

Public Act 99-764 – Illinois Adopts Income Shares Approach Effective July 1, 2017

Gunnar J. Gitlin
The Gitlin Law Firm, P.C., Woodstock, Illinois
© 2016

Updated: Thursday, November 3, 2016



Executive Summary: Effective July 1, 2017, Illinois has finally adopted the income shares approach to child support. This outline provides the new language of the new incomes shares legislation. The official tables are not yet out yet on which the new support guidelines will be based. Accordingly, the question is what is the most representative state to review in comparing potential results under the income shares model and under the prospective tables to come to Illinois. Look to a model that uses net monthly income and has been relatively recently adopted or amended. The most representative state is Iowa. See:

<https://secureapp.dhs.state.ia.us/CustomWeb/Resources/SupportGuidelines/Court%20Rules.pdf>

because they are based on net income and were adopted in 2009 and amended in 2013. Also see:

<https://www.awism.com/childsupport/freecalculator.shtml> to assist with comparing results in Iowa.

Income Shares HB 3982 / PA 99-764.

99th Ill. Gen. Assem., House Bill 3982, 2016 Sess.

Pub. Act 99-0764 (eff. Jul 1, 2018)

<http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=3982&GAID=13&SessionID=88&LegID=90198>

See: <http://www.ilga.gov/legislation/99/HB/PDF/09900HB3982lv.pdf>

(750 ILCS 5/505) (from Ch. 40, par. 505)

(1) **Child support guidelines.** The Department of Healthcare and Family Services shall adopt rules establishing child support guidelines which include worksheets to aid in the calculation of the child support award and a table that reflects the percentage of combined net income that parents living in the same household in this State ordinarily spend on their children. The child support guidelines have the following purposes:

(A) to establish as State policy an adequate standard of support for children, subject to the ability of parents to pay;

(B) to make awards more equitable by ensuring more consistent treatment of persons in similar circumstances;

(C) to improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards;

(D) to calculate child support based upon the parents' combined adjusted net income estimated to have been allocated to the child if the parents and children were living in an intact household;

(E) to adjust the child support based upon the needs of the children; and

(F) to allocate the amount of child support to be paid by each parent based upon the child support and the child's physical care arrangements.

(2) **Duty of support.** The court shall award child support in each case by applying the child support guidelines unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interest of the child in light of evidence which shows relevant factors including, but not limited to, one or more of the following:

- (A) the financial resources and needs of the child;
- (B) the financial resources and needs of the custodial parent;
- (C) the standard of living the child would have enjoyed had the marriage or civil union not been dissolved;
- (D) the physical and emotional condition of the child and his or her educational needs; and
- (E) the financial resources and needs of the noncustodial parent.

(3) **Income.**

(A) [**Definition of Gross Income**] As used in this Section, "gross income" means the total of all income from all sources, except "gross income" does not include:

- (i) benefits received by the parent from means-tested public assistance programs, including, but not limited to, Temporary Assistance to Needy Families, Supplemental Security Income, and the Supplemental Nutrition Assistance Program or
- (ii) benefits and income received by the parent for other children in the household, including, but not limited to, child support, survivor benefits, and foster care payments.

Social security disability and retirement benefits paid for the benefit of the subject child must be included in the disabled or retired parent's gross income for purposes of calculating the parent's child support obligation, but the parent is entitled to a child support credit for the amount of benefits paid to the other parent for the child. **Spousal support or spousal maintenance received pursuant to a court order in the pending proceedings or any other proceedings must be included in the recipient's gross income for purposes of calculating the parent's child support obligation.**

(B) As used in this Section, "**net income**" means gross income minus either the standardized tax amount calculated pursuant to subparagraph (C) of this paragraph (3) or the individualized tax amount calculated pursuant to subparagraph (D) of this paragraph (3), and minus any adjustments pursuant to subparagraph (F) of this paragraph (3). The standardized tax amount shall be used unless the requirements for an individualized tax amount set forth in subparagraph (F) of this paragraph (3) are met.

(C) As used in this Section, "**standardized tax amount**" 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 child or children of the parties, and Social Security tax and Medicaid tax calculated at the Federal Insurance Contributions Act rate.

