

# Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

## New income shares guidelines: Benefit or detriment to your client?

BY STEPHANIE CAPPS

As of July 1, 2017, the income shares guidelines have taken effect replacing the percentage guidelines for child support in Illinois. Under the Illinois Marriage and Dissolution of Marriage Act, child support is no longer calculated by simply determining the payor's net income and multiplying it by a set percentage based on how many children were born to the parties. Under the new guidelines, both parties' net incomes and respective parenting times are taken into consideration to determine the amount of child support to be paid, and to whom. 750 ILCS 5/505.

Before, the non-residential parent, or the parent with less parenting time (the payor), paid child support to the residential parent, or the parent with the majority of parenting time (the payee). Two major steps were followed: First, determine the payor's net income. Second, multiply the net income by the applicable percentage based on how many children were born to the parties. For example, if Dad earned \$5,000 net income per month and the parties had one child together, who primarily resided with Mom, Dad would typically pay Mom 20% of his net monthly

income, or \$1,000 per month.

Under the new rules, the following analysis occurs:

1. Determine the net income of each parent.
2. Add the net incomes of both parents together.
3. Select the applicable amount from the Schedule of Basic Child Support Obligations.
4. Calculate each parent's percentage share by dividing each parent's individual net income by the combined parents' net income.
5. Multiply each parent's percentage share by the applicable amount from Step 3.
6. The parent with the majority of parenting time receives the support payment (the payee) from the other parent (the payor). The payee's share is not payable to the payor but rather kept by the payee to be spent directly (and presumably) on the minor child. If both parents have 146 overnights or more ("shared parenting time"), there are further considerations and calculations, discussed in Example 2.

Let's discuss three examples to

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demonstrate how the new guidelines may play a role in our practice and how the new law may benefit, or cause a detriment, to our clients:

**Example 1: Majority Parenting Time**

Mom and Dad are divorcing and have one minor child. Mom has the majority of parenting time. Dad has parenting time every other weekend from Friday night to Monday morning. The parties divide holidays on an annual even/odd basis. What should the payor spouse pay to the payee spouse under the new child support guidelines? Let's follow the analysis:

1. Mom earns \$7,500 net per month, and Dad earns \$3,500 net per month.
2. The combined net monthly income of both parents is \$11,000.
3. The applicable amount of basic child support obligations is \$1,548.
4. Mom's percentage share of child support is 68% (\$7,500 / \$11,000). Dad's percentage share of child support is 32% (\$3,500 / \$11,000).
5. Mom's amount of child support is

\$1,052.64 per month (\$1,548 x 68%).  
Dad's amount of child support is \$495.36 per month (\$1,548 x 32%).

6. Mom has the majority of parenting time, so Dad pays Mom child support in the amount of \$495.36 per month. Mom keeps her share of \$1,052.64 for the child.

Under the old statute, Dad would typically pay 20% of his net monthly income to Mom in the amount of \$700 per month (\$3,500 x 20%), absent any reasons for the Court to deviate downward.

In Example 1, it appears that Dad benefits more financially under the new statute while mom benefitted more financially under the old statute.

**Example 2: Shared Parenting Time**

Under the new statute, a shared parenting situation arises when both parents have 146 overnights or more per year. Assume all the facts are the same as Example 1, except now Mom and Dad have shared parenting time as follows (assume the child is with Mom during all times not specifically designated to Dad):

Day	Odd Years	Even Years	Overnight
Alternating Weekends (Friday night to Monday morning)	Dad	Dad	78
Alternating Wednesdays (Wednesday before Dad's off weekend)	Dad	Dad	26
Dad's birthday (overnight to school or 10am)	Dad	Dad	1
Child's birthday (overnight to school or 10am)	Dad	Mom	1
New Year's Eve (overnight to 10am)	Dad	Mom	1
New Year's Day (overnight to 10am)	Mom	Dad	1
1 week of spring break (Friday after school to following Monday school, first weekend is Dad's off weekend)	Dad	Mom	7
Memorial Day Weekend (Friday after school to Tuesday school on Dad's off weekend)	Dad	Mom	4
Easter (overnight to 10am)	Mom	Dad	1
3 weeks of non-consecutive summer vacation (Friday to Friday on Dad's off weekends)	Dad	Dad	21
Father's Day (overnight to school or 10am)	Dad	Dad	1
July 4th (overnight to 10am)	Dad	Mom	1
Labor Day (Friday to Tuesday on Dad's off weekend)	Mom	Dad	4
Halloween (overnight to school or 10am)	Dad	Mom	1
Thanksgiving (overnight to 10am)	Dad	Mom	1
First week of winter vacation (Friday to Friday of off weekend)	Dad	Dad	7
Christmas Eve (overnight to 10am)	Dad	Mom	1
Christmas Day (overnight to 10am)	Mom	Dad	1
<b>Total Overnight (Dad)</b>	<b>151</b>	<b>141</b>	

