

SURVEY OF ILLINOIS LAW: ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT*

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INTRODUCTION

The Family Law Survey covers statutory revisions to the Illinois Marriage and Dissolution of Marriage Act pursuant to Public Act 099-0090, to become effective January 1, 2016. In addition to substantial substantive changes, practitioners and judges will have to adjust to a significant shift in terminology. What was previously “visitation” is now referred to as “parenting time,” and “legal custody” is now deemed “parental responsibilities,” or “parental responsibility.”¹ Although definitions of updated terms are specifically set forth in the Illinois Marriage and Dissolution of Marriage Act, the statute is inconsistent in its application of the changes as defined. Omissions and contradictions will be pointed out to the reader.

P.A. 99-90 amends the Illinois Marriage and Dissolution of Marriage Act by making changes regarding:

- Construction of the Act
- Venue
- Pleadings
- Solemnization of marriage
- Offenses involving issuance of licenses
- Grounds for dissolution of marriage

* At the time of the writing of this article, the provisions of Public Act 99-90 had not yet gone into effect. Therefore, all references herein were made to the Public Act itself, with subsequent notations made as to which parts of the Illinois Compiled Statutes would be affected.

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1. 750 ILL COMP. STAT. 5/801(e) (West 2015).

- Judgments for legal separation
- Mediation
- Costs of educational sessions
- Hearings on default
- Filing of a praecipe for summons
- Time for entering judgments
- Simplified dissolution procedure
- Temporary relief; dissolution action stays
- Agreements
- Disposition of property and debts
- Child support
- Attorney's fees
- Modification of provisions of judgments
- Educational expenses
- Support for disabled children who have attained majority
- Custody proceedings, hearings, and orders
- Allocation and restriction of parental responsibilities
- Parenting plans
- Interviews and evaluations of children
- Enforcement of allocated parenting time
- Parental relocation
- Applicability
- Repeal of various provisions
- And other matters.²

STATUTORY CHANGES

Public Act 99-90, hereinafter referred to as “the Act,” made sweeping changes to the Illinois Marriage and Dissolution of Marriage Act, including the repeal of all heart balm actions.³ Illinois was one of the few remaining states to allow recovery under these antiquated laws.

The extensive modifications of the Act are detailed below, and the potential impact of those revisions for domestic violence victims and abused children is discussed.

2. *See generally* 2015 Ill. Legis. Serv. P.A. 99-90 (eff. Jan. 1, 2016) (S.B. 0057) (WEST) [hereinafter Marriage and Dissolution of Marriage Reform Act].

3. *See id.* at § 1-1.

I. GENERAL PROVISIONS

A. Purposes; Rules of Construction. 750 ILCS 5/102

Previously, the Illinois Marriage and Dissolution of Marriage Act embodied the broad provision to “secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children.”⁴ The Act now contains specific obligations, absent domestic violence, that require the court and parents to protect children from exposure to conflict and violence, ensure predictable decision-making for the care of children and for the allocation of parenting time and other parental responsibilities.⁵ The Act also seeks to avoid prolonged uncertainty by requiring an expeditious resolution of issues involving children, as well as recognizing the right of children to maintain a healthy relationship with parents, and acknowledging the responsibility of parents to ensure such a relationship.⁶ Another underlying purpose of the Act is to acknowledge that the determination of children’s best interests, and the allocation of parenting time and significant decision-making responsibilities are among the paramount responsibilities of our system.⁷

B. Venue. 750 ILCS 5/104

In the event a Petitioner files a pleading in a county in which neither the Petitioner nor Respondent reside, the Petitioner must file a written motion advising that the chosen forum is not of proper venue, and asking the court to waive the venue requirements.⁸ The motion must be set for hearing and ruled upon before any other issue is allowed before the court.⁹

4. See 750 ILL. COMP. STAT. 5/102 (West 2015).

5. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/102).

6. *Id.* (amending 750 ILL. COMP. STAT. 5/102).