(I) Unless a court has previously determined otherwise or the parties otherwise agree, the custodial parent shall be deemed entitled to claim the dependency exemption for the parties' minor child or children.

(II) The Department of Healthcare and Family Services shall promulgate a chart that computes net income by deducting the standardized tax amount from gross income.

(D) As used in this Section, "**individualized tax amount**" means the aggregate of the following taxes:

- (I) federal income tax (properly calculated withholding or estimated payments);
- (II) State income tax (properly calculated withholding or estimated payments); and
- (III) Social Security (or, if none, mandatory retirement contributions required by law or as a condition of employment) and Medicare tax calculated at the Federal Insurance Contributions Act rate.

(E) In lieu of a standardized tax amount, a determination of an individualized tax amount may be made under items (I), (II), or (III) below. If an individualized tax amount determination is made under this subparagraph (E), all relevant tax attributes (including filing status, allocation of dependency exemptions, and whether a party is to claim the standard deduction or itemized deductions for federal income tax purposes) shall be as the parties agree or as the court determines. To determine a party's reported income, the court may order the party to complete an Internal Revenue Service Form 4506-T, Request for Tax Transcript.

(I) **Agreement.** Irrespective of whether the parties agree on any other issue before the court, if they jointly stipulate for the record their concurrence on a computation method for the individualized tax amount that is different from the method set forth under subparagraph (D), the stipulated method shall be used by the court unless the court rejects the proposed stipulated method for good cause.

(II) **Summary hearing.** If the court determines child support in a summary hearing under Section 501 and an eligible party opts in to the computation method under this item (II), the individualized tax amount shall be determined by the court on the basis of information contained in one or both parties' financial disclosure statement, financial affidavit, or similar instrument and relevant supporting documents under applicable court rules. No party, however, is eligible to opt in unless the party, under applicable rules, has served the other party with the required statement, affidavit, or other instrument and has also substantially turned over supporting documents to the extent required by the applicable rule at the time of service of the statement, affidavit, or other instrument.

(III) **Evidentiary hearing.** If the court determines child support in an evidentiary hearing, whether for purposes of a temporary order or at the conclusion of a proceeding, item (II) of this subparagraph (E) does not apply. In each such case (unless item (I) governs), the individualized tax amount shall be as determined by the court on the basis of the record established.

(F) Adjustments to gross income.

(I) If a parent also is legally responsible for support of children not shared with the other parent and not subject to the present proceeding, there shall be an adjustment to gross income as follows:

- (i) The amount of child support actually paid by the parent pursuant to a support order shall be deducted from the parent's gross income.
- (ii) The amount of financial support actually paid by the parent for children living in or outside of that parent's household or 75% of the support the parent would

pay under the child support guidelines, whichever is less, shall be deducted from that parent's gross income.

(II) Obligations pursuant to a court order for maintenance in the pending proceeding actually paid or payable under Section 504 to the same party to whom child support is to be payable shall be deducted from the parent's gross income.

(3.1) **Business income.** For purposes of calculating child support, net business income from the operation of a corporations, partnerships, other flow-through business entities, and self-employment. The court shall apply the following:

(A) The accelerated component of depreciation and any business expenses determined either judicially or administratively to be inappropriate or excessive shall be excluded from the total of ordinary and necessary business expenses to be deducted in the determination of net business income from gross business income.

(B) Any item of reimbursement or in-kind payment received by a parent from the business, including, but not limited to, a company car, free housing or a housing allowance, or reimbursed meals, shall be counted as income if not otherwise included in the recipient's gross income, if the item is significant in amount and reduces personal expenses.

(3.2) **Unemployment or underemployment.** If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community. If there is insufficient work history to determine employment potential and probable earnings level, there shall be a rebuttable presumption that the parent's potential income is 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person.

(3.3) **Minimum orders.** There is a rebuttable presumption in any judicial or administrative proceeding for child support that the amount of the award which would result from the application of the child support guidelines is the correct amount of child support to be awarded.

