

What if you have a smaller base salary, and a larger, but unpredictable bonus or other forms of pay? What income base do you use? This is not defined in the new statute.

What happens if your pay substantially changes? This is not defined in the new statute.

The new guidelines have produced, well, new guidelines and, inadvertently, an uptick in cases to be reviewed – and more often.

## Summary Thoughts

If you're contemplating divorce, consider these questions:

1. How long have I been married? Am I approaching a major milestone (5 year, 10 year, 15 year, 20 year)?
2. What is my income (earnings, bonus, dividends, business income, etc.)? Is it under \$250,000?
3. Am I expecting a significant increase or decrease in gross income in the near future?
4. Is a prior marriage maintenance/child support obligation changing in the near future?
5. Is my spouse contemplating ending or commencing employment?
6. Is my spouse anticipating a significant increase or decrease in income?

Every divorce is different. Be sure to talk with your advisors to determine the best course of action for you and your family. The Collaborative Law Institute of Illinois is committed to sharing helpful information and serving as a resource to readers.

*This piece is part of an ongoing series of white papers produced by The Collaborative Law Institute of Illinois. Within these pieces guest authors share their insights from the field for our general public and professional audiences. This article was written by Christiana Zouzias. The content of this piece is the work of the author and not The Collaborative Law Institute of Illinois.*

### About The Collaborative Law Institute of Illinois

The mission of The Collaborative Law Institute of Illinois is to advance Collaborative Practice as a conflict resolution option in Illinois. CLII is a non-profit organization with members representing the legal, mental health, financial and collaborative fields. In addition to offering free educational resources for the public, CLII maintains a listing of collaborative divorce practitioners for the public.

Visit [CollabLawIL.org](http://CollabLawIL.org) to learn more.

### About Christiana Zouzias

Ms. Zouzias performs collaborative dispute resolution and financial mediation services, formulating settlements and financial scenarios that minimize costs and resolve conflict between parties.

As a forensic accountant and litigation consultant, Ms. Zouzias has managed a variety of income analyses assignments, business valuations, white collar crime investigations and complex financial analysis of divorce and commercial litigation engagements including breach of contract, shareholder dispute, fiduciary self-dealing, retaliatory discharge and business interruption, as well as patent infringement and trade secrets litigation.

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## COLLABORATIVE LAW INSTITUTE OF ILLINOIS

TO FILE OR NOT TO FILE.  
THAT IS THE QUESTION.

### New Illinois maintenance guidelines give payors more reason to try to make marriage work. Divorce is hard on the pocketbook.

There are new facts regarding the maintenance guidelines (and indirectly new child support guidelines) for couples living in Illinois.

We've all heard the acronym: KISS (Keep It Simple Stupid). Illinois has recently passed new maintenance guidelines that are meant to simplify. But sometimes simple is, well, too simple. In order to keep it simple, a multitude of additional questions and gaps have been created. In 2016 Illinois enacted these new guidelines and now that some time has passed, it is evident that there are unexpected consequences for the public.

Predictability and uniformity was the goal. Reality will likely look a bit different.

There's a misconception that these guidelines always apply. That is not the case. A compelling case for maintenance must still be made, and these new guidelines are not meant to be applied to multiple family support situations.

Maintenance guidelines apply if gross earnings are under \$250,000. But if your income is over the \$250,000 threshold, expect that a judge or other party might at least consider this guideline as a data point.

Duration of maintenance is a key consideration. If your marriage is nearing the 10 year, 15 year, or 20 year mark the new guidelines can have a major impact on your circumstance. Payor earnings, spouse's earnings, and length of the marriage are key factors.

The new guidelines specifically include income from all sources, including imputed income for the spouse, disability and retirement income, among others.

If the court deviates, the couple must supply reasons for deviation. This is different from the past and not necessarily a "guideline" but more of a mandate – as the word makes a frequent appearance in the guidelines.

