

# SHARED RESPONSIBILITY: TIME FOR ILLINOIS TO ADOPT THE INCOME SHARES MODEL OF CHILD SUPPORT

J. David Sanders\*

## I. INTRODUCTION

Suppose you are a hard working Illinois attorney with an annual net income of \$120,000, which is used to support two children and a spouse. One day you come home to find that your spouse has filed for divorce and plans to marry a millionaire. After going through divorce and custody proceedings, the judge orders you, as the non-custodial parent, to pay your former spouse 28%, or \$33,600, of your net income.<sup>1</sup> Stunned, you question the judge as to what additional benefit \$33,600 provides your two children, who now reside with a wealthy stepparent. Furthermore, you cannot believe the court considered the fact that your spouse is unemployed as evidence of the need for full child support payments. Adhering to the Illinois child support statute, the circuit judge determines that the amount of household income the custodial parent enjoys is not a factor to be considered when calculating child support obligations.<sup>2</sup> In addition, the judge decides not to exercise judicial discretion, which allows for deviation from the 28% guideline under the Illinois statute.<sup>3</sup> Ultimately, you feel penalized for having children and a failed marriage.

Your child support case is one of over 15.8 million child support cases filed in the United States<sup>4</sup> and one of more than 510,000 such cases in

---

\* J. David Sanders is a third-year student expecting his J.D. from Southern Illinois University School of Law, May 2014. He would like to thank his family and friends for their love, support, and encouragement throughout this writing process. He would also like to thank Professor Rebecca O'Neill for her guidance and support in writing this Comment.

1. This is the statutory amount for two children in Illinois. See 750 ILL. COMP. STAT. 5/505(a)(1) (2013).
2. See STAT. 5/505.
3. See, e.g., *In re Marriage of Hubbs*, 843 N.E.2d 478, 489 (Ill. App. Ct. 2006) (holding that the circuit court's failure to deviate downward from statutory child support guidelines because each party had above-average income did not constitute abuse of discretion); *Einstein v. Nijim*, 831 N.E.2d 50, 58-59 (Ill. App. Ct. 2005) (holding that failure to downwardly deviate from statutory guideline in setting child support was not abuse of discretion as a result of "demonstrable disparity" between father's and mother's monthly income).
4. U.S. DEP'T OF HEALTH & HUMAN SERVS., FY 2011 PRELIMINARY REPORT – TABLE P-9 (2012), available at <http://www.acf.hhs.gov/programs/css/resource/fy2011-preliminary-report-table-p-9>. Statistics include child support cases located in the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. *Id.*

Illinois.<sup>5</sup> These staggering figures demonstrate the importance that child support laws have in society. Accordingly, in an effort to ensure children of separated parents are adequately cared for, federal law mandates that states enact child support statutes that outline the collection process and the amount an obligor owes towards child support.<sup>6</sup> Adopted by forty states and territories, the leading child support guideline is the Income Shares Model.<sup>7</sup> The theory behind this model is to level the financial playing field for both parents by considering both parents' incomes.<sup>8</sup> This model is considered more representative of actual child-rearing costs because it takes into consideration the financial and non-financial contributions of both parents in order to allocate the proportion of parental income estimated to have been spent on the child if the household remained intact.<sup>9</sup> Currently, Illinois is not one of the forty states or territories that follow this model.<sup>10</sup> Instead, Illinois follows the Percentage of Income Model.<sup>11</sup> Simply put, this model is essentially a fixed tax on the non-custodial parent's income and based on the number of dependent children.<sup>12</sup> Further, the model does not take into account the actual child-rearing costs, but rather assigns child support obligations based on a fixed percentage of the non-custodial parent's income, regardless of the wealth of the custodial parent.<sup>13</sup> Consequently, the Percentage of Income Model may result in a disparity between the statutory amount of child support and the actual child support needed.<sup>14</sup>

In light of the large majority of states enacting the Income Shares Model and the current financial disparity that the Percentage of Income Model creates, this Comment addresses the need for Illinois to join the trend and change the Illinois Marriage and Dissolution of Marriage Act (IMDMA) by adopting the Income Shares Model for determining child support obligations. Changing the IMDMA is imperative to create better and more realistic child support amounts. To demonstrate how to best change the current IMDMA, Section II of this Comment will briefly discuss the history of child support laws in the United States and the different types of child support models

- 
5. U.S. DEP'T OF HEALTH & HUMAN SERVS., FY 2011 PRELIMINARY REPORT—STATE BOX SCORES (2012), available at <http://www.acf.hhs.gov/programs/css/resource/fy2011-preliminary-report-state-box-scores#IL-IN>.
  6. 42 U.S.C. § 667 (2010).
  7. For example, Indiana, Kentucky, Missouri, Tennessee, etc., have adopted the Income Shares Model. *Child Support Guideline Models by Model Type*, NAT'L CONF. ST. LEGISLATURES (Feb. 2013), <http://www.ncsl.org/issues-research/human-services/guideline-models-by-model-type.aspx> [hereinafter *Child Support Guideline Models*].
  8. See Pamela Foohey, *Child Support and (In)ability to Pay: The Case for the Cost Shares Model*, 13 U.C. DAVIS J. JUV. L. & POL'Y 35, 49 (2009).
  9. *Id.*
  10. See *Child Support Guideline Models*, *supra* note 7.
  11. 750 ILL. COMP. STAT. 5/505 (2013).
  12. Foohey, *supra* note 8, at 45.
  13. *Id.*
  14. *Id.*

currently enacted. Next, Section III will examine the current Illinois child support statute and discuss the multiple deficiencies with the model. Finally, Section IV will provide an in-depth analysis supporting the reasons why the Illinois General Assembly should adopt the Income Shares Model and highlight important provisions the new statute should include.

## II. DEVELOPMENT OF CHILD SUPPORT IN THE UNITED STATES

Adopting new child support guidelines is no easy task. In order to understand the reasons to change the current Illinois model, some important background information is required. First, the history of the child support guidelines in the United States will be examined. Next, the different child support formulas currently used in the United States will be briefly discussed, with greater emphasis placed on the Income Shares Model.

### A. History of Child Support Guidelines

As a result of the Child Support Enforcement Amendments of 1984 (Amendments), states were required to develop statutorily prescribed mathematical procedures for determining the amount of child support awards and provisions for income withholding when an arrearage occurs.<sup>15</sup> The goal of the Amendments was to improve compliance with child support orders, because few states had implemented child support guidelines before 1984.<sup>16</sup> Prior to 1984, most state statutes included very general language, such as “just and reasonable,” when addressing child support obligations, which soon led to inconsistent child support awards.<sup>17</sup> Consequently, the Amendments became a forceful mechanism by requiring states to enact legislation that provided state courts with some uniformity when determining child support obligations.

Four years later, President Reagan enacted the Family Support Act of 1988, which mandated that states enact legally presumptive guidelines for child support obligations.<sup>18</sup> In addition, the Family Support Act required states to review their guidelines, based on current economic data and patterns of deviation, every four years.<sup>19</sup> Even by requiring states to include legally

---

15. 42 U.S.C. § 667 (2012); *see also* Irwin Garfinkel et al., *Child Support Orders: A Perspective on Reform*, 4 CHILD. & DIVORCE 84, 85 (1994). States have the option to opt out of adopting the requirements, but they risk losing federal funds from the Aid to Families with Dependent Children program. *Id.*

16. Robert G. Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 FAM. L.Q. 281, 282 (1987).

17. Garfinkel, *supra* note 15, at 85.

18. Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified in scattered sections of 42 U.S.C.).

19. Jane C. Venohr & Robert G. Williams, *The Implementation and Periodic Review of State Child Support Guidelines*, 33 FAM. L.Q. 7, 8 (1999).

presumptive guidelines and review their processes, states maintained the discretion to choose the type of child support model.<sup>20</sup> These two congressional Acts laid the foundation for the current child support structures in the United States.

