



## NEW CHILD CUSTODY/SUPPORT LAWS

How the changes affect divorcing couples



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Illinois divorce law is undergoing a multiyear overhaul. In January 2016, new changes to child custody laws—now called parental responsibilities—were introduced.

A second statute, which took effect July 1, significantly altered the way courts allocate child-support payments.

Both of these changes in Illinois law were intended to create more equitable outcomes for divorcing spouses and factor in modern realities of dual-income families and shared parenting responsibilities.

Crain's Custom Media turned to four Chicago-based family law attorneys to get their thoughts about how the new laws will affect divorcing couples with minor-age children.

**Howard A. London** is a managing partner at Beermann Pritikin Mirabelli Swerdlove LLP, where he's worked since graduating from the George Washington University Law School in 1978. In addition to traditional family law litigation, he advocates alternate dispute resolution methods—such as mediation and cooperative and collaborative law—to achieve fair settlements in an amicable and cost-effective way. He's been recognized by The Best Lawyers in America, the Leading Lawyers Network, and Illinois Super Lawyers. He's been named one of the Top 10 Civil Appellate Law attorneys in Illinois, and one of the Top 10 Family Law attorneys in Illinois.

**Alyssa Mogul** is a partner with Grund & Leavitt, P.C., where she specializes in litigation. She's a frequent speaker at professional events, including continuing education seminars for lawyers, and she teaches at various Chicago law schools. She's an honors graduate of the Chicago-Kent College of Law, where she received a certificate from the Litigation and Alternative Dispute Resolution Program. She's a Fellow of both the American Academy of Matrimonial Lawyers and the

International Academy of Family Lawyers and has been recognized by the Leading Lawyers Network and Super Lawyers.

**Robert D. Segal** is a partner at Davis Friedman LLP, a Chicago-based firm exclusively practicing family law since 1946. Throughout his 30-year legal career, he has represented business owners, investment bankers, medical professionals, attorneys and others operating at the pinnacle of their respective fields. He holds a bachelor's degree in economics with honors from the University of Pennsylvania and a law degree from Temple University. He's a Fellow of the American Academy of Matrimonial Lawyers, a frequent faculty member and lecturer to legal and community organizations, and has been recognized by the Illinois Leading Lawyers and Super Lawyers.

**Tanya J. Stanish** is a senior partner with Schiller DuCanto & Fleck LLP, a family law firm with offices in Chicago, Lake Forest and Wheaton. As a negotiator and litigator, she's represented a wide variety of prominent clients, and understands the desire to protect families' and children's interests in complex divorce proceedings. An honors graduate of DePaul University's College of Law, she's been consistently recognized by Illinois Super Lawyers, The Best Lawyers in America, and the Leading Lawyers Network. She's been named among the Top 100 Trial Lawyers, and The Top 25 National Women Trial Lawyers.

**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.



**A NEW CHILD SUPPORT MODEL**



*“Illinois is catching up with 39 other states that have already adopted what’s known as the ‘income shares’ model for determining child support. This approach considers the income and allocation of parenting time of both parents.”*

**ROBERT D. SEGAL, DAVIS FRIEDMAN LLP**

**Robert D. Segal:** Illinois is catching up with 39 other states that have already adopted what’s known as the “income shares” model for determining child support. This approach considers the income and allocation of parenting time of both parents. By changing to this model, Illinois acknowledges the more nuanced reality of modern, dual-income families and strives to ensure that children receive the same or approximate benefits they would have if their parents still were married. The old model was built on the presumption of one working spouse making all the money and one non-working spouse providing all the childcare. It was very black and white, and generally pretty unfair.

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

**Tanya J. Stanish:** Education, health, religion and extracurricular activities. The parents by agreement, or the court otherwise, can

allocate the decision-making in each category to one parent solely or both parents jointly. Prior to the change in the law, both parents had joint decision-making or custody, or one parent had “sole” decision-making or “sole custody,” collectively for all four categories. Now, the court can allocate the decision-making of the four categories separately.

**Howard A. London:** For example, the father can be in charge of education, the mother in charge of health, and then both parents jointly responsible for religion and extracurricular activities, or any other combination. Regardless of who’s given the final say as to a category, it’s usually beneficial to the child and the parents’ relationship for the parents to consult each other and attempt to agree before making important decisions.

