

2017

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### Recommended Citation

Jennifer Straka, *New Income Shares Model for Determining Child Support to be More Equitable*, 23 Pub. Interest L. Rptr. 20 (2017).

Available at: <https://lawcommons.luc.edu/pilr/vol23/iss1/5>

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## New Income Shares Model for Determining Child Support to be More Equitable

Jennifer Straka

On July 1, 2017, the method for calculating child support in Illinois changed.<sup>1</sup> Previously, the Illinois child support formula had not changed for almost three decades with the exception of one adjustment.<sup>2</sup> Illinois became the 40th state to adopt the income shares model, joining the majority of states in the country.<sup>3</sup> The income shares model is based on the concept that a child should receive the same proportion of parental income that he or she would have received if the parents lived together.<sup>4</sup> Over 30 states have been using the income shares model since it was developed in the 1980's.<sup>5</sup> By 2012, 38 states based their child support guidelines on the income shares model.<sup>6</sup> "With Illinois becoming the 40th state to adopt the income shares model, we will be using an approach that has become increasingly endorsed by experts and advocates in the field," said Felicia Norwood, Director of the Department of Healthcare and Family Services.<sup>7</sup>

### BEGINNING THE CHANGE

Erin Bodendorfer, an Associate at Katz & Stefani, offered some insight as to how this change began to come about and the process of the revision. Bodendorfer recalled, "The income share guidelines for child support was initially a byproduct of recommendations made by the Illinois Family Law Study Committee ("IFLSC")."<sup>8</sup> The Illinois Family Law Study Committee was created to examine the Illinois Marriage and Dissolution of Marriage Act, study

<sup>1</sup> *Future Child Support Cases to Use Widely Accepted 'Income Shares'*, ILL. DEP'T OF HEALTHCARE AND FAMILY SERV. (June 23, 2017), [https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeShares\\_Child\\_Support\\_HFS.pdf](https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeShares_Child_Support_HFS.pdf) [hereinafter *Future Child Support Cases*].

<sup>2</sup> *Proposal to Adopt the Income Shares Model for the Illinois Child Support Guidelines*, CTR. FOR POL'Y RESEARCH (May 16, 2012), [https://www.illinois.gov/hfs/ChildSupport/Documents/070912\\_incomeshares.pdf](https://www.illinois.gov/hfs/ChildSupport/Documents/070912_incomeshares.pdf) [hereinafter *Income Shares Model*].

<sup>3</sup> *Future Child Support Cases*, *supra* note 1.

<sup>4</sup> *Income Shares FAQ's*, ILL. DEP'T OF HEALTHCARE AND FAMILY SERV., <https://www.illinois.gov/hfs/SiteCollectionDocuments/INCOMESHARESFAQ.pdf>.

<sup>5</sup> *Income Shares Model*, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Future Child Support Cases*, *supra* note 1.

<sup>8</sup> Interview with Erin Bodendorfer, Associate, Katz & Stefani, LLC, in Chicago, Ill. (Nov. 8, 2017).

the changes in law and society since the Act was enacted, and recommend how the Act should be amended to improve and update it.<sup>9</sup> In regards to her involvement with the committee, Bodendorfer stated, “In recognition of dramatic changes in familial societal norms since 1979, Speaker of the House Michael Madigan appointed P. André Katz, a Principal at Katz & Stefani, LLC, as Chairman of the Illinois Family Law Study Committee in 2008. Specifically, Mr. Katz was appointed to lead the bipartisan review and revision of Illinois’ Illinois Marriage and Dissolution of Marriage Act (“IMDMA”) and Parentage Act.<sup>10</sup> As an Associate at Katz & Stefani, LLC, I worked closely with Mr. Katz since approximately 2013, other members appointed to the IFLSC, Judges, legislators, and other interested governmental bodies and parties on several pieces of legislation leading to a re-write of the IMDMA.”<sup>11</sup> In the re-write, substantial revisions were made to topics including grounds for dissolution of marriage, allocation of parental responsibilities, and child support, among others.<sup>12</sup> In terms of the re-write, Bodendorfer commented, “A long overdue overhaul of the Illinois Marriage and Dissolution of Marriage Act (initially enacted in 1977) and the Parentage Act (initially enacted in 1984) went into effect.<sup>13</sup> Subsequent to the re-write of the IMDMA and Parentage Act, the legislation setting forth the income share model of child support was adopted as well.”<sup>14</sup>