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## Odd Years

Dad has 151 overnights per year, or 41% of the parenting time, thus Mom has 214 overnights per year, or 59% of the parenting time.

To calculate child support in a shared parenting time situation, Steps 1, 2 and 3 are followed from Example 1. Then the following analysis occurs:

4. Multiply the child support obligation by 1.5.
5. Calculate each parent's percentage share of child support by dividing each parent's individual net income by the combined parents' net income.
6. Multiply each parent's percentage share by the applicable amount from Step 4.
7. Calculate each parent's percentage share of parenting time by dividing the number of overnights by 365.
8. Adjust for each parent's parenting time by multiplying each parent's percentage share of child support by the percentage of time the child spends with the other parent.
9. The parent paying more child support pays the difference between the two amounts. Subtract the larger amount from the smaller amount. This is the amount of child support owed from one parent to the other.

Under the shared parenting schedule in Odd Years, who should pay what to whom under the new child support guidelines? Let's follow the analysis:

1. Mom's net monthly income is \$7,500 and Dad's net monthly income is \$3,500.
2. The combined net monthly income is \$11,000.
3. The applicable child support obligation is \$1,548.
4. The shared child support obligation is \$2,322 ( $\$1,548 \times 1.5$ ).
5. Mom's percentage share of child support is 68% ( $\$7,500 / \$11,000$ ). Dad's percentage share of child support is 32% ( $\$3,500 / \$11,000$ ).
6. Mom's amount of child support is \$1,578.96 per month ( $\$2,322 \times 68\%$ ). Dad's amount of child support is \$743.04 per month ( $\$2,322 \times 32\%$ ).
7. Mom's percentage share of parenting

time is 59% ( $214/365$ ). Dad's percentage share of parenting time is 41% ( $151/365$ ).

8. Mom's total child support obligation is \$647.37 ( $\$1,578.96 \times 41\%$ ). Dad's total child support obligation is \$438.39 ( $\$743.04 \times 59\%$ ).
9. Mom pays \$208.98 per month to Dad (the difference between \$647.37 less \$438.39).

Even though Mom has more parenting time than Dad, because this is considered a shared parenting time schedule under the new statute, Mom would owe Dad the difference between her amount (the higher amount) less Dad's amount (the lower amount).

Under the old statute, Dad likely would have paid Mom child support in the amount of \$700 per month, 20% of his net monthly income, despite having significant parenting time with the child. The new statute seems to embrace the holding of *IRMO Turk*, where the Court held that it has the authority to order a custodial parent to pay child support to the noncustodial parent under certain circumstances. *IRMO Turk*, 2013 IL App (1st) 122486.

Under Example 2, it appears that if you represent the lower wage earner who enjoys shared parenting time, your client may benefit under the new guidelines.

## Even Years

The elimination of Spring Break causes Dad's overnights to decrease by seven in even years. If dad receives one-half of the child's Spring Break every year, from the Friday after school (on Dad's off weekend) to the following Wednesday morning, rather than alternating the entire Spring Break on an even/odd year basis, Dad would meet the 146 threshold in all years. His parenting time would increase by five overnights in even years, bringing his total overnights to 146. His parenting time would decrease by 2 in overnights in odd years, but still leave Dad with 149 overnights per year.