## B. Child Support Models in the United States

Initially, by giving states wide latitude in creating child support guidelines, the Child Support Enforcement Amendments<sup>21</sup> and the Family Support Act<sup>22</sup> yielded varying guidelines and formulas.<sup>23</sup> As time passed, states have roughly adopted three main child support models: the Melson Formula, Percentage of Income, and Income Shares.<sup>24</sup>

### 1. *Melson Formula*

Adopted by only Delaware, Hawaii, and Montana, the Melson Formula is the least utilized child support model.<sup>25</sup> This model is the most comprehensive and mathematically complex approach to calculating child support.<sup>26</sup> The Melson Formula incorporates a complicated three-step calculation for determining child support.<sup>27</sup> The model takes into consideration the income of both parents and the minimum amount of financial support needed to maintain a child at a subsistence level.<sup>28</sup> The model's calculation of child support obligations is often criticized for placing the basic support needs of the parent before the child's needs by first calculating the parent's own expenditures, separate from child-rearing costs.<sup>29</sup>

---

20. Williams, *supra* note 16, at 281.

21. 42 U.S.C. § 667 (2012).

22. Pub. L. No. 100-485, 102 Stat. 2343 (1988).

23. Williams, *supra* note 16, at 281.

24. *Child Support Guideline Models*, *supra* note 7.

25. *Id.*

26. Margaret Campbell Haynes, *Child Support and the Courts in the Year 2000*, 17 AM. J. TRIAL ADVOC. 693, 701 (1994) ("The Melson formula is the most sophisticated guideline as far as the number of factors expressly considered by the guideline.").

27. Williams, *supra* note 16, at 295.

28. *Id.*

29. Foohey, *supra* note 8, at 54.

## 2. *Percentage of Income Model*

The Percentage of Income Model, which has been adopted by nine states<sup>30</sup> and the District of Columbia, is the second most popular model used to calculate child support obligations.<sup>31</sup> This model is ideal for courts and general practitioners who are wary of mathematical formulas.

Under a Percentage of Income Model, only the income of the non-custodial parent is imputed into the calculation of child support.<sup>32</sup> The income of the custodial parent is not considered, nor are any childcare costs, extraordinary medical expenses, or parenting time.<sup>33</sup> Depending on the number of children and, in some states, the age of the children, an obligor is statutorily required to pay a fixed percentage of their income, ranging anywhere from 15% to 50%.<sup>34</sup> In essence, this model is a tax on the obligor, with some states applying a flat tax, regardless of the obligor's income, and others applying a graduated tax.<sup>35</sup> Nonetheless, the determination of child support is easily ascertainable by referencing the statute and applying the fixed percentage to the obligor's income.

Consistent with the general goal of child support, the Percentage of Income Model strives to preserve the economic well-being of children.<sup>36</sup> The rationale for using a fixed or graduated scale is the idea of fairness to both the custodial parent and child by ordering a non-custodial parent to pay support based on his or her income.<sup>37</sup> Accordingly, this design allows the child to enjoy increases in the obligor's income, just as if the parent and child lived together.<sup>38</sup> However, the converse is problematic. If the obligor's income decreases and the obligation of child support is lowered, the child may suffer financially from the decrease in child support if the child's expenses and needs remain constant.<sup>39</sup> Nevertheless, the efficiency of the Percentage of Income Model allows courts to set child support obligations without the need to make complex calculations on the individual costs of childcare and helps avoid protracted litigation regarding this issue.<sup>40</sup>

---

30. Alaska, Arkansas, Illinois, Mississippi, Nevada, New York, North Dakota, Texas, and Wisconsin. *Child Support Guideline Models*, *supra* note 7.

31. *Id.*

32. Foohey, *supra* note 8, at 44.

33. Williams, *supra* note 16, at 290.

34. See 750 ILL. COMP. STAT. 5/505(a) (2013); TEX. FAM. CODE ANN. § 154.125 (West 2013); WIS. ADMIN. CODE § 150.03 (2010).

35. Foohey, *supra* note 8, at 45.

36. David Betson et al., *Trade-Offs Implicit in Child-Support Guidelines*, 11 J. POL'Y ANALYSIS & MGMT. 1, 7 (1992).

37. Garfinkel, *supra* note 15, at 87.

38. *Id.*

39. *Id.*

40. *Id.*

### 3. *Income Shares Model*

The Income Shares Model is the most widely adopted child support model.<sup>41</sup> Thirty-eight states, along with Guam and the Virgin Islands, have enacted this model.<sup>42</sup> This model shares some similarities to both the Melson Formula and the Percentage of Income Model. The basic premise of the model is that parents should share the same financial responsibility as they would if the parents lived together.<sup>43</sup>

The first step of the Income Shares Model is to add together the income<sup>44</sup> of both parents.<sup>45</sup> This initial focus on the combined income of the parents offers a better representation of a two-parent household income and, accordingly, preserves the child's economic well-being while being able to adjust for income increases.<sup>46</sup> By calculating the level of pre-divorce income, the Income Shares Model creates the impression that the standard of living of the children is maintained.<sup>47</sup> Further, this premise permits children of separated parents to share the standard of living of both of their parents and ensures that the children do not bear a disproportionate share of the reduced standard of living that may result from their parents' decision not to share a household.<sup>48</sup>

In step two, based on economic data, the model calculates child-related expenditures for a two-parent household in order to generate the basic child support obligation.<sup>49</sup> The total obligation is then computed by adding actual expenditures for work-related childcare expenses and extraordinary medical expenses.<sup>50</sup> By first using economic data instead of actual spending, some critics claim that the formulas are not a true representation of the actual child-rearing costs.<sup>51</sup> Although the estimates may not result in the actual child-

---

41. *Child Support Guideline Models*, *supra* note 7.

42. *Id.* Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, and Wyoming. *Id.*

43. *See* Garfinkel, *supra* note 15, at 87.

44. Depending on the enacted statute, either gross or net income.

45. Foohey, *supra* note 8, at 49.

46. *See* Garfinkel, *supra* note 15, at 87.

47. Jo Michelle Beld & Len Biernat, *Federal Intent for State Child Support Guidelines: Income Shares, Cost Shares, and the Realities of Shared Parenting*, 37 FAM. L.Q. 165, 175 (2003).

48. *Id.* at 181-82 ("The Income Shares approach . . . considerably mitigates the impact of the household dissolution or non-formation by reserving the proportions of parental income for that child that would have been spent in the intact unit.").

49. Williams, *supra* note 16, at 293.

50. *Id.*

51. Fooley, *supra* note 8, at 50; *see also* Ira Mark Ellman, *Fudging Failure: The Economic Analysis Used to Construct Child Support Guidelines*, 2004 U. CHI. LEGAL F. 208-16 (2004). *But see* DAVID M. BETSON, PARENTAL EXPENDITURES ON CHILDREN: ROTHBARTH ESTIMATES (2010), available at <http://www3.nd.edu/~dbetson/research/documents/CaliforniaReport.pdf>. New Rothbarth

rearing costs of a particular child, the vast measure of data is a greater representation of child-rearing costs than assigning a fixed percentage to income (as done in the Percentage of Income Model).

In step three, the Income Shares Model assigns the non-custodial parent a pro-rated amount of the child support amount equivalent to the proportion of the obligor's share of the parents' aggregate incomes.<sup>52</sup> Although the custodial parent is assigned a pro-rata amount, that amount assigned is not owed; rather, the amount demonstrates that parent's expected child-rearing expenditures.<sup>53</sup> As a result, non-custodial parents favor this model over the Percent of Income Model because the model outlines and details the individual child-rearing costs, thereby reinforcing to non-custodial parents that their payments are being allocated for individual costs on behalf of their children.<sup>54</sup> Further, this process is different than the Percentage of Income Model because the Percentage of Income Model fails to consider child-rearing costs. Therefore, the Percentage of Income Model does not outline how custodial parents should allocate their support payments.<sup>55</sup> Nonetheless, an interesting and beneficial attribute of the Income Shares Model is the ability for states to adjust or include "credits" into the final child support amount.<sup>56</sup> Typical credits include childcare costs, extraordinary medical expenditures, and parenting time.<sup>57</sup>

For an example of calculating child support under the Income Shares Model, suppose the combined monthly net income between parents is \$10,000: \$6000 (60%) from the non-custodial parent and \$4000 (40%) from the custodial parent. Economic data shows that monthly child-rearing expenditures for raising a child without any extraordinary medical expenses total \$2000. Accordingly, the non-custodial parent must pay his or her pro-rata amount out of \$2000, which totals \$1200 (60%) per month towards child support. Further deductions may then be calculated from the \$1200 based on a pro-rata amount of contribution.