Illinois previously used the percentage of obligor net income model.<sup>15</sup> This model assumed that child-rearing costs would be shared between the parents.<sup>16</sup> A percentage of the non-residential parent’s net income was assessed as the support to be paid to the parent or guardian who resided with the chil-

<sup>9</sup> *House Resolution 1101*, ILL. GENERAL ASSEMBLY, <http://www.ilga.gov/legislation/Bill-Status.asp?DocTypeID=HR&DocNum=1101&GAID=9&SessionID=51&LegID=38386>.

<sup>10</sup> Interview with Erin Bodendorfer, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> *The Illinois Marriage and Dissolution Act Effective January 1, 2016: An Overview from the Chairman of the Illinois Family Law Study Committee*, CHICAGO DAILY LAW BULLETIN: LEADING LAWYERS, <http://katzstefani.com/content/illinois-marriage-and-dissolution-marriage-act-effective-january-1-2016-overview-chairman>

<sup>13</sup> Interview with Erin Bodendorfer, *supra* note 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Illinois Income Shares Overview*, ILL. DEP’T OF HEALTHCARE AND FAMILY SERV. (May 26, 2017), <https://www.illinois.gov/hfs/SiteCollectionDocuments/IncomeSharesOverviewPublicVersionRC.pdf> [hereinafter *Income Shares Overview*].

<sup>16</sup> *Child Support Guidelines Frequently Asked Questions*, ILL. DEP’T OF HEALTHCARE AND FAMILY SERV., <https://www.illinois.gov/hfs/ChildSupport/About/AdvisoryCommittee/Pages/FAQs.aspx>.

dren.<sup>17</sup> The percentages were based on the number of children that were being supported.<sup>18</sup>

### THE INCOME SHARES MODEL APPROACH

Child support set by the income shares model is based on the typical cost of raising a child or children in a family with the same combined income and same number of children.<sup>19</sup> The incomes of both parents are combined and the number of children the parents share are recognized.<sup>20</sup> The amount those parents would spend in raising their child or children is identified within an expenditure table.<sup>21</sup> An expenditure table is a tool that identifies how much parents living together would normally spend on their children.<sup>22</sup> The expenditure table utilizes data from the Consumer Expenditure Survey released by the Bureau of Labor Statistics.<sup>23</sup> An expenditure table includes, among other things, housing, clothing, food, transportation, entertainment, and education.<sup>24</sup> The amount on the expenditure table is the Basic Support Obligation.<sup>25</sup> The obligation is then assigned to each parent according to his or her proportional financial contribution to the combined income.<sup>26</sup>

The Illinois Child Support Advisory Committee recommended the use of the income shares model for several reasons.<sup>27</sup> First, although the percentage of obligor income model and the income shares model yield approximately the same results for most families, income shares can yield markedly different results for certain families – primarily families where the parents incomes are very different.<sup>28</sup> Therefore, the income shares model is considered a more equitable approach to computing child support.<sup>29</sup> Bodendorfer considers the income shares model more equitable stating, “In most child support cases, it is definitely more fair and equitable than the previous model that was only based

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Income Shares FAQ's, supra* note 4.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Income Shares FAQ's, supra* note 4, at 1.