When drafting a shared parenting schedule, be careful of double counting overnights. If you represent Dad, make sure his holiday and vacation time correlate with his "off" weekends. For

example, if the parenting schedule herein awarded Dad three consecutive weeks of Summer Vacation, rather than three non-consecutive weeks, we would have to account for his already scheduled Wednesday overnights before his "off" weekends and his already scheduled alternating Fridays to Mondays. Thus, Dad's overnights would decrease from 21 to between 14 and 17. Similarly, if Dad's Winter Break fell on his "on" weekend, we would have to subtract the already scheduled Friday to Monday overnights and the Wednesday overnight before his "off" weekend to eliminate double counting. Thus, Dad's overnights would decrease from 7 to 3. If any of Dad's single overnight Holidays fell on his already scheduled parenting time, the total number of overnights would decrease even more. This would affect Dad's total annual overnights and mean the difference between Dad reaching the 146 overnight threshold and receiving child support under Example 2, versus having to pay child support under Example 1.

Where one year meets or exceeds the threshold while the next year slightly varies, missing the threshold by only a few overnights, the parties could also creatively consider taking the difference between the child support paid by Dad in Example 1 (\$495.36) less the child support paid by Mom in Example 2 (\$208.98). Dad would then simply pay the difference of \$286.38 per month to Mom.

## Example 3: Modification of Child Support

Assume all the facts are the same as Example 1, except the parties were divorced on July 6, 2015. Pursuant to the Judgment at that time, Dad was ordered to pay Mom 20% of his net monthly income in the amount of \$700 per month ( $\$3,500 \times 20\%$ ).

Two years later, after exchanging tax returns, Mom discovers that Dad has a new job and his net monthly income has increased to \$5,000. Mom's net monthly income has increased to \$8,000 net per month. She calls you requesting that Dad's child support be modified upward. Though the new statute in and of itself does not constitute a substantial change in

circumstances for a modification of child support pursuant to 750 ILCS 5/510, Dad's new job and increased net income does. How do you advise your client?

Under the old statute, Dad would likely have to pay Mom 20% of his current net monthly income in the amount of \$1,000 per month to Mom.

Under the new statute, Dad would actually owe less than the amount ordered in the 2015 Judgment.

Let's follow the analysis:

1. Mom earns \$8,000 net per month, and Dad earns \$5,000 net per month.
2. The combined net monthly income of both parents is \$13,000.
3. The applicable amount of basic child support obligations is \$1,667.
4. Mom's percentage share of child support is 62% ( $\$8,000 / \$13,000$ ). Dad's percentage share of child support is 38% ( $\$5,000 / \$13,000$ ).
5. Mom's amount of child support is \$1,033.54 per month ( $\$1,667 \times 62\%$ ). Dad's amount of child support is \$633.46 per month ( $\$1,667 \times 38\%$ ).
6. Mom has the majority of parenting time, so Dad pays Mom child support in the amount of \$633.46 per month. Mom keeps her share of \$1,052.64 for the child.

If you represent Mom, you may not want to file a petition to modify child support, even though Dad is earning \$18,000 net more per year than at the time of Judgment. You will have to explain to Mom that filing a petition to modify child support may decrease the amount she receives from Dad each month based on the new guidelines.

If you represent Dad, you may want to file a petition to modify child support

based on his new job and new income, and seek a lesser amount owed to Mom based on the new guidelines.

How our clients react to the new guidelines, and hence to us, may depend on whether they incur a financial benefit or a financial detriment. ■

Stephanie A. Capps is the founder and principal attorney of The Capps Law Firm, P.C. She counsels clients on all aspects of divorce and family law matters and also serves as a certified mediator.



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**Thursday, 08-10-17 - Webinar—**  
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 08-17-17 - Webinar—**  
Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

## September

**Thursday, 09-07-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday and Friday 09-7 & 8, 2017 – Chicago, ISBA Regional Office—**  
ISBA Guardian Ad Litem and Child Representative Training. Presented by Family Law.

**Friday, 09-08-17 – Lincoln Heritage Museum, Lincoln, IL—**1st Annual Lawyer Lincoln's Legacy: Lessons for Today. 9 a.m.-4:30 p.m.

**Wednesday, 09-13-17 – LIVE Webcast—**Sexual Orientation Protected as Sex Discrimination Under Title VII: Hively V. Ivy Tech Community College. Presented by Labor and Employment. 12-2 pm.