Although the Income Shares Model is not as straightforward as the Percentage of Income Model, it, unlike the other model, takes into consideration numerous factors, such as child-rearing costs, extraordinary

---

estimates are updated by Dr. David Betson of Notre Dame University and analyze thousands of married couples with and without children to determine what percentage of income a parent should allocate to child-rearing costs. *Id.* The estimates compare the generated amount to statistically similar estimates created from the U.S. Department of Agriculture. *Id.*

52. Williams, *supra* note 16, at 293.

53. Jane C. Venohr & Tracy E. Griffith, *Child Support Guidelines: Issues and Reviews*, 43 FAM. CT. REV. 415, 424 (2005).

54. Beld & Biernat, *supra* note 47, at 175; *see also* LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATION & APPLICATION § 1.03(a)(3)(ii) (1st ed. 1996).

55. *See* MORGAN, *supra* note 54, § 1.03(a)(3)(ii), (4)(ii).

56. Williams, *supra* note 16, at 294.

57. *Id.* *See also* Venohr & Griffith, *supra* note 53, at 424 (outlining states that allow for a time-sharing deduction).

medical expenses, and shared parenting.<sup>58</sup> Further, the Income Shares Model is consistent with the longstanding principle that both parents should share responsibility in raising their children by making clear the expectation that both parents contribute to maintaining a child's standard of living.<sup>59</sup> Lastly, this model is unlike the Illinois' Percentage of Income Model, where a fixed percentage of the obligor's income is assigned, regardless of the actual child-rearing costs of a particular child.<sup>60</sup>

### III. PROBLEMS WITH THE CURRENT ILLINOIS CHILD SUPPORT STATUTE

In 1977, the Illinois General Assembly enacted the IMDMA.<sup>61</sup> The IMDMA is expansive and incorporates a number of sections dealing with child support and modification of child support judgments with one of the several purposes being mitigating the chance of inadequate support to children and spouses.<sup>62</sup> The main section of the IMDMA discussed in Section III is the statutory guidelines Illinois courts reference when calculating child support obligations. Currently, there are numerous legal and policy problems within this section of the IMDMA.

#### A. Current Illinois Child Support Statute

Although an adoption of the Income Shares Model would affect most of the IMDMA, section 5/505 (child support guidelines) would encounter the most change. Under current Illinois law, section 5/505 of the IMDMA outlines the calculation of child support.<sup>63</sup> In Illinois, a non-custodial parent's child support obligation is set at a specified minimum amount based on a percentage of that parent's net income.<sup>64</sup> This type of child support model is widely referred to as the Percentage of Income Model because, depending on the number of children, a non-custodial parent in Illinois is required to pay 20% to 50% of his or her net income to the custodial parent.<sup>65</sup> Section 5/505(a)(1) requires the trial judge to determine the minimum amount of support by using the following guidelines:<sup>66</sup>

---

58. Beld & Biernat, *supra* note 47, at 175.

59. Williams, *supra* note 16, at 292.

60. *Id.* at 292-95.

61. Pub. Act No. 80-923, 1977 Ill. Laws 2675 (1977).

62. Treva H. O'Neill & Delney N. Hilten, *Family Law*, 11 S. ILL. U. L.J. 741, 742 (1987).

63. 750 ILL. COMP. STAT. 5/505 (2013).

64. STAT. 5/505(a).

65. STAT. 5/505(a)(1).

66. *Id.*

<b>CHART A</b>	
Number of Children	Percent of Supporting Party's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6 or more	50%

“Net income” is defined by the IMDMA as “the total of all income from all sources,” minus certain enumerated deductions.<sup>67</sup> Notably, the IMDMA’s definition of net income is not the same definition as “income” referred to by the IRS for income tax purposes.<sup>68</sup> The definition of what is “income” under the IMDMA has been a hotly debated topic within Illinois appellate districts.<sup>69</sup>

Most importantly, especially in the instance of an unemployed or underemployed obligor, section 5/505 provides for deviation from the statutory guidelines when “the court makes a finding that the application of the guidelines is appropriate, after considering the best interests of the child in light of evidence.”<sup>70</sup> The statute includes five factors a judge may consider when deviating from the set guidelines.<sup>71</sup> However, these factors are broad and provide no reference to the actual dollar amount or dollar limit by which a judge should deviate.<sup>72</sup> This lack of set amounts or limits may provide a

67. STAT. 5/505(a)(3). Deductions include state and federal income tax, social security (FICA payments), mandatory retirement contributions, union dues, dependent and individual health or hospitalization insurance premiums, prior obligations of support or maintenance actually paid pursuant to court order, and expenditures for repayment of debts incurred for certain purposes. *Id.*

68. See *In re Marriage of Rogers*, 820 N.E.2d 386, 390 (Ill. 2004).

69. Currently, a split between the First, Second, and Fourth Districts of the Illinois Appellate Court exists as to whether disbursements from an Individualized Retirement Account constitutes “income.” *In re Marriage of Lindman*, 824 N.E.2d 1219, 1226 (Ill. App. Ct. 2005) (holding that IRA disbursements are considered income for child support purposes); *In re Marriage of Eberhardt*, 900 N.E.2d 319, 326 (Ill. App. Ct. 2008) (determining that it was not an abuse of discretion to consider IRA withdrawals as income for child support purposes); *In re Marriage of O’Daniel*, 889 N.E.2d 254, 258 (Ill. App. Ct. 2008) (holding that disbursements from an IRA are not income for child support purposes, except to the extent they represent interest or appreciation earnings).

70. STAT. 5/505(a)(2).

71. *Id.* A court may consider the following relevant factors when deviating from the statute:

- (a) the financial resources and needs of the child;
- (b) the financial resources and needs of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child, and his educational needs; and
- (e) the financial resources and needs of the non-custodial parent.

*Id.*

72. *Id.*

benefit for a party in that particular case, but without uniformity, judges with factually similar cases may differ in the amounts they deviate from the statute. Nevertheless, a circuit judge is not required to deviate from the statutory guideline, but if a court deviates above or below the statutory guidelines, the court must make an express finding supporting the deviation.<sup>73</sup>

Before circuit courts may deviate beyond the statutory guidelines, the court must first follow the procedures of calculating net income set forth in section 505(a) of the IMDMA.<sup>74</sup> Although a trial court is normally required to make a threshold determination of a non-custodial party's net income before establishing the child support amount, the statute recognizes situations where the amount of the non-custodial parent's net income cannot be accurately determined or is not available.<sup>75</sup> Thus, a circuit court in such situations may order support in a reasonable amount, which may or may not be the statutory minimum percentage.<sup>76</sup> However, if a court finds the application of the guidelines appropriate, the court is not in error if it elects not to consider the financial resources of the custodial parent, even if the custodial parent enjoys a healthy standard of living.<sup>77</sup> Thus, all a court must find is that the best interests of the child are served when the non-custodial parent pays child support according to the guidelines of the statute.

## B. Current Problems Under Illinois Child Support Laws

The current Illinois child support statute is outdated and behind the trend of adopting the Income Shares Model.<sup>78</sup> Although the calculation of child support is easily calculated under Illinois' Percentage of Income Model, this ease of calculation comes with substantial problems. The IMDMA does not take into specific consideration the custodial parent's income, the remarriage of a parent, the amount of time a child spends with the non-custodial parent, or other expenses the non-custodial parent provides for the

---

73. *Id.*

74. *See In re Marriage of McGrath*, 970 N.E.2d 12, 14 (Ill. 2012) (holding that the trial court was correct in first calculating the respondent's net income prior to determining that the generated amount was inappropriate).