7. *Id.* (amending 750 ILL. COMP. STAT. 5/102). To ensure the purpose of the Act is fulfilled, the court should: recognize children’s right to a strong and healthy relationship with parent’s and parents’ concomitant right and responsibility to create and maintain such relationships; recognize that in the absence of domestic violence or any other factor that the court expressly finds to be relevant, proximity to, and frequent contact with, both parents promotes healthy development of children; facilitate parental planning and agreement about the children’s upbringing and allocation of parenting time and other parental responsibilities; continue existing parent-child relationships, and secure the maximum involvement and cooperation of parents regarding the physical, mental, moral, and emotional well-being of the children during and after the litigation; and, promote or order parents to participate in programs designed to educate parents to minimize or eliminate rancor and the detrimental effects of litigation in any proceeding involving children, and facilitate the maximum cooperation of parents in raising their children. *Id.* (enacting 750 ILL. COMP. STAT. 5/102(7)(A)-(E)).

8. *Id.* (amending 750 ILL. COMP. STAT. 5/104).

9. *Id.* (amending 750 ILL. COMP. STAT. 5/104).

C. Application of Civil Practice Law. 750 ILCS 5/105

The title for documents regarding parental responsibility allocation and parental responsibility must reflect the change in terminology adopted in the Act.¹⁰ If an affirmative or other defense is raised in a response, the petitioner may file a reply, but the failure to do so does not result in an admission of the legal sufficiency of the defense.¹¹ Subsection (d) defines ‘pleadings’ as “any petition or motion filed in the dissolution of marriage case which, if independently filed, would constitute a separate cause of action, including, but not limited to, actions for declaratory judgment, injunctive relief, and orders of protection.”¹² These pleadings are subject to motions filed pursuant to 750 ILCS 5/2-615 and 750 ILCS 5/2-619.¹³

D. Order of protection; status. 750 ILCS 5/107

Courts must now inquire of the parties, and the parties must advise the court, concerning the existence of any Order of Protection proceeding in which either party, or a child of either or both parties, has been designated in an Order of Protection as a petitioner, respondent, or protected person.¹⁴ Previously, the court was obligated to determine whether a prior Order of Protection had been entered that included a party or child as a respondent or protected party;¹⁵ the status of petitioner has been added under the Act.¹⁶

II. MARRIAGE

A. Solemnization of Marriage. 750 ILCS 5/209

In order for a marriage to be held valid, the law now demands that a reasonable person would have believed the person solemnizing a marriage was qualified to do so.¹⁷ Previously, the belief by either party that the individual was qualified was sufficient to validate a marriage solemnized by an unqualified individual.¹⁸

10. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/105(a)).

11. *Id.* (amending 750 ILL. COMP. STAT. 5/105(c)).

12. *Id.* (enacting 750 ILL. COMP. STAT. 5/105(d)).

13. *Id.* (enacting 750 ILL. COMP. STAT. 5/105(d)).

14. *Id.* (amending 750 ILL. COMP. STAT. 5/107).

15. 750 ILL. COMP. STAT. 5/107 (West 2015).

16. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/107).

17. *Id.* (amending 750 ILL. COMP. STAT. 5/209(b)).

18. 750 ILL. COMP. STAT. 5/209(b) (West 2015).

B. Offenses. 750 ILCS 5/219

The penalty for an official knowingly issuing a license to parties prohibited from marriage has been increased from a petty offense to a Class C misdemeanor.¹⁹ Likewise, anyone unauthorized to solemnize marriage who knowingly performs such a marriage is now guilty of a Class C misdemeanor.²⁰

III. DISSOLUTION AND LEGAL SEPARATION

A. Dissolution of Marriage. 750 ILCS 5/401

The grounds requirement for divorce has been eliminated. All that must be decided by the court is that irreconcilable differences have caused the irretrievable breakdown of the marriage and efforts at reconciliation have failed or further attempt would be impracticable and not in the best interest of the family.²¹ An irrebuttable presumption arises that irreconcilable differences exist once the parties have lived separate and apart for a continuous period of no less than six months immediately preceding the entry of the judgment for dissolution.²²

The court may enter a judgment prior to a six month separation, and subsequent to a six month separation, must enter such judgment.²³

The court shall not enter a judgment until the court has considered and decided on the allocation of parental responsibilities, child support, maintenance, and property distribution.²⁴ However, upon agreement of the parties, or upon motion of a party and a finding by the court that appropriate circumstances exist, the court must enter a judgment for dissolution that reserves any of the issues regarding the allocation of parental responsibilities, child support, maintenance, and the disposition of property.²⁵ Previously, the court had discretion whether to enter the order under this subsection.²⁶

19. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/219).