**Thursday, 09-14-17 – LIVE Webcast—**Environmental Due Diligence in the Era of President Trump: Revisiting Caveat Emptor, the Role of Government, Tort Liability and Statutory Environmental

Cleanup Liability under State and Federal Law. Presented by Real Estate. 12-1 p.m.

**Thursday, 09-14-17 - Webinar—**  
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 09-15-17 – Fairview Heights, Four Points by Sheraton—**Solo and Small Firm Practice Institute. All Day.

**Wednesday, 09-20-17 – LIVE Webcast—**Construction Escrow, Lien Waivers and Sworn Statements: Best Practices. Presented by Construction Law. 12-1 p.m.

**Thursday, 09-21-17 - Webinar—**  
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**Wednesday, 09-27-17 – LIVE Webcast Webinar—**HIPAA and How It Applies To YOU. Presented by Employee Benefits. 12-1 p.m.

**Thursday, 09-28-17 – LIVE Webcast—**How Secure Are you? Cyber for the Illinois Practitioner. Presented by Insurance Law. 12-2:15 p.m.

## October

**Wednesday, 10-04-17 LIVE Webcast—**Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

**Thursday, 10-05-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—**Fall 2017 Beginner & Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

**Friday, 10-06-17 – Chicago, ISBA Regional Office—**Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

**Monday, 10-09-17 – Chicago, ISBA Regional Office—**Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Monday, 10-09-17 – Fairview Heights—**Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.

**Wednesday, 10-11-17 – LIVE Webcast—**Enforcing Illinois' Eviction Laws: A Basic Guide to Landlord Remedies and Tenant Rights. Presented by Real Estate Law. 12-1 pm.

**Thursday, 10-12-17 - Webinar—**  
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office—**40 Hour Mediation/Arbitration Training Master Series. Master Series

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Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 10-19-17 – Bloomington—**Real Estate Law Update – Fall 2017. Presented by Real Estate.

**Friday, 10-27-17 – Chicago, ISBA Regional Office**—Solo and Small Firm Practice Institute. All Day.

## November

**Wednesday, 11-01-17 – ISBA Chicago Regional Office**—Anatomy of a Medical Negligence Trial. Presented by Tort Law. All Day.

**Thursday, 11-02-17 - Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 11-03-17 – NIU Naperville**—Real Estate Law Update – Fall 2017. Presented by Real Estate.

**Thursday, 11-09-17 - Webinar**—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 11-10-17 – Chicago, ISBA Regional Office**—Profession Under Pressure; Stress in the Legal Profession and Ways to Cope. Presented by Civil Practice and Procedure. 8:15 am-4:45 pm.

**Wednesday and Thursday, 11-15 and 11-16, 2017 – Chicago, ISBA Regional Office**—Microsoft Word in the Law Office: ISBA's Tech Competency Series. Master Series with Barron Henley. All Day

**Thursday, 11-16, 2017 – Chicago, ISBA Regional Office**—Microsoft Excel In the Law Office: ISBA's Technology Competency Series. Master Series with Barron Henley. Half Day.

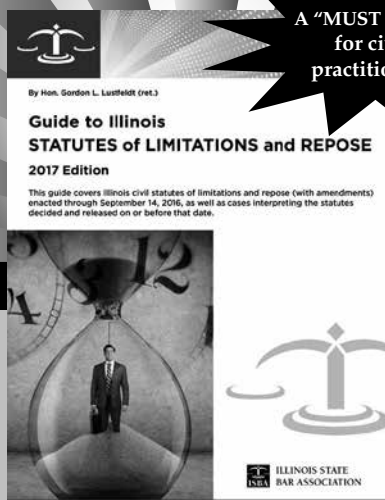
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**Thursday, 11-16-17 - Webinar**—Fastcase Boolean (Keyword) Search for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 11-17-17 – Webcast**—Obtaining and Using Social Media Evidence at Trial. Presented by Young Lawyers Division. 12:00-1:30 pm.

**Tuesday, 11-28-17 - Webcast**—Ethics Questions: Multi-Party Representation – Conflicts of Interest, Joint Representation and Privilege. Presented by Labor and Employment. 2:00-4:00 pm. ■

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## Guide to Illinois STATUTES of LIMITATIONS and REPOSE 2017 EDITION

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