## How Is Maintenance & Child Support Calculated?

### STEP 1: BEGIN WITH THE MAINTENANCE CALCULATION (this is new).

30% of payor's gross less 20% of your spouse's gross, but not to exceed 40% of combined gross. This is before child support is factored. However, maintenance is considered a reduction to income for child support purposes. Following is a basic example:

PAYOR GROSS	\$100,000 x 30% = \$30,000
LESS SPOUSE GROSS	\$20,000 x 20% = (\$4,000)
POTENTIAL MAINTENANCE	= \$26,000

*\$26,000 meets and doesn't exceed the 40% of total gross income cap*

### STEP 2: NEXT CALCULATE CHILD SUPPORT

PAYOR GROSS	\$100,000
LESS HEALTH INSURANCE	(\$4,000)
LESS MAINTENANCE	(\$26,000)
LESS ESTIMATED TAXES	(\$18,500)
AFTER-TAX INCOME	\$51,500
CHILD SUPPORT – 2 KIDS (28%)	(\$14,420)
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AFTER-TAX INCOME TO PAYOR	\$37,080 (40% of AFTER-TAX)
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AFTER-TAX TO SPOUSE	\$55,220 (60% of AFTER-TAX)

*This is a simplified example, for illustration purposes only, and meant to demonstrate a broad view of the new guidelines, as well as the sequence of the calculations.*

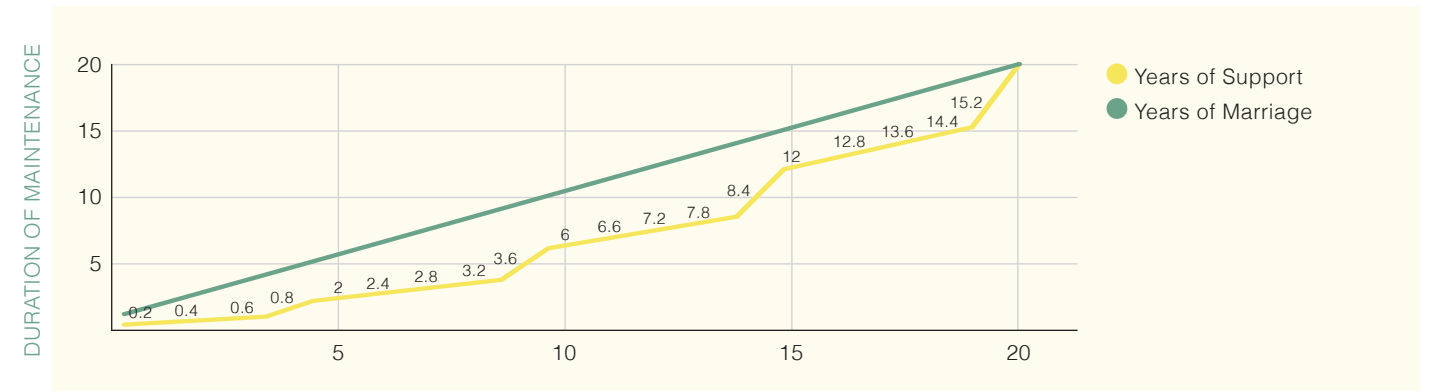
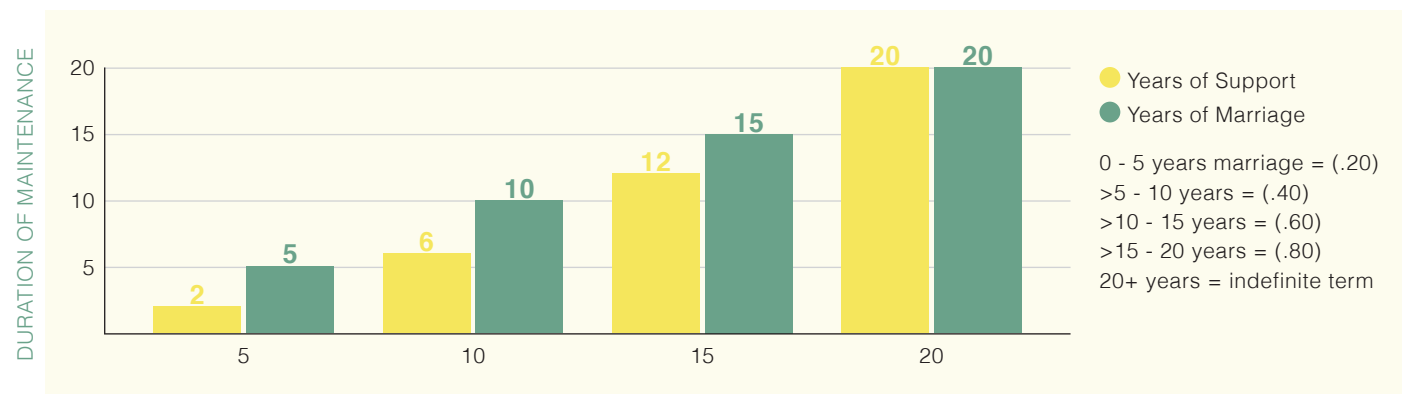
## Maintenance vs Child Support