75. *See, e.g., In re Keon C.*, 800 N.E.2d 1257 (Ill. App. Ct. 2003) (holding that a deviation above the statutory guidelines is justifiable in order to maintain the standard of living the child previously experienced, even if household expenses were half of the amount); *In re Marriage of Severino*, 698 N.E.2d 193 (Ill. App. Ct. 1998) (holding that awarding child support in an amount that was reasonable, instead of using the percentage guidelines, was proper when the father's testimony regarding his income lacked credibility).

76. *See, e.g., In re Marriage of Takata*, 709 N.E.2d 715, 723 (Ill. App. Ct. 1999) ("Without credible evidence of respondent's net income, the trial court was compelled to make the award of child support in an amount that was reasonable in the case.").

77. *See* 750 ILL. COMP. STAT. 5/510(a)(2)(b) (2013).

78. *See Child Support Guideline Models*, *supra* note 7.

child.<sup>79</sup> The subjective focus on only the non-custodial parent's income is a major criticism of the Percentage of Income Model and a problematic issue for Illinois courts.<sup>80</sup>

### 1. *Windfall Situation*

Consider the hypothetical at the beginning of this Comment. Taking a strict application of the IMDMA, a court avoids reversible error when it orders the non-custodial parent of two children to pay 28% of the \$100,000 salary.<sup>81</sup> Although section 5/505(a) states that “the court may order either or both parents owing a duty of support to a child . . . to pay an amount reasonable and necessary,”<sup>82</sup> the proceeding subsection of the IMDMA requires courts to determine the minimum amount of support by using a fixed percentage of the non-custodial parent's income.<sup>83</sup> Not requiring courts to take into consideration the income of the custodial parent essentially penalizes the non-custodial parent when a court orders the non-custodial parent to pay the statutory amount, even if the custodial parent has the financial means to adequately provide for the needs of their children. Moreover, in today's society, it is normal that both parents earn an income.<sup>84</sup> This trend undermines the premise of the Percent of Income Model Illinois follows because one parent is no longer the sole financial supporter of a child.<sup>85</sup> As a result, the economic responsibility of raising a child is not equally divided in proportion to each parents' respective income.<sup>86</sup>

Consequently, if a judge elects not to consider the income of the custodial parent, especially if that parent's household income is high, the custodial parent receives a windfall. This windfall, albeit potentially beneficial to the child, is unfair to the non-custodial parent who has to pay child support based on a set statutory amount, regardless of whether the custodial parent needs the full amount of support to maintain the same standard of living for the child.

The potential windfall of the custodial parent is even more prevalent if the custodial parent remarries. Remarriage has a financial effect on either party by increasing the funds available to that party, while individual

---

79. 750 ILL. COMP. STAT. 5/505(a) (2013).

80. See Foohey, *supra* note 8, at 46-47.

81. STAT. 5/505(a). For two children, the minimum amount owed by the non-custodial parent is 28%. *Id.*

82. *Id.*

83. STAT. 5/505(a)(1).

84. See Beld & Biernat, *supra* note 47, at 192.

85. See *id.* Illinois uses the standard custodial/non-custodial model. *Id.*

86. *Id.*

expenses decrease as a result of a new collective share.<sup>87</sup> Illinois jurisprudence is in a state of flux when considering whether to include the income of a new spouse in the determination of child support obligations.<sup>88</sup> The traditional rule is that the new spouse's income should not be included in the calculation of child support.<sup>89</sup> This rationale is simple: a new spouse does not owe a financial duty to support a child from a previous marriage.<sup>90</sup>

Recently, the traditional rule has gradually shifted to where some Illinois appellate courts have considered the income or assets of the custodial parent's new spouse because the income or assets can be used to contribute to the living expenses of the custodial parent.<sup>91</sup> Although there is a trend by Illinois courts to include the income of a new spouse, without a statutory provision, there is potential for wide discrepancies among the courts when determining whether to include a new spouse's income.

## 2. *Not a Fair Representation of Child-Rearing Costs*

The current Illinois child support statute is not a full representation of the prior household income. Under the subjective focus on the obligor's income and not the individual childcare costs, assigning a fixed percentage of an obligor's income does not represent the actual costs once contributed to child-rearing costs. First, if the obligor was the sole financial supporter of the intact family, a child could experience a diminished standard of living because now the obligor does not need to devote the same financial resources to pay for clothing or extracurricular activities, but instead, only a fixed percentage of his or her income. Consequently, this fixed percentage may equal an amount below what the parent previously provided to the child.

Similarly, the current Illinois statute fails to consider child-rearing costs, such as who pays for health insurance, parenting time, daycare, or other daily costs.<sup>92</sup> Thus, under the statute there is no incentive (besides being an upstanding parent) to continue paying these additional costs because the obligor must pay a fixed percentage in addition to any extra expenses the

---

87. Clayton P. Kawski, *Stepping In(Come): Evaluating the Inherent Inconsistency of Illinois's Trend Toward Consideration of New Spouse Income in Child Support Modification*, 27 N. ILL. U. L. REV. 247, 278 (2007).

88. See 2 H. JOSEPH GITLIN, GITLIN ON DIVORCE: A GUIDE TO ILLINOIS MATRIMONIAL LAW § 17-1(1), at 17-52.1 (3d ed. 2013).

89. See *Robin v. Robin*, 359 N.E.2d 809, 814 (Ill. App. Ct. 1977) (holding that the income of the custodial parent's spouse could not be considered when determining the ability to support the child).

90. *Id.*

91. See, e.g., *In re Marriage of Drysch*, 732 N.E.2d 125, 130 (Ill. App. Ct. 2000) (holding that "a trial court may equitably consider the income of a parent's current spouse in determining an appropriate award of child support"); *Street v. Street*, 756 N.E.2d 887, 892 (Ill. App. Ct. 2001) (acknowledging that "there is clearly a current trend in the case law moving away from the traditional rule of law" on whether the assets of a spouse should be included when determining child support obligations).

92. See 750 ILL. COMP. STAT. 5/505 (2013).

obligor spends on his or her child.<sup>93</sup> Therefore, the obligor financially expends a greater amount than statutorily required. This result could lead to the obligor refusing to provide additional child-rearing costs above what is required under the statute, and therefore, the child could lose once-provided-for benefits. Moreover, the current Illinois model does not provide guidance regarding adjustments when each parent has a significant amount of parenting time or when one child lives with one parent and another child lives with the other parent.<sup>94</sup> This leads to a parent not willing or able to provide additional financial resources in certain circumstances.

A problem Illinois courts have encountered are situations where the statutory guideline may yield an amount in excess of the actual child-rearing costs. For example, in *In re Marriage of Singleteary*, the circuit court adhered to the statutory guidelines by ordering the non-custodial parent to pay \$36,000 per year, or 28% of the father's income, for child support for his only child.<sup>95</sup> The Illinois Appellate Court found the statutory amount inappropriate and reduced the circuit court order to \$24,000 per year.<sup>96</sup> Similarly, the appellate court in *In re Marriage of Bush* reversed a child support award of \$30,000 per year, the statutory required 20% of income, for one child because the four-year-old child could not possibly need "more than the average income of most Americans."<sup>97</sup> Resorting to the appellate court to remedy child support awards that are grossly disproportionate to actual child-rearing costs is problematic, because not all families have the financial resources to petition for appeal in otherwise appealable circumstances.

As illustrated, the current child support statute in Illinois contains flaws when it comes to providing for the best interests of a child. Assigning a fixed percentage of the obligor's income is too arbitrary and not representative of the actual child-rearing costs. Because of these flaws, it is time for the Illinois General Assembly to reform the IMDMA in order to take into consideration the financial needs of each child and the contributions of each obligor.

---

93. *See id.*

94. *Id.*

95. 687 N.E.2d 1080, 1089 (Ill. App. Ct. 1997).

96. *Id.*

97. 547 N.E.2d 590, 596 (Ill. App. Ct. 1989); *see also In re Marriage of Scafuri*, 561 N.E.2d 402, 406-07 (Ill. App. Ct. 1990) (reducing the child-support award for three children from \$10,000 per month, or 32% of the father's statutory net income, to \$6000 per month, stating that as the net income of the parties increase, the statutory guidelines have less utility because they were created to deal with average incomes and average child-rearing expenses). *But see In re Marriage of Garrett*, 785 N.E.2d 172, 174-77 (Ill. App. Ct. 2003) (affirming that the application of the guidelines pursuant to an award above the conventional needs of the child may be justified even though the amount exceeded the monthly expenses of the entire household). The court noted that no "Illinois Supreme Court case . . . has reversed a trial court's decision establishing child support at the statutory guidelines' minimum." *Id.* at 174.