There is a rebuttable presumption that a minimum child support obligation of \$40 per month, per child, will be entered for a payor parent who has actual or imputed income at or less than 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person, with a maximum total child support obligation for that payor of \$120 per month to be divided equally among all of the payor parent's children.

For parents with no gross income, including those who receive only means-tested assistance or who cannot work due to a medically proven disability, incarceration, or institutionalization, there is a rebuttable presumption that the \$40 per month minimum support order is inappropriate and a zero dollar order shall be entered.

(3.4) **Deviation factors.** In any action to establish or modify child support, whether temporary or permanent, the child support guidelines shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. The court may deviate from the child support guidelines if the application would be inequitable, unjust, or inappropriate. Any deviation shall be accompanied by written findings by the court specifying the reasons for the deviation and the presumed amount under

the child support guidelines without a deviation. These reasons may include:

- (A) extraordinary medical expenditures necessary to preserve the life or health of a party or a child of either or both of the parties;
- (B) additional expenses incurred for a child subject to the child support order who has special medical, physical, or developmental needs; and
- (C) any other factor the court determines should be applied upon a finding that the application of the child support guidelines would be inappropriate, after considering the best interest of the child.

(3.5) **Income in excess of table.** A court may use discretion to determine child support if the combined adjusted gross income exceeds the uppermost levels of the schedule of basic child support obligations, except that the presumptive basic child support obligation shall not be less than it would be based on the highest level of adjusted gross income set forth in the schedule of basic child support obligations.

(3.6) **Extracurricular activities and school expenses.** The court, in its discretion, in addition to the basic child support obligation, may order either or both parents owing a duty of support to the child to contribute to the reasonable school and extracurricular activity expenses incurred which are intended to enhance the educational, athletic, social, or cultural development of the child.

(3.7) **Child care expenses.** The court, in its discretion, in addition to the basic child support obligation, may order either or both parents owing a duty of support to the child to contribute to the reasonable child care expenses of the child. The child care expenses shall be made payable directly to a party or directly to the child care provider at the time of services.

(A) As used in this paragraph (3.7), "child care expenses" means actual annualized monthly child care expenses reasonably necessary to enable a parent or non-parent custodian to be employed, attend education and training activities, or job search, and includes after-school care and all work-related child care expenses incurred while receiving education or training to improve employment opportunities. "Child care expenses" includes deposits for the retention of securing placement in child care programs. "Child care expenses" may include camps when school is not in session. Parties may agree on additional day camps. Child care expenses due to a child's special needs shall be a consideration in determining reasonable child care expenses for a child with special needs.

(B) Child care expenses shall be calculated as set forth in this paragraph. Child care expenses shall be prorated in proportion to each parent's percentage share of combined parental net income, and added to the basic child support obligation. The obligor's portion of actual child care expenses shall appear in the support order. The obligee's share of child care expenses shall be paid by the obligee directly to the child care provider.

(C) The amount of child care expenses shall be adequate to obtain reasonable and necessary child care. The family's actual child care expenses shall be used to calculate the child care expense contributions, if available. When actual child care expenses vary, the actual child care expenses shall be averaged over the most recent 12-month period. When the parent is temporarily unemployed or temporarily not attending school, then child care expenses shall be based upon prospective expenses to be incurred upon return to employment.

(D) An order for child care expenses may be modified upon a showing of a substantial change in

circumstances. Persons incurring child care expenses shall notify the obligor within 14 days of any change in the amount of child care expenses that would affect the annualized child care amount as determined in the support order.

(3.8) **Shared parenting.** If each parent exercises 146 or more overnights per year with the child, the basic child support obligation is multiplied by 1.5 to calculate the shared care child support obligation. The child support obligation is then computed for each parent by multiplying that parent's portion of the shared care support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support paying the difference between the 2 amounts. Child support for cases with shared physical care are calculated using a child support worksheet promulgated by the Department of Healthcare and Family Services. An adjustment for shared physical care is made only when each parent has the child for 146 or more overnights per year.