### MAINTENANCE UP, CHILD SUPPORT DOWN.

There is now a direct effect between new maintenance guidelines and child support. This actually represents a change to both. Maintenance is determined first. Then child support is calculated. The good news here is that if you have children, more of your overall support payments will be tax deductible. If your spouse is in a lower income bracket than you, great! You'll pay more to the family, and less to the IRS. The practical reality, however, is that if you have a couple of children, your spouse and children might receive more than 50% of after-tax income.

## Duration of Support

Marriage years – this is calculated at the time the dissolution action was commenced (divorce filing date). To gauge the term of maintenance, you multiply the length of the marriage by whichever of the following factors applies. Note that "greater than" can be one month or one day.



So for example, if you're married 10 years and 1 month, your support term would be  $10.1 \times .60 = 6.06$  years support. If you're married 9 years, your support term would be  $9 \times .40 = 3.6$  years support. The step-ups at year 5, 10, 15 and 20 are noteworthy and should be considered.

For a marriage of more than 20 years, discretion of the court is expected. Hope that the judge has had his/her coffee and breakfast! Permanent maintenance or maintenance for a period equal to the length of the marriage will be considered. "Permanent" is an unfortunate word choice, as it's not really permanent. A better description is INDEFINITE and subject to the court's discretion based on specific factors in any particular case.

Illinois has some of the highest child support as compared to other states. And the statistics imply that is true regardless of how much time you spend with your kids.

## Possible Exceptions or Deviations to Guidelines

- Disabled adult child
- Disproportionate share of marital estate
- Pre-existing court-ordered support obligations
- Unusual needs from spouse (health, age, etc.)

*It is possible a judge will consider these guidelines, even if outside the guideline parameters.*

## Income From All Sources

Income from all sources? New guidelines open up a slew of questions regarding double dipping. Income from all sources, means income from all sources. So, theoretically, if you have an investment account that was divided as part of the marital estate, and that investment account produces dividend income, for example, that dividend income is fair play and includible in maintenance. This is unfortunate because the asset was already divided and support/maintenance on that income + sharing half that asset should not theoretically occur. But it can with the new guidelines.

The offsetting factor, and some good news, is that your spouse theoretically will have that income as well from his/her share of the asset, which will offset your maintenance obligation. The tricky part is that if your spouse uses proceeds from his/her asset division to buy a house or pay down debt or support household expenses, then your spouse will not have an offset. Spouse's dividends can be \$0 or substantially less than yours, while yours may still be in play and produce income. And this income applies to child support as well. Contemplate this before agreeing to an asset division. At a minimum, try to address specifically what income might be excluded for support purposes in your divorce decree.

What period of time is considered in measuring gross income? Current? Last year? Average of certain number of years? This is not defined in the new statute.