#### IV. ADOPTING NEW CHILD SUPPORT GUIDELINES

In the United States, childcare is a major expense for parents.<sup>98</sup> As demonstrated in Section III, the current Illinois child support statute contains many flaws that threaten the best interests of children with separated parents. Moreover, the Illinois guidelines are outdated and behind the national trend of enacting child support guidelines that follow the Income Shares Model.<sup>99</sup> Therefore, in order to update the state's current child support guidelines, Illinois legislators should pass legislation to adopt the Income Shares Model.

Changing the child support statute in Illinois is not a novel idea. In 2008, the Illinois House of Representatives established and tasked the Family-Law Study Committee (Committee) to make major changes to the IMDMA.<sup>100</sup> After years of research, public meetings, and congressional hearings, the Committee recommended that Illinois join the national trend and adopt the Income Shares Model for calculating child support.<sup>101</sup> Although the Illinois General Assembly adjourned prior to enacting the proposed child support bills drafted by the Committee,<sup>102</sup> Illinois should continue the push to enact major changes to the IMDMA.

##### A. Congressional Action

The Illinois General Assembly should, once again, propose legislation to change the current IMDMA. To adopt the Income Shares Model, legislators must address how best to incorporate the three-step process of the model.<sup>103</sup> Thus, Illinois legislators will need to decide which type of income courts should calculate under a new statute, create an economic data table that sets forth minimum support obligations, and decide whether parents may receive credits for any extraordinary expenses or parenting time.

---

98. Garfinkel, *supra* note 15, at 88.

99. *Child Support Guideline Models*, *supra* note 7.

100. Adam W. Lasker, *Lawpulse: Is a Family-Law Overhaul on the Way?*, 100 ILL. B. J. 458 (2012).

101. CTR. FOR POLICY RESEARCH, DRAFT: PROPOSAL TO ADOPT THE INCOME SHARES MODEL FOR THE ILLINOIS CHILD SUPPORT GUIDELINES 2 (2012), available at <http://www.childsupportillinois.com/assets/070912incomeshares.pdf>. "The Center for Policy Research is a private, nonprofit research agency that plans, develops, and tests projects that improve the effectiveness and efficiency of human service agencies and the justice, health and education systems." CENTER FOR POL'Y RES., <http://www.centerforpolicyresearch.org/> (last visited Feb. 20, 2014).

102. H.B. 6191, 97th Gen. Assembly (Ill. 2012); H.B. 6192, 97th Gen. Assembly (Ill. 2012).

103. Williams, *supra* note 16, at 293. The three-step process is as follows: (1) combine the income (net or gross) of the parents, (2) Calculate child-related expenditures for a two-parent household, and (3) assign a pro-rata amount of child support equivalent to the proportion of the obligor's share of the aggregate parents' income. *Id.*

### 1. *Minimum Support Obligations*

Before Illinois can adopt new minimum child support obligations, Illinois legislators must first decide the core question of whether the new minimum support obligation should be based on the “net income” or “gross income” of the parents. Currently, Income Shares states vary on which form of income they apply.<sup>104</sup> Twenty-six Income Shares states and territories use the gross income of the parents,<sup>105</sup> whereas thirteen Income Shares states and territories calculate the net income of the parents.<sup>106</sup> The main difference between net income and gross income is that net income takes into account federal and state income taxes, whereas a gross income model does not.<sup>107</sup>

Practically, Illinois should base the new Income Shares guidelines on the net income of the parents, because currently the IMDMA calculates child support obligations based on the net income of the non-custodial parent.<sup>108</sup> However, an advantage of using gross income is the benefit of avoiding discovery and verification of each parent’s tax filing status, as well as avoiding potential problems of after-tax discrepancies.<sup>109</sup> Adopting guidelines based on the net income of the parents will allow Illinois courts and practitioners to rely on decades of case law concerning the definition of “net income.”<sup>110</sup> In addition, net income is the actual income a parent has available to support his or her children, thereby being more consistent with the measurements of child-rearing expenditures used to develop the proposed income shares schedule.<sup>111</sup> Net income also accounts for tax rate differences

---

104. CTR. FOR POLICY RESEARCH, *supra* note 101, at 16.

105. *Id.*; *see also* WASH. ST. DEP’T OF SOC. AND HUMAN SERVS., SURVEY OF CHILD SUPPORT GUIDELINES: DO THEY USE NET INCOME OR GROSS INCOME? (2007), available at <http://www.dshs.wa.gov/pdf/esa/dcs/grossnetmatrix2807.pdf>. Gross income guidelines in the United States include: Alabama, Arizona, Colorado, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, West Virginia, Guam, and the Virgin Islands. [List corrected from print version of article.] *Id.*

106. CTR. FOR POLICY RESEARCH, *supra* note 101; *see also* WASH. ST. DEP’T OF SOC. AND HUMAN SERVS., *supra* note 105. Net income guidelines in the United States include: California, Connecticut, Florida, Iowa, Michigan, Nebraska, New Hampshire, New Jersey, Pennsylvania, South Dakota, Vermont, Washington, and Wyoming. [List corrected from print version.] *Id.*

107. DAVID H. HOPKINS, WHY A “NET INCOME” MODEL TO AN INCOME-SHARING APPROACH FOR PURPOSES OF CHILD SUPPORT GUIDELINES IN ILLINOIS IS PREFERABLE (2011), available at [http://www.childsupportillinois.com/assets/102811csac\\_net.pdf](http://www.childsupportillinois.com/assets/102811csac_net.pdf).

108. 750 ILL. COMP. STAT. 5/505(a)(3) (2013).

109. CTR. FOR POLICY RESEARCH, *supra* note 101, at 18. For example, the after-tax amounts differ if one parent is married and the other is single. *Id.*

110. *Id.*; *see also* *In re* Marriage of McGrath, 970 N.E.2d 12, 15-16 (Ill. 2012). Defining “income” depends on whether the financial resource of the non-custodial parent is a pre-existing or a new, additional benefit from a financial resource. *See id.* at 15. If the financial resource is a pre-existing, and not a new benefit to the individual, that money is not considered “income” for child support purposes. *See id.* at 15-16.

111. CTR. FOR POLICY RESEARCH, *supra* note 101, at 17-18.

as well as child-related income tax benefits a parent might receive, such as exemptions for child dependents, child tax credits, and earned income tax credits.<sup>112</sup>

Once the Illinois General Assembly decides on whether to base the child support guidelines on the net income or gross income of the parents, Illinois legislators must create a mathematical guideline for the basic child support obligation. The report submitted by the Committee included an extensive guideline table based on the net income of the parents.<sup>113</sup> The guideline table applied Dr. David Betson's recent revision of the Rothbarth child-rearing estimates (referred to as the Betson-Rothbarth measurements), which used current economic data to estimate child-rearing costs.<sup>114</sup> The guideline table the Committee submitted is similar to the minimum support obligations used by twenty-eight states.<sup>115</sup> Chart B, below, is an abridged version of the Committee's basic child support guideline based on the combined monthly net income of the parents.<sup>116</sup>

<b>CHART B</b>						
<b>Net Income Model</b>						
<b>Combined Adjusted Net Income Per Month</b>	<b>One Child</b>	<b>Two Children</b>	<b>Three Children</b>	<b>Four Children</b>	<b>Five Children</b>	<b>Six Children</b>
\$1,000	\$218	\$275	\$278	\$281	\$284	\$287
\$2,000	435	667	809	904	994	1081
\$3,000	648	972	1169	1306	1437	1562
\$4,000	812	1126	1466	1638	1802	1959
\$5,000	921	1377	1641	1833	2016	2192
\$6,000	1000	1501	1784	1993	2193	2383
\$7,000	1120	1658	1965	2195	2415	2625
\$8,000	1224	1833	2175	2430	2673	2905
\$9,000	1318	1974	2342	2616	2877	3127
\$10,000	1413	2121	2523	2818	3100	3369
\$11,000	1494	2234	2647	2957	3253	3536
\$12,000	1546	2312	2739	3059	3365	3658
\$13,000	1620	2414	2848	3181	3499	3804
\$14,000	1691	2516	2963	3310	3641	3957

112. *Id.* at 18.

