

NEW CHILD CUSTODY/SUPPORT LAWS

How the changes affect divorcing couples



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What prompted the changes to Illinois law?

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.

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

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.

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

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?

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?

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.

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.

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.