20. *Id.* (amending 750 ILL. COMP. STAT. 5/219).

21. *Id.* (amending 750 ILL. COMP. STAT. 5/401(a)).

22. *Id.* (amending 750 ILL. COMP. STAT. 5/401(a-5)).

23. *Id.* (amending 750 ILL. COMP. STAT. 5/401(a-5)).

24. *Id.* (amending 750 ILL. COMP. STAT. 5/401(b)).

25. *Id.* (amending 750 ILL. COMP. STAT. 5/401(b)).

26. *See* 750 ILL. COMP. STAT. 5/401(b) (2014) (providing that “the court *may* enter a judge for dissolution of marriage that reserves any of these issues”)

B. Legal Separation. 750 ILCS 5/402

Proper venue has been extended in that the petitioner may now file for legal separation in the petitioner's county of residence without the requirement of the inability to find the respondent within the State.²⁷

Temporary relief in a legal separation is limited to maintenance, child support, and a temporary restraining order or preliminary injunction.²⁸ The restraining order or preliminary injunction may be entered to prohibit a party from transferring, encumbering, concealing or disposing of property, enjoin a party from removing a child from the jurisdiction of the court, ordering a party not strike or interfere with the personal liberty of a party or child, or provide other proper injunctive relief.²⁹

If the parties request a property settlement agreement be incorporated into the legal separation judgment, the court must do so unless court finds the agreement unconscionable.³⁰ Absent an agreement by the parties, the judge may not value or allocate property.³¹ Any property settlement agreement entered is final and non-modifiable.³²

If a party to a judgment for legal separation files for a dissolution of marriage, the issues of temporary and permanent maintenance shall be decided de novo, unless an agreement has been entered that provides for non-modifiable permanent maintenance.³³

C. Pleadings. 750 ILCS 5/403

With the elimination of the grounds requirement, the petition must allege that irreconcilable differences have caused the irretrievable breakdown of the marriage.³⁴

750 ILCS 5/403(a)(5) previously required that the petition set forth "any arrangements as to support, custody and visitation of the children and maintenance of a spouse."³⁵ As amended, the terms "custody and visitation" in this subsection have been replaced by "allocation of parental responsibility."³⁶ Visitation was previously included in this subsection, so

27. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/402(b)).

28. *Id.* (amending 750 ILL. COMP. STAT. 5/402(b)).

29. *Id.* (amending 750 ILL. COMP. STAT. 5/402(b)).

30. *Id.* (enacting 750 ILL. COMP. STAT. 5/402(b)(2)).

31. *Id.* (enacting 750 ILL. COMP. STAT. 5/402(b)(1)).

32. *Id.* (enacting 750 ILL. COMP. STAT. 5/402(b)(3)).

33. *Id.* (amending 750 ILL. COMP. STAT. 5/402(c)).

34. *Id.* (enacting 750 ILL. COMP. STAT. 5/403(a)(3)).

35. 750 ILL. COMP. STAT. 5/403(a)(5) (West 2015).

36. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/403(a)(5)).

presumably parenting time was erroneously omitted and should be included, as well.³⁷

Contested trials continue to be conducted on a bifurcated basis with the issue of whether irreconcilable differences have caused the irretrievable breakdown of the marriage being tried first, regardless of whether that issue is contested.³⁸ In determining the value of assets or property the court has the discretion to use the date of the trial, such other date as agreed upon by the parties, or a date as ordered by the court.³⁹

The court shall enter a dissolution judgment only at the conclusion of the case, and not after hearing only the testimony as to whether irreconcilable differences have caused the irretrievable breakdown of the marriage.⁴⁰ An exception is provided in subsection (b) of Section 401, wherein the court enters judgment and reserves the issues of allocation of parental responsibilities, child support, maintenance, or the disposition of property upon (1) “agreement of the parties or” (2) “motion of a party and a finding by the court that appropriate circumstances exist.”⁴¹

