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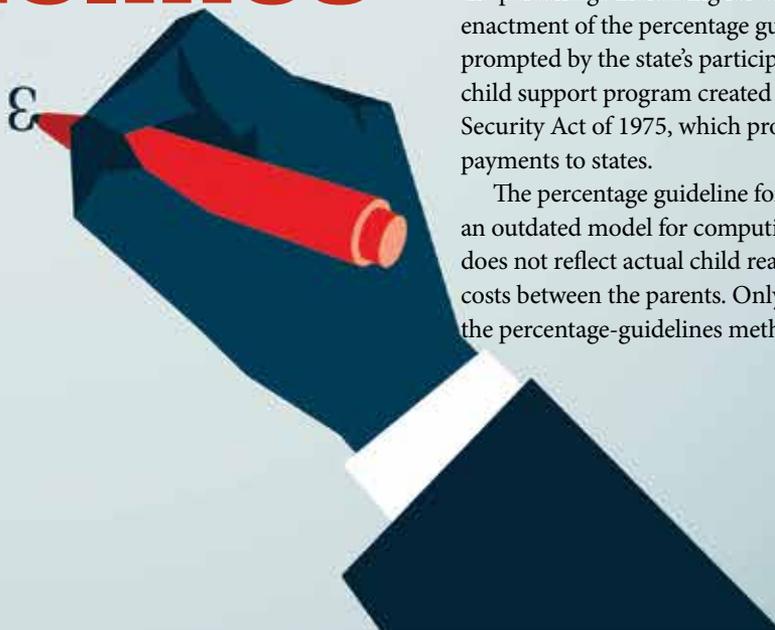
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The New Income Shares Child Support Guidelines

BY MARGARET BENNETT, NANCY CHAUSOW SHAFER, AND HON. PAMELA LOZA

Effective July 1, Illinois will implement a major change in how child support is computed. Here's how the new guidelines will work and why they'll make divorce practitioners' lives easier.



Shares Guidelines



WITH THE ENACTMENT OF PUBLIC ACT 99-764, Illinois joins 39 other states and the District of Columbia in adopting the income shares model for calculating child support. It is both equitable and accurate because it is based on data that measures child-rearing costs. Those costs are then allocated between the parents based on each parent's respective net income.

The soon-to-be-replaced percentage guideline. Illinois has used the percentage guideline formula to determine child support since 1984, and unofficially for many years prior. It is based on a percentage of the obligor's net income, with the percentage increasing for each child of the parties. The enactment of the percentage guideline statute in 1984 was prompted by the state's participation in the federal interstate child support program created by Title IV-D of the Social Security Act of 1975, which provides for federal incentive payments to states.

The percentage guideline formula is now considered an outdated model for computing child support because it does not reflect actual child rearing costs or allocate those costs between the parents. Only seven states continue to use the percentage-guidelines method, which is perceived as a

TAKEAWAYS >>

- Effective July 1, 2017, Illinois will use the income shares model for the calculation of child support in family law cases. The new system will replace the percentage guideline formula that has been officially used since 1984.

- Although some states utilize gross income to calculate child support payments, Illinois will continue to utilize net income to calculate a party's respective share of support responsibility. The relevant definition of income will continue to be all income from all sources, as under previous law, thus retaining decades of case law defining income.

- When determining the percentage of income shares between the parties in cases where spousal support is paid by one parent to the other, maintenance is subtracted from the payor parent's income and must be included in the recipient parent's income. The percentage of income shares increases the recipient parent's percentage share and conversely reduces the payor spouse's percentage share.

THE CURRENT PERCENTAGE-GUIDELINE FORMULA FOR CALCULATING CHILD SUPPORT IS CONSIDERED OUTDATED BECAUSE IT NEITHER REFLECTS ACTUAL CHILD REARING COSTS NOR ALLOCATES THOSE COSTS BETWEEN PARENTS.

one-parent-payor system. It often causes discord between the parents and distrust of the child-support system.

Income shares. The income shares model attempts to reflect a family’s actual child-rearing expenses and how they were shared by the parents prior to their divorce or separation. This reduces negativity between them, thus benefiting the child. Implementing the new legislation should significantly improve support collection and coordination of interstate child support payments.

Comparisons of the two methods show that using the income shares model can produce child support amounts higher, lower, or comparable to those generated using percentage guidelines, depending upon the respective financial circumstances of each parent. There is a rebuttable presumption in any judicial or administrative proceeding that the amount of child support determined using the income shares guidelines is correct.

The statute also provides that the Act itself does not constitute a substantial change of circumstances warranting a modification. 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.

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

	Dad	Mom	Combined
Net income	\$11,190	\$7,460	\$18,650
Combined Net Income	60%	40%	
Schedule of Basic Child Support Obligation	\$1,800	\$1,200	\$3,000
2 children			
			1.5
Shared Care Support Obligation			\$4,500
Child Support Obligation	\$2,700	\$1,800	
Overnights	40%	60%	
SCSO	\$1,620	\$720	\$900
Net available support cash	\$1,800	\$2,700	\$4,500

Labor Statistics. Calculating child support based on actual child-rearing costs maintains the standard of living the child would have enjoyed if the parents had not divorced or separated.

Schedule of Basic Support Obligation. The Schedule of Basic Support Obligation (“Schedule”) will be promulgated by the Illinois Department of Healthcare and Family Services (HFS) and updated periodically. The actual Schedule will not be part of the child-support statute but will be maintained by HFS and available on their website.