113. *Id.* at 35-45.

114. *Id.* at 48.

115. *Id.*

116. *Id.* at 35-45.

For a circuit court to determine the basic child support obligation, the court would combine the net income of the parents and then use Chart B to cross-reference the combined net income amount with the number of children between the parents.<sup>117</sup> The corresponding dollar amount would equal the basic child support amount owed by the obligor, prior to any deductions.<sup>118</sup> For example, if the combined net income of the parents of two children totaled \$8000, the basic child support amount would equal \$1833 per month.

## 2. *Important Credits to Include*

After calculating the basic child support obligation, a parent may qualify for credits to his or her final pro-rata obligation.<sup>119</sup> Credits are financial adjustments from the generated child support amount.<sup>120</sup> Although credits apply to both parents, only the obligor receives the credit.<sup>121</sup> The credits received by a parent are marginal to the total child support obligation and, ultimately, cannot result in a zero child support obligation.<sup>122</sup> The types of credits recognized vary among Income Shares states, but the most common types include child medical costs, work-related childcare, and parenting time.<sup>123</sup>

### a. Credits: Medical and Extraordinary Expenses

When adopting the Income Shares Model, Illinois legislators need to include a credit for child healthcare expenses. Recognized by all states, a parent can deduct from his or her income expenditures for health insurance premiums, life insurance premiums, or reasonable and necessary medical costs of the child.<sup>124</sup> The method of assigning credits for child healthcare expenses varies.<sup>125</sup> Most Income Share states pro-rate any extraordinary medical expenditures between the parents.<sup>126</sup> For example, Colorado allows a parent to receive credits for his or her contributions to health insurance and extraordinary medical expenses.<sup>127</sup> A common practice is to require the non-

---

117. See Williams, *supra* note 16, at 393. This process is step two of the Income Shares Model. *Id.*

118. See *id.*

119. *Id.* at 393-94.

120. See MORGAN, *supra* note 54, § 1.03(a)(3)(i).

121. Venohr & Griffith, *supra* note 53, at 424.

122. Williams, *supra* note 16, at 294.

123. *Id.*

124. MALCOLM L. SMITH ET AL., 2009 NEW HAMPSHIRE CHILD SUPPORT GUIDELINES REVIEW AND RECOMMENDATIONS 1, 32 (2009) available at [http://extension.unh.edu/News/dcss\\_guidelinesreport.pdf](http://extension.unh.edu/News/dcss_guidelinesreport.pdf); see also 750 ILL. COMP. STAT. 5/505(a)(3)(f), (h) (2013).

125. Garfinkel, *supra* note 15, at 89.

126. *Id.*

127. COLO. REV. STAT. ANN. § 14-10-115 (West 2013).

custodial parent to provide health insurance for the child when available through the parent's employment.<sup>128</sup> Such is the current law in Illinois.<sup>129</sup>

An additional credit some states offer is for extraordinary expenses, such as travel or tuition for private schooling.<sup>130</sup> For instance, Colorado offers credits for expenses incurred from the child attending private or specialized school due to the child's special needs.<sup>131</sup> Similarly, Indiana allows extraordinary expenses for elementary, secondary, or post-secondary education when "reasonable and necessary."<sup>132</sup> These extraordinary expenses benefit the child by maintaining the same standard of living once enjoyed.

#### b. Credits: Work-Related Childcare Costs

Another type of credit Illinois should include when adopting the Income Shares Model is a credit for payment for work-related childcare expenses. There are two different types of work-related credits: actual and discretionary work-related expenses.<sup>133</sup> All states include actual work-related childcare expenses, which are the expenses associated with providing care to a child when the parent is searching for employment (i.e., daycare and babysitting for the child).<sup>134</sup> Importantly, the amount of the credits determined for actual work-related expenses are calculated after the federal income tax credits for childcare are subtracted.<sup>135</sup> This process eliminates a double-counting for the same work-related expenses.<sup>136</sup>

In addition to including actual work-related expenses, some Income Shares jurisdictions allow for discretionary expenses, which are the costs associated with education aimed at increasing the parent's earnings.<sup>137</sup> There are concerns with allowing deductions based on discretionary expenses for the reason a parent may overstate such expenses.<sup>138</sup> However, the costs of such discrepancies are minimal because most childcare costs are actually work-related.<sup>139</sup> Nonetheless, if the legislature is wary of such abuse by

---

128. Garfinkel, *supra* note 15, at 89.

129. STAT. 5/505.

130. *See, e.g.*, IND. ST. CHILD SUPPORT GUIDELINE 8 (West 2013); § 14-10-115.

131. § 14-10-115.

132. *Id.*

133. CTR. FOR POLICY RESEARCH, *supra* note 101, at 52.

134. *Id.*; *see also* IRS, PUBLICATION 503 (2013), available at <http://www.irs.gov/publications/p503/ar02.html> (providing definitions and examples of work-related expenses).

135. CTR. FOR POLICY RESEARCH, *supra* note 101, at 8.

136. *Id.*

137. *Id.* at 52; *see also* KY. REV. STAT. ANN. § 403.211(6) (West 2013) ("The court shall allocate between the parents, in proportion to their combined monthly adjusted parental gross income, reasonable and necessary child care costs incurred due to employment, job search, or education leading to employment, in addition to the amount ordered under the child support guidelines.").

138. CTR. FOR POLICY RESEARCH, *supra* note 101, at 52.

139. *Id.*

parents inflating their work-related expenses, it should allow for judicial discretion.

For example, in Indiana, either parent may receive a credit for work-related childcare expenses if such childcare is “reasonable and [does] not exceed the level required to provide quality care for the children.”<sup>140</sup> Indiana recognizes the potential for abuse when the exact amount of work-related credit may not be known at the time child support obligations are established, and as a result, courts have a duty to use sound judgment and not attribute a work-related expense that is not actually incurred.<sup>141</sup>

Unlike Indiana, the Illinois Committee recommends that only the custodial parent may qualify for a childcare credit.<sup>142</sup> However, a failure to allow the non-custodial parent to claim credits for work-related childcare costs is adverse to the policy of the Income Shares Model of both parents sharing the responsibility of the child. Therefore, the non-custodial parent should enjoy similar benefits that the custodial parent enjoys. Essentially, if both parents incur a similar cost in maintaining the standard of living for the child, understandably, both parents should receive an equal credit. Therefore, under an Illinois Income Shares Model, both parents should qualify for credits based on work-related childcare expenses.

### c. Credits: Shared-Parenting Time

In 1987, the National Child Support Guidelines Panel recommended that states adopt child support guidelines that encourage the involvement of both parents in the upbringing of their child by allowing for a shared-parenting credit.<sup>143</sup> The shared-parenting credit takes into account the financial support each parent contributes to that child.<sup>144</sup> States recognize that the more time a non-custodial parent spends with a child, the more likely the parent will directly incur part of the child’s expenses beyond the general support obligation (e.g., food consumed by the child, transportation, housing costs, etc.).<sup>145</sup> Further, the credit is based on the premise that it is usually in a child’s best interest to have frequent, meaningful, and continuing contact with each parent.<sup>146</sup> This policy goal is admirable, especially considering the high rate of divorce in the United States,<sup>147</sup> which diminishes parent-child

---

140. IND. ST. CHILD SUPPORT GUIDELINE 3(E) (West 2013).

141. *Id.* at cmt.

142. CTR. FOR POLICY RESEARCH, *supra* note 101, at 10.

143. Venohr & Griffith, *supra* note 53, at 423.

144. *Id.*

145. *Id.*; see also Beld & Biernat, *supra* note 47, at 194-95.