D. Proof of Foreign Marriage. 750 ILCS 5/409

In order to prove a marriage was entered into in a foreign state or country, certified copies of records from an authorized state governmental unit, embassy, or consulate may now be admitted into evidence as an exception to the hearsay rule.⁴²

E. Commencement of Action. 750 ILCS 5/411

Actions for dissolution of marriage or legal separation shall be commenced as in other civil cases.⁴³ The petitioner also has the option of filing a praecipe for summons with the clerk of the court and paying the regular filing fees, in which case, a petition shall be filed within 6 months thereafter, or any extension for good cause shown granted by the court.⁴⁴ The option for an extension beyond the sixth month limitation was not previously available.⁴⁵

37. See 750 ILL. COMP. STAT. 5/403(a)(5) (2014); see also Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15.

38. *Id.* (amending 750 ILL. COMP. STAT. 5/403(e)).

39. *Id.* (amending 750 ILL. COMP. STAT. 5/403(e)).

40. *Id.* (amending 750 ILL. COMP. STAT. 5/403(e)).

41. *Id.* (amending 750 ILL. COMP. STAT. 5/401(b)).

42. *Id.* (amending 750 ILL. COMP. STAT. 5/409).

43. 750 ILL. COMP. STAT. 5/411(a) (West 2015).

44. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/411(d)).

45. See 750 ILL. COMP. STAT. 5/411(d) (West 2015).

The filing of a praecipe for summons under this Section constitutes the commencement of an action that serves as grounds for involuntary dismissal under subdivision (a)(3) of Section 2-619 of the Code of Civil Procedure of a subsequently filed petition for dissolution of marriage or legal separation in another county.⁴⁶

F. Judgment. 750 ILCS 5/413

The court must enter a judgment for dissolution of marriage, legal separation, or invalidity of marriage within 60 days of the closing of proofs.⁴⁷ If the court enters an order specifying good cause for an additional 30 days, the judgment shall be entered within 90 days of the closing of proofs, including any hearing and submission of closing arguments concerning an award of contribution.⁴⁸

IV. JOINT SIMPLIFIED DISSOLUTION PROCEDURE

A. Petition for Simplified Dissolution. 750 ILCS 5/452

Having retirement benefits will now disqualify the parties from simplified dissolution, with the exception of IRAs having a combined value of less than \$10,000.⁴⁹ However, the limits on the value of marital property and annual income of the parties have been raised. Previously, the fair market value for all marital property after deducting encumbrances had to total less than \$10,000;⁵⁰ currently, that amount is less than \$50,000.⁵¹ The combined annual income from all sources has risen to \$60,000 from \$35,000, with neither party making in excess of \$30,000 (previously \$20,000).⁵²

B. Procedure; Judgment. 750 ILCS 5/453

The parties must use the forms provided by the Circuit Clerk's office, which also includes the affidavit required under Section 454, stating that all property of the parties has been divided in accordance with their agreement

46. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/411(e)).

47. *Id.* (amending 750 ILL. COMP. STAT. 5/413(a)).

48. *Id.* (amending 750 ILL. COMP. STAT. 5/413(a)).

49. *Id.* (amending 750 ILL. COMP. STAT. 5/452(f)).

50. 750 ILL. COMP. STAT. 5/452(h) (West 2015).

51. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/452(h)).

