

NEW CHILD CUSTODY/SUPPORT LAWS

How the changes affect divorcing couples



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What prompted the changes to Illinois law?

Alyssa Mogul: Illinois is working to align more closely with federal mandates and national trends in family law. The new laws reflect changes in and further encourage increased involvement of both parents in their children's lives after a divorce. The new laws also address a long-standing concern that looking at one parent's income to set child support was unfair and not in line with the children's needs.

Under the parental responsibilities statute, what are the major responsibilities to be allocated?

AM: Parenting time, which includes regular, holiday and vacation schedules, is also divided between the parties in a way that makes the most sense for the children.

The new law replaces the term "child custody" with the phrase "allocation of parental responsibilities." What's the difference?

AM: It still means a determination is required to assign decision-making and parenting time

to one or both parents. Unfortunately, to add to the confusion, while the new law removes the word "custody," there are other related laws affecting families that are still in use and not modified by the legislature that continue to use the term "custody."

Under the new law, what's a parenting plan?

AM: The parenting plan provides the rules parents will follow. If the parents cooperate and agree on a plan, the court will adopt it and enforce it, so long as it serves the children's best interests.

How does the amount of parenting time with a child affect child support calculations?

AM: Both parents' incomes are considered when determining child support, and each parent will have a support obligation based on his or her prorated share of the child's overall support. In addition, when each parent has at least 146 overnights with a child per year (40 percent of annual overnights), a different calculation is used to apportion child support. A parent with at least 146 overnights per year pays the other parent less than he or she would if he or she had less parenting time. Conceptually, the more time a parent spends with a child, the less money that parent is required to pay to the other, as the child is not living with the child support recipient as much.

If a parent owns a business, what does he/she need to know regarding the new child support statute?

AM: The new statute provides much more detail than before concerning how income from a business is to be calculated, and how documents concerning the business may be obtained to determine the appropriate amount of child support. Legal counsel is crucial in this area.

How is child support calculated if one parent is voluntarily unemployed or underemployed?

AM: A person who thinks they can avoid child support by becoming voluntarily unemployed or underemployed is misguided. A court will look to a person's historical earnings, qualifications, employment history, assets, and community standards to impute income to them. In addition, a court can require an unemployed person to seek employment. The person may have to maintain a job diary and

regularly report to the court and the other parent all the details of his or her daily efforts to obtain employment.

Will people paying alimony or spousal support, in addition to child support, be affected by the new law?

AM: This is a departure from an earlier version of the statute that did not consider spousal support when setting the amount of child support. Now, a person paying spousal support receives a benefit for those payments, and they're taken into account when calculating child support payments.

What advice do you have for couples with children who are contemplating filing for divorce?

AM: Each party should speak to a trusted professional in the family law field about how best to achieve their goals before beginning the process. Speak with a mental health professional about how to approach the topic with your children, inform the children together with the other parent and maintain a cohesive parenting plan, if possible. Prepare and be knowledgeable about your finances, including your family's expenses. Understand there are many ways to resolve your matter. And find an attorney you feel confident with, who has the skills to advance and resolve your case by settlement, mediation or litigation. Many attorneys specialize in one arena, but it's most cost-effective to find one who has a track record in all of them in case your divorce does not proceed as you hope or plan.

What are some other changes outlined in the new laws?

AM: Lawmakers have attempted to make the system easier to navigate—with a statewide financial affidavit, for example—and better suited to deal with the many varieties of families affected by the law. It's no longer assumed that a family consists of a mother, a father, and the children, where one parent primarily cares for the children and the other parent primarily earns the income. Terms have been made gender-neutral and more flexible. Recently introduced maintenance guidelines have been refined to be fairer and give more predictable results.