146. IND. PARENTING TIME GUIDELINES (West 2013).

147. See Patrick F. Fagan & Robert Rector, *The Effects of Divorce on America*, HERITAGE FOUND. (June 5, 2000), <http://www.heritage.org/research/reports/2000/06/the-effects-of-divorce-on-america>.

involvement. Currently, thirty-three states provide for an adjustment for a shared-parenting time credit.<sup>148</sup>

Typically, Income Shares states use a graduated scale when applying parenting-time credits after a parent meets a set minimum requirement.<sup>149</sup> The amount of credits a parent receives increases depending on the court-ordered time for visitation with a child.<sup>150</sup> For instance, in Indiana, a child must spend over fifty-two days with the non-custodial parent before that parent qualifies for a shared-parenting credit.<sup>151</sup> In comparison, Arizona provides a shared-parenting credit after meeting a four-day minimum.<sup>152</sup> Interestingly, although the minimum day threshold for a shared-parenting credit in Arizona is much lower than in Indiana, the fixed percentage that corresponds to the number of shared-parenting days is similar.<sup>153</sup>

Calculating the amount of a shared-parenting credit is simple. Depending on the amount of days spent with a child, a court multiplies the total basic child support obligation by the set percentage that corresponds to the number of shared-parenting.<sup>154</sup> For example, if the basic child support obligation is \$2000 per month and the non-custodial parent spends fifty-five days with a child, according to Chart C,<sup>155</sup> below, the non-custodial parent receives a \$100 credit by multiplying \$2000 times 0.050. As a result, the credit reduces the non-custodial parent's total obligation from \$2000 to \$1900.

---

148. Venohr & Griffith, *supra* note 53, at 423.

149. See PATRICIA R. BROWN & TOYNA BRITO, CHARACTERISTICS OF SHARED-PLACEMENT CHILD SUPPORT FORMULAS USED IN THE FIFTY STATES 6 (2007), available at [http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/Brown\\_Brito\\_Task11.pdf](http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/Brown_Brito_Task11.pdf).

150. *Id.*

151. IND. ST. CHILD SUPPORT GUIDELINE 6 (West 2013).

152. ARIZ. REV. STAT. ANN. § 25-320 (2013).

153. *Id.*

154. See, e.g., IND. ST. CHILD SUPPORT GUIDELINE 6; § 25-320.

155. § 25-320.

<b>CHART C</b>	
<b>Parenting Time Table</b>	
<u>Number of Parenting Time Days</u>	<u>Adjustment Percentage</u>
0 - 3	0
4 - 20	.012
21 - 23	.031
39 - 57	.050
58 - 72	.085
73 - 87	.105
88 - 115	.161

A concern of allowing a shared-parenting time credit is the potential problem that occurs when the remaining child support payment seems “unfairly” low due to the non-custodial parent receiving a substantial amount of credits that reduces the overall child support obligation.<sup>156</sup> Thus, such a result is contrary to the federal intent of providing adequate support for the child.<sup>157</sup> As a safeguard, twenty-nine states allow judicial deviation from the child support guideline when applying shared-parenting credits.<sup>158</sup> Therefore, if the court finds the amount of shared-parenting credits harms the child by reducing the overall child obligation, the court can deviate from the generated amount.<sup>159</sup>

Under the current Illinois child support statute, the amount of time the non-custodial parent spends with his or her child is not a factor considered in setting child support obligations.<sup>160</sup> Consequently, there is no financial incentive for non-custodial parents to spend additional time with their children when they may incur additional costs. Thus, if a non-custodial parent spends an above average number of days with a child and, subsequently incurs additional childcare expenses, the child support obligation remains the same, just as if that parent had been absent from the child’s life.

The discrepancy and lack of recognition of the time and money the non-custodial parent spends with a child is unfair and conflicts with the federal intent of encouraging both parents to raise their children.<sup>161</sup> Although both parents have a moral obligation to support the upbringing of their child, the

---

156. *Id.*

157. Beld & Biernat, *supra* note 47, at 195.

158. *Id.*

159. *See, e.g.*, IND. ST. CHILD SUPPORT GUIDELINE 6 cmt. “Parenting Time Credit is not automatic. The court should determine if application of the [Parenting Time] credit will jeopardize a parent’s ability to support the child(ren). If such is the case, the court should consider a deviation from the credit.”

*Id.*

160. *See* 750 ILL. COMP. STAT. 5/505 (2013).

161. Beld & Biernat, *supra* note 47, at 194.

current child support model in Illinois fails to encourage this obligation.<sup>162</sup> By adopting an Income Shares Model, Illinois can include a provision that recognizes the costs a non-custodial parent incurs in addition to his or her general support obligation. As an additional positive consequence, such a model would compensate parental involvement.

#### B. Income Shares Applied: Abridged Worksheets

Recognized as a more rational assessment of the actual pre-divorce, child-rearing costs, an Income Shares Model requires both parents to complete worksheets that detail the actual and estimated expenditures for specific child costs, such as childcare, health insurance, and parenting time.<sup>163</sup> Income Shares worksheets that states utilize to determine child support obligations vary in length and detail.<sup>164</sup> The worksheets provide courts with a pro-rata amount that the non-custodial parent owes for child support.<sup>165</sup> From this generated amount, a court can deviate above or below when the court finds the amount inappropriate.<sup>166</sup> Understanding how individual facts of a case may affect these worksheets is important. The following parts of this Comment will provide multiple worksheets that demonstrate the effects and benefits of Illinois adopting an Income Shares Model.

##### 1. *Example One: Parents with Equal Incomes*

In Example One, the court awarded custody to the mother and determined the father to be the non-custodial parent of his two children. The pre-divorce monthly income for both parents is \$4000, which equals a combined monthly income of \$8000. Thus, each parent's proportional percentage of their income is 50%. Next, the judge refers to Chart B, *supra*, and finds that the basic child support obligation for the parents of two children with a combined income of \$8000 totals \$1833.<sup>167</sup>

After determining the basic child support obligation, the judge examines the parents' combined monthly expenditures for the children.<sup>168</sup> In this case, the mother incurs a work-related expense of \$200 per month for daycare for the two children, while the father pays a monthly health insurance

---

162. *See id.*

163. *See* Beld & Biernat, *supra* note 47, at 175.

164. *See, e.g., Worksheet—Child Support Obligation*, IND. JUDICIARY, <http://www.in.gov/judiciary/files/csow.pdf> (last visited Apr. 2, 2013); *Parent's Worksheet For Child Support Amount*, ARIZ. SUPREME CT., <http://azcourts.gov/Portals/34/Forms/CSW5-18-11.pdf> (last visited Apr. 24, 2013).

165. *Id.*

166. *See* Beld & Biernat, *supra* note 47, at 195.

167. *Id.* at 174.

168. *Id.*

premium of \$100 for the children. The total childcare expenses per month totals \$300, which raises the basic child support obligation to \$2133.

With the newly adjusted basic child support obligation of \$2133, the judge will then pro-rate the parents' obligation by their proportional share of incomes.<sup>169</sup> In this case, both parents owe \$1067 per month, but only the non-custodial parent must pay.<sup>170</sup> From the \$1067 the non-custodial parent must pay, the non-custodial parent can apply any available credits.