(3.9) **Split care.** Split care refers to a situation in which there is more than one child and each parent has physical care of at least one but not all of the children. In a split care situation, the support is calculated by using 2 child support worksheets to determine the support each parent owes the other. The resulting obligations are then offset, with one parent owing the other the difference as a child support order. The support shall be calculated as follows:

- (A) compute the support the first parent would owe to other parent as if the child in his or her care was the only child of the parties; then
- (B) compute the support the other parent would owe to the first parent as if the child in his or her care were the only child of the parties; then
- (C) subtract the lesser support obligation from the greater.

The parent who owes the greater obligation shall be ordered to pay the difference in support to the other parent, unless the court determines, pursuant to other provisions of this Section, that it should deviate from the guidelines.

(4) **Health care.**

(A) A portion of the basic child support obligation is intended to cover basic ordinary out-of-pocket medical expenses. The court, in its discretion, in addition to the basic child support obligation, shall also provide for the child's current and future medical needs by ordering either or both parents to initiate health or medical coverage for the child through currently effective health or medical insurance policies held by the parent or parents, purchase either or all of health or medical, dental, or vision insurance policies for the child, or provide for the child's current and future medical needs through some other manner.

(B) The court, in its discretion, may also order either or both parents to contribute to the reasonable health care needs of the child not covered by insurance, including, but not limited to, unreimbursed medical, dental, orthodontic, or vision expenses and any prescription medication for the child not covered under the child's health or medical insurance.

(C) If neither parent has access to appropriate private health care coverage, the court may order:

- (I) one or both parents to provide health care coverage at any time it becomes available at a reasonable cost; or
- (II) the parent with primary physical responsibility for the child to apply for public health care coverage for the child and the other parent to pay a reasonable amount of the cost for medical

support.

If cash medical support is ordered, the order may also provide that any time private health care coverage is available at a reasonable cost to that party it will be provided instead of cash medical support. As used in this Section, "cash medical support" means 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.

(D) The amount to be added to the basic child support obligation shall be the actual amount of the total insurance premium that is attributable to the child who is the subject of the order. If this amount is not available or cannot be verified, the total cost of the premium shall be divided by the total number of persons covered by the policy. The cost per person derived from this calculation shall be multiplied by the number of children who are the subject of the order and who are covered under the policy. This amount shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross incomes.

(E) After the health insurance premium for the child is added to the basic child support obligation and divided between the parents in proportion to their respective incomes for child support purposes, if the obligor is paying the premium, the amount calculated for the obligee's share of the health insurance premium for the child shall be deducted from the obligor's share of the total child support obligation. If the obligee is paying the premium, no further adjustment is necessary.

(F) Prior to allowing the health insurance adjustment, the parent requesting the adjustment must submit proof that the child has been enrolled in a health insurance plan and must submit proof of the cost of the premium. The court shall require the parent receiving the adjustment to annually submit proof of continued coverage of the child to the child support enforcement unit and to the other parent.

(G) A reasonable cost for providing health care coverage for the child or children may not exceed 5% of the providing parent's gross income. Parents with a net income below 133% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines or whose child is covered by Medicaid based on that parent's income may not be ordered to contribute toward or provide private coverage, unless private coverage is obtainable without any financial contribution by that parent.

(H) If dental or vision insurance is included as part of the employer's medical plan, the coverage shall be maintained for the child. If not included in the employer's medical plan, adding the dental or vision insurance for the child is at the discretion of the court.

(I) If a parent has been directed to provide health insurance pursuant to this paragraph and that parent's spouse or legally recognized partner provides the insurance for the benefit of the child either directly or through employment, a credit on the child support worksheet shall be given to that parent in the same manner as if the premium were paid by that parent.

Amendment to Section 510(a) with additional language effective July 1, 2017:

The court may grant a petition for modification that seeks to apply the changes made to subsection (a) of Section 505 by this amendatory Act of the 99th General Assembly to an order entered before the

effective date of this amendatory Act of the 99th General Assembly only upon a finding of a substantial change in circumstances that warrants application of the changes. The enactment of this amendatory Act of the 99th General Assembly itself does not constitute a substantial change in circumstances warranting a modification.

G:\DOCS\ILLINOIS CHILD SUPPORT INCOME SHARES 2017 PUBLIC ACT 99-764.DOCX