

Chicago Daily Law Bulletin®

Volume 162, No. 166

Serving Chicago's legal community for 161 years

Latest child support guidelines will play bigger role in child visitation

Traditionally, one of the first lessons young divorce attorneys learn is that the payment of child support is not contingent upon to the allocation of parenting time. An obligor's duty to pay child support is presumed by that party's net income from all sources as applied to the statutory guidelines.

Section 5/505 of the Illinois Marriage and Dissolution of Marriage Act contemplates deviations from the guidelines based on certain factors. The "allocation of parenting time" is not a statutory factor set forth in that section.

During the last decade there has been a consistent movement by non-custodial parents, usually fathers, toward equal or near equal parenting time in any case that may factually allow for the same.

Invariably in such circumstances, divorce practitioners will hear a guardian ad litem or child's representative inquire as to whether the non-custodial client is willing to pay guideline child support even after he or she is allocated equal parenting time.

Whether appropriate under the circumstance or not, such an inquiry is intended to bring to the surface whether the non-custodial parent's goal is truly to spend more time with the children, or whether the request for additional time is merely a ploy to save money on child support.

Equal (or near-to-equal) parenting time has not in and of itself justified a deviation from guideline child support. As noted by the 2nd District Appellate Court in *In re Marriage of Sobieski*, "It is unclear how extended time spent with one's children affects the financial resource and needs of the children or the financial recourses and needs of the non-custodial parent in a way that warrants deviation from the child support

guidelines." *Sobieski*, 368 Ill.Dec. 438, 451 (2nd Dist. 2013).

To make the correlation between parenting time and child support, attorneys must concurrently consider the parties' respective incomes. In situations where the parties make similar or relatively equal incomes, the allocation of equal or near-to-equal parenting time may justify a deviation from guidelines or even a reservation of support altogether.

Under this model, litigants understood that the allocation of parenting time was not determinative of their financial obligations to pay or receive child support. As such, litigants negotiated their appropriate parenting schedules based on the best interests of the children, not necessarily in consideration of any potential support obligations.

Next year, however, this paradigm will be turned on its head.

The Illinois legislature in May approved House Bill 3982, the Income Shares Bill. Signed by Gov. Bruce Rauner on Aug. 12, the Income Shares Bill sets forth an

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entirely new methodology for calculating child support which will become effective July 1, 2017.

Gone are the traditional statutory percentage guidelines, and in their place will be guidelines drafted by the Department of Healthcare and Family Services, including "worksheets to aid in the calculation of the child support award and a table that re-

MODERN FAMILY



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flects the percentage of combined net income that parents living in the same household in this state ordinarily spend on their children." The full text of the bill can be read at ILGA.gov.

These "tables and worksheets" have yet to be published. But clearly the legislature is attempting to transform the setting of child support from a factually based argument into an administrative calculation. Next year

it will create between the allocation of parenting time and the setting of child support. Paragraph 3.8, titled "Shared Parenting" provides that if each parent exercises 146 or more overnights per year with the child, then an entirely different calculation is put into effect.

The Shared Parenting provision is replete with confusing verbiage and terminology and is impossible to fully understand without those necessary "tables and spreadsheets," but what is clear is that the more parenting time a non-custodial parent has, the less child support the guidelines will presume should be paid, regardless of the comparability of the parties' incomes.

The shared parenting provision creates a very real financial incentive for the presumed custodial parent to refuse to allocate more than 145 nights per year to the other parent. Less parenting time will mean more child support. This is the antithesis of our established principles regarding the relationship, or supposed lack thereof, between parenting time and child support obligations. The new statute incentivizes parents to fight over parenting time.

Further, 146 nights per year is not an exceptionally generous amount of time. If a non-custodial parent exercises five nights out of every 14, in addition to exercising two weeks of summer vacation and a week of winter break, they have already reached the 146-night threshold.

The net result of this statute is to provide custodial parents with a "hill to die on" in terms of what they are willing to give up in a parenting time negotiation. And a decision as to how much time a child should spend with each parent should not be made based on how much money one parent can expect to receive in return for agreeing to such a schedule.