**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?**

**HL:** Previously, the term “custody” was often a fight waiting to happen—a zero-sum game where one parent was the winner and the other the loser. Married parents—equal in the eyes of the law (and to the children and others)—became something more or less, depending on who “won” custody. A main goal of the new law is to diffuse the tension by focusing on child-rearing. There’s still the potential for fighting over which parent gets to make decisions, but the hope is that parents will focus on sharing decision-making or allocating responsibilities consistent with the child’s best interest, without the distraction of the child “custody” label.

**RS:** The new terminology recognizes the fine-grain complexity of family life and parenting and puts both parents on more equal footing. Words matter. The new model moves away from the outmoded idea that the responsibility of caring for a child is an absolute. It’s also less conducive to the implication that one of the parents—the non-custodial parent—is somehow the less caring or able parent. The changes in terminology are also designed to reduce conflict and litigation concerning children.

**TS:** Now, the language is neutral with the prospect that both parents may be able to partake in the decision-making and parenting of their child, without having to feel that they won or lost a battle.

**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?**

**TS:** It’s the written agreement of the parents as to who will make the decisions in the four major categories (noted above) for the children, and when the children will spend their time with each parent. It includes many more details such as allocating

**FACTORING IN BUSINESS INCOME**



*“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.”*

**ALYSSA MOGUL, GRUND & LEAVITT, P.C.**

holiday, summer and vacation time, right of first refusal and dispute resolution provisions if the parents reach an impasse.

**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.

**HL:** If the parents can’t agree on a parenting plan, the court will order mediation and, if that fails, conduct a trial and fashion a parenting plan for the parties. The new law encourages parents to agree on a parenting plan rather than to require the court to dictate one.

**RS:** In my experience, one of the principal reasons married couples get divorced concerns issues of control—emotional, financial or social. The imbalance can make it difficult for parents to agree on a parenting plan. Nonetheless, the new law’s requirement of a parenting plan sets the expectation that parents find a way to jointly author what is effectively the blueprint for defining their responsibilities and roles for parenting and, most important, ensure their children’s overall health, safety and well-being.

**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.

**TS:** If the threshold’s achieved, the computation of child support becomes a multi-step formula which takes into account the costs of having two households to support. The incomes of the respective parents and their parenting time are considered as part of that formula.

**HL:** There’s a table that specifies a child support obligation figure based on the number of children (one to six) and combined family “adjusted net income” levels ranging from \$775 to more than \$30,000 per month. Child support is computed by

applying the ratio of the parents’ adjusted net income to the stated child support obligation for their income level. This computation can be affected by the amount of parenting time. While this reduction may fairly reflect higher child-rearing costs of the obligor’s significant parenting time, there’s concern that parents will fight over parenting time to get more (or pay less) in child support, rather than focusing on the children’s best interests.

**RS:** I prepared a spreadsheet to help my clients whose cases were ongoing prior to enactment of the new law understand different scenarios and the implications of the application of the old versus the new law and the effect on the child support calculation, so we could plan and act strategically.

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

**HL:** The new law defines how to compute “net business income” for purposes of calculating child support. The income may come from sole proprietorships, closely held corporations, partnerships, other flow-through business entities, and self-employment. The purpose is to separate business expenses from personal expenses and reasonable expenses from excessive ones. The law zeros in on three categories of business expenses: accelerated depreciation, inappropriate or excessive expenses, and personal expenses. These items can’t be used to reduce income for child support purposes, even if they are allowed as deductible expenses on a tax return.

**Robert D. Segal**  
**DAVIS | FRIEDMAN**



**Guidance**

Recent changes in family law indicate the legal system has begun to recognize the fine-grain intricacies of modern family life and parenting. This also means family law is becoming more detailed, more nuanced. Perceptive, experienced and informed, Robert Segal is the attorney who can help you navigate this new complexity.

