompliance is mailed, the court may order that the obligor's driver's license be suspended as provided for in subsection (b) of Section 7-703;
- (e) If the circuit court certifies the obligor to the Secretary of State for noncompliance with an order of support, the Secretary of State must suspend any driver's license or instruction permit the obligor holds and the obligor's right to apply for or obtain a driver's license or instruction permit until the obligor comes into compliance with the order of support;
- (f) If the obligor files a motion to modify support with the court or requests the court to modify a support obligation, the circuit court shall stay action to certify the obligor to the Secretary of State for noncompliance with an order of support; and
- (g) The obligor may comply with an order of support by doing all of the following:
 - (1) Paying the current support;
 - (2) Paying all past-due support or, if unable to pay all past-due support and a periodic payment for past-due support has not been ordered by the court, by making periodic payments in accordance with a written payment agreement approved by the court; and
 - (3) Meeting the obligor's health insurance obligation.

The notice must include the address and telephone number of the clerk of the circuit court. The clerk of the circuit court shall attach a copy of the obligor's order of support to the notice. The notice must be served by certified mail, return receipt requested, by service in hand, or as specified in the Code of Civil Procedure.

A sample notice is attached as Exhibit A.

f. Hearings Re Whether Licence Should be Suspended:

Once the obligor receives the notice that his (or her) driving privileges will be suspended, there is to be a hearing as to whether there has been compliance with the support order. Section 706.1(d) of the Illinois Vehicle Code provides (with emphasis added) that the scope of the hearing is limited to the following issues:

- (1) Whether the obligor is required to pay child support under an order of support.
- (2) Whether the obligor has been adjudicated in arrears in court ordered child support payments in an amount equal to 90 days obligation or more.
- (3) **Any additional issues raised by the obligor, including the reasonableness of a payment agreement in light of the obligor's current financial circumstances,** to be preserved for appeal.

It is also noteworthy that the law provides that the court's action resulting in the suspension of driving privileges is a "final judgment" for the purpose of appellate review. This is significant in family law cases where temporary orders are not considered final and appealable.

Written Agreement to Pay Past-Due Support: Persons subject to suspension can avoid the suspension by entering into a written agreement approved by the court which meets certain stated requirements as set forth in Section 702.2 of the Illinois Vehicle Code. Before a written payment agreement is executed, the obligor must fully disclose to the court his or her financial circumstances (including income from all sources, assets, liabilities, past work history, etc.) and provide the court with documentation as to the obligor's financial circumstances (recent tax returns (both personal and business), recent pay stubs, other records, etc.). Upon review of this information the court may determine the obligor's ability to pay past-due support and may approve a written payment agreement which is consistent with the obligor's ability to pay.

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