Child rearing costs under the Schedule will be based on data from the Bureau of Labor Statistics adjusted for Illinois and will be updated periodically. Illinois, like other income shares states, is using an economic research institute to prepare the Schedule. The process will be initiated and administered by HFS, the agency responsible for insuring compliance with Illinois’ federal mandate, under which Illinois received over \$200,000,000 per year in grants for participation and compliance with the Title IV-D program.

In anticipation of the new legislation, HFS prepared a sample expenditure table in 2012, which is available on their website. Once the updated expenditure tables are available, HFS will prepare web-based electronic worksheets. The electronic worksheets and the expenditure

tables will be posted on the website.

Net income still the standard

Although some states use gross income to calculate child support payments, Illinois will continue to use net income to calculate parents’ respective shares of support responsibility. The definition of income for purposes of calculating child support continues to be all income from all sources, as under previous law, thus retaining decades of case law defining income. However, the new statute exempts certain governmental benefits from being included as income, including TANF, SNAP, and SSI.

Business income is also defined in the new statute. The court now has authority to reject depreciation, excessive or inappropriate business deductions, and personal expenses paid through a business when determining a parent’s income.

The new statute allows the parties to elect one of two formulas for computing tax deductions to determining net income: a) The standardized (or simplified) tax amount, or b) the individualized tax amount.

The standardized tax formula is based on both parents having single taxpayer status. It uses the standard deduction with one personal exemption. It will be based on the support recipient receiving the dependency exemption for the child

unless otherwise agreed or determined. The computation of net income will allow the deduction for federal and state taxes, including Social Security and Medicare taxes calculated at the Federal Insurance Contribution Act tax rate.

While the standardized tax amount may be appealing in its relative simplicity, it is unlikely to reflect the actual net income of a party who has numerous itemized deductions. In those cases, it is best to use the individualized tax amount formula to determine net income, which in turn requires using properly calculated state and federal taxes. The best way to make this calculation is to use one of the available software programs, especially where spousal support is awarded.

The interaction between income shares and spousal maintenance

To determine the percentage of income shares between the parties when spousal support is paid by one parent to the other, maintenance must be subtracted from the payor parent's income and must be included in the recipient parent's income. The percentage of income shares increases the recipient parent's percentage share and conversely reduces the payor spouse's percentage share.

An analysis of the interaction between 750 ILCS 5/504 and the new 750 ILCS 5/505 have consistently shown a more equitable financial result. In fact, all states that use spousal maintenance guideline formulas also have income shares statutes to calculate child support.

The spousal maintenance adjustment should be made from gross income before determining the tax amounts, since maintenance is tax deductible and includable in the recipient's income. Note that spousal support received from a previous spouse must be included as income by the recipient. Commercial software programs will calculate the tax consequences of spousal support on net income when determining the percentage of income shares and the resulting child support obligation.

The multiple-family adjustment

If a parent is paying court-ordered support, it is a permitted adjustment from gross income. Court ordered support is completely deductible.

This provision is a good reason to obtain a child support order for non-shared children. The multiple family adjustment should be made after, not before, the tax computation, since child support is not tax deductible.

The shared-parenting adjustment

The new child support statute has a two-step formula for shared parenting when both parents have 146 or more parenting overnights per year.

The first step is to multiply the basic support obligation as determined by the schedule by 1.5. Many other states use this type of enhancement of the basic child support obligation to reflect shared parenting expenses. The rationale for increasing the basic support obligation is to account for the increased housing, food, and other basic costs required to maintain two households to accommodate a shared parenting plan.

For example, if the schedule reflects \$3,000 per month of child rearing expenditures, the shared parenting multiplier amount would be \$4,500 per month. The percentage of the parents' income shares are determined. Those

THE INCOME SHARES MODEL ATTEMPTS TO REFLECT ACTUAL CHILD-REARING EXPENSES AND HOW THEY WERE SHARED BY THE PARENTS PRIOR TO THEIR DIVORCE. THIS REDUCES NEGATIVITY BETWEEN THEM.

allocated amounts are then cross-multiplied by the percentage allocation of parenting time to the other parent, and are set-off by subtracting the lesser support obligation from the greater as shown in the example.

Additional child-related expenses

Because the choice and cost of child care is unique to every family, the drafters of the new statute chose not to include child-care expenses in the Schedule. Child care expenses will be determined separately from child support, prorated in proportion to each parent's percentage share of combined parental net income,

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ISBA RESOURCES >>

- ISBA Free CLE, *Get Ready – It's Coming: Major Changes to Family Law Effective January 1, 2016* (Dec. 4, 2015), <http://onlinecle.isba.org/store/seminar/seminar.php?seminar=51850>.
- Margaret A. Bennett, *An Overview of the Illinois Parentage Act of 2015*, 103 Ill. B.J. 28 (Dec. 2015), <https://www.isba.org/ibj/2015/12/overviewillinoisparentageact2015>.
- P. Andre Katz & Erin B. Bodendorfer, *The New and Improved Illinois Marriage and Dissolution of Marriage Act*, 103 Ill. B.J. 30 (Nov. 2015), <https://www.isba.org/ibj/2015/11/newandimprovedillinoismarriageanddi>.
- Jeffrey L. Hirsch, *Solving for X & Y: The Illinois Spousal Maintenance Guidelines*, 103 Ill. B.J. 32 (Sept. 2015), <https://www.isba.org/ibj/2015/09/solvingxyillinoispsousalmaintenance>.