**Thoughtful. Thorough. Tough.**



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## CRAFTING A PARENTING PLAN



*"If the parents can't agree on a parenting plan, the court will order mediation and, if that fails, conduct a trial and fashion a parenting plan for the parties."*

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MIRABELLI SWERDLOVE LLP**

**RS:** Business-owning parents should remain aware that opposing counsel will investigate not only their individual tax return, but will also look behind the tax return and delve into the various expense line items on the income statement of the business. This is done to distinguish between those claimed business expenses that are legitimate versus those that are personal in nature and hence subject to scrutiny.

**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.

**TS:** For any in-kind benefits or payments the parent receives—such as a company car, reimbursed meals, housing allowance or other benefits that are significant and reduce the parent's personal expenses—the

value of the benefits will be included in the business owner's income for purposes of the calculation.

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

**RS:** In those cases, child support will be calculated based on potential income. For example, if a parent without good reason quits her/his million-dollar-a-year job to flip hamburgers, the court can use that parent's much higher potential income to calculate her/his child support obligation. Similarly, the court may be called upon to address the situation when one parent has been out of the workplace for some time

but unreasonably refuses to become re-employed. The other parent will argue that by refusing to return to the workplace, she/he is not acting in good faith. This would form the basis for the court to impute to that parent her/his potential income for purposes of calculating child support.

**HL:** The tougher cases, which are subjective for a court, include: where a parent has been out of the workforce for years; has changed careers for good reasons, such as, for example, to pursue a passion; or is near or past a customary retirement age and has the ability to keep working but wishes to scale back or retire; or is earning a substantial income at an enjoyable pursuit but could earn more in a much less enjoyable position. These are more nuanced circumstances where the courts will be called upon to exercise discretion in considering whether to deviate from the child support guidelines.

**TS:** The court may also consider any substantial non-income producing assets held by the parent. Sometimes, one parent may request that the court require his or her under-employed spouse to submit to a vocational examination by an expert to determine the amount of income the spouse could be earning. The expert's determination may then be used in the child support calculation.

**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?**

**TS:** Possibly. The new law clearly states that in computing the child support amount, the person paying spousal support gets to deduct his or her payments from their gross income in determining their net income for child support, and the person receiving the spousal support has to include the payments in their gross income for purposes of calculating their net income.

**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

## DETERMINING CHILD SUPPORT



*"Sometimes, one parent may request that the court require his or her under-employed spouse to submit to a vocational examination by an expert to determine the amount of income the spouse could be earning."*

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person paying spousal support receives a benefit for those payments, and they're taken into account when calculating child support payments.

**HL:** The new law also allows a deduction for spousal maintenance payable or actually paid to a former spouse pursuant to a court order.

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

**RS:** Make sure that you've exhausted all other options to attempt to save the marriage. Earnestly participate in marriage counseling. Look inward to ask, "Is this marriage really dead?" Many divorce practitioners firmly believe a "custody fight" (now labeled as "a dispute concerning allocation of parental responsibilities"), absent exigent circumstances such as mental illness, substance abuse addiction or alcoholism, is a form of child abuse. Children not only suffer through the divorce of their parents and the upheaval of their family, but also will themselves be interviewed, tested and evaluated by a succession of court-appointed strangers. Parents considering divorce also ought to consider the big picture—the future of their children and their presence in their lives. If divorce truly is the best course, it's imperative that parents do everything they can to maintain a cordial relationship and an aligned front designed first and foremost to serve their children's best interests, including the promotion of the overall physical and emotional health, safety and well-being of the children.

**TS:** Since the laws have changed so much recently, the Internet may not be a reliable resource for keeping up with the changes and nuances of the law. Consult with a divorce attorney who can explain the laws within the context of the parent's particular circumstances. The child support law, for example, considers combined income of the parties up to approximately \$500,000 gross. If a family earns in excess of that, the child support amount may be significantly different than the statutory requirements and the court may use its discretion to determine the amount of support, considering such factors as lifestyle of the family and the unique expenses of the child.

**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.

**HL:** Put your children first and do your utmost to work out any differences amicably, or at least civilly. Contested court proceedings can irreparably harm families, especially children, who often suffer collateral damage from their parent's divorce. Seek the advice and assistance of counsel who will prioritize the well-being of your children.

**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.

He built an exceptional business. It's a good thing his attorney was with him every step of the way.

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