<sup>26</sup> *Id.*

<sup>27</sup> *Income Shares Model, supra* note 4, at 3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

upon one person's income.<sup>30</sup> The child support charts setting forth the applicable amounts based upon combined net income are based upon federally mandated economic studies regarding the cost of raising children."<sup>31</sup>

Second, the percentage of obligor income model does not provide guidance about adjustments when parents each have a significant amount of parenting time – often called “shared parenting” – or when one or more children live with one parent and another child or other children live with the other parent.<sup>32</sup> The income shares model offers a mechanism for shared parenting time to be included in calculations if the parenting time meets a minimum threshold.<sup>33</sup>

Third, the percentage of obligor income model did not easily allow for consideration of families where one or both parents have unusually high or unusually low income.<sup>34</sup> The income shares model offers a mechanism for consideration of these factors.<sup>35</sup>

Lastly, the income shares model begins with an explicit understanding between parents of what is the normal cost two parents of their combined income circumstances spend to rear children, and what their relative proportion of those expenses should be.<sup>36</sup> Parents begin their new parenting circumstances with facts and with the knowledge that the process is fair.<sup>37</sup>

#### DIFFERENCE BETWEEN THE CHILD SUPPORT STATUTES

There are several key differences between the income shares guidelines and the percentage of obligor net income model.<sup>38</sup> First, the income shares model considers both parents' incomes when determining the support award while the previous Illinois guidelines considered the obligor's income only.<sup>39</sup> This is an important consideration given income trends that suggest the average gap in incomes between obligated parents and parents due receipt is narrowing.<sup>40</sup> In

<sup>30</sup> Interview with Erin Bodendorfer, *supra* note 8.

<sup>31</sup> *Id.*

<sup>32</sup> *Income Shares Model*, *supra* note 2, at 3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 4.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Income Shares Model*, *supra* note 2, at 3.

<sup>39</sup> *Id.*

<sup>40</sup> Jane Venohr, *Technical Documentation: Illinois Schedule of Basic Obligations and Standardized Net Income Table*, CTR. FOR POL'Y RES. (June 12, 2017), <https://www.illinois.gov/hfs/SiteCollectionDocuments/TechnicalDocumentationIllinoisScheduleNetIncomeTable.pdf>.

other words, the income gap of mothers and fathers has narrowed over the years.<sup>41</sup> Bodendorfer noted the change in society, stating, “One of the most compelling reasons I found for the change to the income share model is that society has changed dramatically since the old model based solely on the obligor’s income went into effect.<sup>42</sup> Today, in many, if not most families, both parents are employed outside the home, and both share the financial and emotional responsibilities of parenting.<sup>43</sup> Society and family dynamics have changed dramatically and the laws should (and now do) reflect those changes.”<sup>44</sup>

Second, each parent is financially responsible for his or her prorated share of child-rearing expenses in the income shares model.<sup>45</sup> The previous Illinois guidelines assigned a flat percentage of the obligor’s income to determine the support award.<sup>46</sup>

Third, the income shares model is a more comprehensive and flexible model.<sup>47</sup> It can accommodate a variety and range of case circumstances (e.g., cases with high childcare expenses as well as cases with no childcare expenses and cases with extraordinary timesharing arrangements).<sup>48</sup> In contrast, percentage-of-obligor income guidelines essentially are a one-size fits all guidelines despite a variety of case circumstances.<sup>49</sup> Most states believe that the income-shares model is a fairer approach to child support guidelines.<sup>50</sup>

The income shares model will apply to all child support cases where support will be set on or after July 1, 2017.<sup>51</sup> The change in the law does not entitle a parent to modification of support.<sup>52</sup> There must be a significant change in circumstances or the support must have been set at least three years in the past to be eligible for modification.<sup>53</sup>

It has only been a short time since the new child support guidelines have taken effect, therefore, the full impact they will have in Illinois is not fully

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<sup>41</sup> *Id.*

<sup>42</sup> Interview with Erin Bodendorfer, *supra* note 8.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Income Shares Model*, *supra* note 2, at 3.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Income Shares FAQ’s*, *supra* note 4.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

known at this moment. On the effect of the income shares model, Bodendorfer commented, “The new income share model puts more responsibility on *both* parents to contribute to the support of their minor children.”<sup>54</sup> However, at higher income levels, the guideline child support awards are generally much lower than they were under the old model.<sup>55</sup> This will be a significant adjustment for some.”<sup>56</sup> Because the income shares model has been widely accepted in many other states, it can be anticipated that the income shares model will be endorsed here as well as a fairer, more equitable approach to determining child support.

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<sup>54</sup> Interview with Erin Bodendorfer, *supra* note 8.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*