In this case, the father receives a \$192 credit for eighty days of shared-parenting time. The parenting time credit is calculated by multiplying the original basic child support obligation of \$1833 by the appropriate percentage (.105) found in Chart C, *supra*.<sup>171</sup> In addition, the father can claim his health insurance contribution of \$100, for a total credit deduction of \$292.<sup>172</sup> Under this Income Shares guideline, the father's child support obligation is \$1067 minus his credit of \$292, for a total of \$775 per month. Below is the completed worksheet:

<b>CHART D</b>			
<b>CHILD SUPPORT CALCULATION PER MONTH: Number of Children = 2; Mother is Custodial Parent</b>			
	<b>Custodial Parent</b>	<b>Non- Custodial Parent</b>	<b>Combined</b>
<b>1. Adjusted Monthly Income</b>	\$4000	\$4000	\$8000
<b>2. Proportional Share of Income</b>	50%	50%	100%
<b>3. Basic Child Support Obligation (enter figure from Chart A)</b>			\$1833
<b>4. Work-Related Childcare Costs</b>	\$200	\$0	\$200
<b>5. Child's Share of Health Insurance Premium and/or Extraordinary Medical Costs</b>	\$0	\$100	\$100
<b>6. Total Additional Expenses: (Add Lines 4 and 5)</b>	\$200	\$100	\$300
<b>7. Adjusted Basic Child Support Obligation (Add Lines 3 and 6)</b>			\$2133
<b>8. Parenting Time Credit (enter figure from Chart B and multiply by Line 3)</b>		\$192	
<b>9. Each Parent's Obligation (multiply Line 7 by Line 2 for each parent)</b>	\$1067	\$1067	
<b>10. Adjusted Child Support Order: (Subtract non-custodial parent's Line 6 &amp; Line 8 from non-custodial parent's Line 9)</b>		<b>\$775</b>	

169. ARIZ. REV. STAT. ANN. § 25-320 (2013).

170. Calculating the proportion the custodial parent must pay is for the purpose of showing the amount the parent is expected to directly spend on the child. SMITH, *supra* note 124, at 4.

171. § 25-320.

172. Beld & Biernat, *supra* note 47, at 174-75.

As mentioned above, one criticism against the Income Shares Model is the idea that the non-custodial parent can reduce his or her child support obligations using credits to generate an amount that seems “unfair” to the custodial parent and consequently diminish the child’s standard of living. However, in Example One, the monthly obligation of the father equals 19% of his income. Although this amount is below the 28% required under the current Illinois statute,<sup>173</sup> the father satisfied the federal intent to provide health insurance and exercise parenting time with his children.<sup>174</sup>

## 2. *Example Two: Unemployed Mother Remarries a Wealthy Individual*

Example Two is based on the hypothetical at the beginning of this Comment. This example demonstrates the stark difference between parents with grossly disproportionate incomes.

In this example, the court awarded custody to the mother and determined the father to be the non-custodial parent of his two children. Prior to the divorce, the mother was unemployed and the father was the sole provider, earning a monthly net income of \$10,000. Using an Income Shares Model, the father’s proportion of the shared income equals 100%, or \$10,000. According to Chart B, *supra*, the basic child support obligation for the parents of two children, with the combined monthly income of \$10,000, totals \$2121 per month.

Given that the mother remarried and remained unemployed, she can raise her children without the need of incurring work-related childcare costs. Therefore, she receives no childcare credits. In addition, the children remain on the father’s health insurance plan at a cost of \$100 per month. This raises the basic child support obligation to \$2221. However, the father will subsequently receive a \$100 per month credit for his health insurance contribution. Additionally, the father spends eighty days with his two children, which provides him a \$223 parenting time credit. In total, the father will receive \$323 in credits for his health insurance contribution and parenting time. Because the father’s proportional share of the household income totaled 100%, his monthly child support obligation is \$2221 minus his credit of \$323, for a total of \$1898 per month. Below is the completed worksheet:

---

173. 750 ILL. COMP. STAT. 5/505(a)(1) (2013).

174. See Beld & Biernat, *supra* note 47, at 194.

<b>CHART E</b>			
<b>CHILD SUPPORT CALCULATION PER MONTH: Number of Children = 2; Mother is Custodial Parent</b>			
	<b><u>Custodial Parent</u></b>	<b><u>Non- Custodial Parent</u></b>	<b><u>Combined</u></b>
<b>1. Adjusted Monthly Income</b>	\$0	\$10,000	\$10,000
<b>2. Proportional Share of Income</b>	0%	100%	100%
<b>3. Basic Child Support Obligation (enter figure from Chart A)</b>			\$2121
<b>4. Work-Related Childcare Costs</b>	\$0	\$0	\$0
<b>5. Child's Share of Health Insurance Premium and/or Extraordinary Medical Costs</b>	\$0	\$100	\$100
<b>6. Total Additional Expenses: (Add Lines 4 and 5)</b>	\$0	\$100	\$100
<b>7. Adjusted Basic Child Support Obligation (Add Lines 3 and 6)</b>			\$2221
<b>8. Parenting Time Credit (enter figure from Chart B and multiply by Line 3)</b>		\$223	
<b>9. Each Parent's Obligation (multiply Line 7 by Line 2 for each parent)</b>	\$0	\$2221	
<b>10. Adjusted Child Support Order: (Subtract non-custodial parent's Line 6 &amp; Line 8 from non-custodial parent's Line 9)</b>		<b>\$1898</b>	

In this example, the monthly child support obligation of the father equals 19% of his net income. Similar to Example One, this amount is lower than an amount required in Illinois.<sup>175</sup> However, the facts are different; here, the mother remarried a wealthy individual. Her remarriage has allowed her to stay voluntarily unemployed, and therefore, she has no income to include in the calculation for child support. Further, because of the mother's remarriage, she has no individual expenses beyond that of child-rearing costs. Consequently, the father's child support contributions result in discretionary spending and are not used for household expenses such as utility bills, mortgage payment, etc.

Although the father's support obligation is not grossly excessive, not having both parents share in the burden of raising their children diminishes the goal of the Income Shares Model.<sup>176</sup> Therefore, the remarriage of the mother to a wealthy individual hinders the ability to share a proportion of the child-rearing costs. Essentially, if the mother remains voluntarily unemployed, she receives a windfall. However, under an Income Shares

175. STAT. 5/505(a)(1).

176. See Garfinkel, *supra* note 15, at 87.

Model, states have enacted a provision that protects the non-custodial parent from such a situation.<sup>177</sup>

For example, Indiana recognizes that even though an unemployed parent has never worked, potential income should be considered for that parent if he or she remains voluntarily unemployed without justification.<sup>178</sup> Therefore, Indiana includes a “Potential Income” calculation into its child support calculation.<sup>179</sup> “Potential Income” is the amount of income a person is capable of earning.<sup>180</sup> If the court cannot determine such potential earnings, “federal minimum wage should be used in calculating potential income for that parent.”<sup>181</sup> The purpose of applying a “potential income” is to fairly allocate the support obligation when a parent remarries and, because of the income of the new spouse, chooses not to be employed.<sup>182</sup> The “Potential Income” provision is another benefit available to Illinois families if the Income Shares Model is adopted.

Unlike the situation of a voluntarily unemployed custodial parent receiving a windfall in child support payments under the IMDMA, the Income Shares Model protects against such situations without the need for judicial discretion. As a result, both parents are responsible for the upbringing of their children.

## V. CONCLUSION

Illinois child support laws are outdated and inconsistent with national child support laws. Under the current child support guidelines, Illinois fails to recognize the current societal change of both parents earning an income. Further, the subjective focus on the non-custodial parent’s net income does not provide an accurate estimate of the actual child-rearing costs or allow for flexibility for extraordinary childcare costs. Similarly, the current statute does not recognize the costs that the non-custodial parent incurs in addition to his or her mandatory support obligation. Essentially, the IMDMA penalizes the non-custodial parent and provides no incentives or financial compensation for parental involvement.

The best approach to remedy the current deficiencies found under the IMDMA is for the Illinois General Assembly to enact new legislation that adopts the Income Shares Model for calculating child support. The flexible design behind the Income Shares Model is ideal for current societal changes because the model calculates each child’s individual needs. Moreover, the

---

177. See, e.g., IND. ST. CHILD SUPPORT GUIDELINE 3(A) (West 2013).

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* at cmt. (2)(c).

182. *Id.*

flexible design allows states to custom design their guidelines to meet their respective goals.

When designing new Income Shares guidelines, it is imperative that Illinois legislators follow the majority of other states by including credits for different child-rearing expenses. Financial incentives for parental involvement will greatly benefit both the children and parents by ensuring that Illinois children experience the same standard of living previously enjoyed and that parents are reasonably compensated for additional expenditures on behalf of their children. Ultimately, the Income Shares Model advances the federal intent that both parents share responsibility in the upbringing of their children by requiring both parents to share the actual child-rearing expenses. In order to provide for the best interests of children, Illinois should join the national trend and enact legislation adopting the Income Shares Model of child support.