52. *Id.* (amending 750 ILL. COMP. STAT. 5/452(h)).

and all necessary documents regarding that agreement have been executed.⁵³

V. PROPERTY, SUPPORT AND ATTORNEY FEES

A. Temporary relief. 750 ILCS 5/501

A petition for temporary relief for maintenance or child support must be accompanied by a financial affidavit set forth on a statewide form, as determined by the Supreme Court.⁵⁴ The affidavit must be supported by documents, including, but not limited to, income tax returns, pay stubs, and banking statements.⁵⁵ These documents are not to be made a part of the public record, but will be available to the trial court or to a court of review, in addition to being made available to the parties, the parties' attorneys, and any other person the court may direct.⁵⁶

If so moved by a party, the court may hold a hearing to determine whether and why there is a disparity between a party's sworn affidavit and the supporting documentation.⁵⁷ If the court holds a party has intentionally or recklessly filed an inaccurate or misleading affidavit, the court must impose significant penalties and sanctions, which includes, but is not limited to, costs and attorney's fees.⁵⁸

If the court enters appropriate orders allowing the parties to pay necessary personal and business expenses, including professionals to assist the court, the court need not include an exception for transferring, encumbering, or otherwise disposing of property in the usual course of business or for the necessities of life.⁵⁹ The expenses include the fees or costs associated with the payment to professionals, including financial experts, hired to administer the payment and accounting of the personal and business expenses, pursuant to 750 ILCS 5/503(k)(1).⁶⁰ The statute erroneously cites to subsection (1) of Section 503.⁶¹

Regarding other temporary relief, the court has the authority, if the court so deems appropriate, to order the purchase of assets or sale of assets and to require that a party or parties borrow funds.⁶² Issues regarding temporary maintenance or temporary child support shall be dealt with on a

53. *Id.* (amending 750 ILL. COMP. STAT. 5/453).

54. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

55. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

56. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

57. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

58. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

59. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(2)(i)).

60. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

61. *See id.* (amending 750 ILL. COMP. STAT. 5/501(a)(1)).

62. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(3)).

summary basis based on allocated parenting time, financial affidavits, tax returns, pay stubs, banking statements and other relevant documentation, except that an evidentiary hearing may be held on a showing of good cause.⁶³ The court must impose significant penalties and sanctions, including, but not limited to, costs and attorney's fees for a party intentionally or recklessly filing an inaccurate or misleading financial affidavit.⁶⁴

The Act requires that a standard form designated by the Supreme Court now be used for an interim award of attorney's fees, and labeled "Interim Fee Award Order."⁶⁵

The new allocation of the use of the marital residence provision mandates that the court balance hardships to the parties. Section 501(c-2) states:

Where there is on file a verified complaint or verified petition seeking temporary eviction from the marital residence, the court may, during the pendency of the proceeding, only in cases where the physical or mental well-being of either spouse or his or her children is jeopardized by occupancy of the marital residence by both spouses, and only upon due notice and full hearing, unless waived by the court on good cause shown, enter orders granting the exclusive possession of the marital residence to either spouse, by eviction from, or restoration of, the marital residence, until the final determination of the cause pursuant to the factors listed in Section 602.7 of this Act. No such order shall in any manner affect any estate in homestead property of either party. In entering orders under this subsection (c-2), the court shall balance hardships to the parties." Section 602.7 of this Act refers to "Allocation of parental responsibilities: parenting time."⁶⁶

Mediation costs or fees may be assessed by the court as deemed equitable and are to borne by the parties. The assignment of fees may be reallocated at the conclusion of the case.⁶⁷

B. Dissolution of action stay. 750 ILCS 5/501.

Paragraphs pertaining to extraordinary expenditures or transactions have finally been eliminated as these sections were previously ruled unconstitutional.⁶⁸

63. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(3)).

64. *Id.* (amending 750 ILL. COMP. STAT. 5/501(a)(3)).

65. *Id.* (amending 750 ILL. COMP. STAT. 5/501(2)).

66. *Id.* (enacting 750 ILL. COMP. STAT. 5/501(c-2)).

67. *Id.* (enacting 750 ILL. COMP. STAT. 5/501(e)).

68. *Id.* (amending 750 ILL. COMP. STAT. 5/501).

C. Agreement. 750 ILCS 5/502

The term “parental responsibility allocation” is now substituted for “custody and visitation” in Section 502(a) and (b).⁶⁹ The Act is inconsistent in accurately applying the new terminology regarding custody and visitation. As set forth in these two subsections, the meaning of parental responsibility allocation is contrary to the definition as designated in 750 ILCS 5/600 and 750 ILCS 5/801(e) in which parental responsibility refers to custody and parenting time has replaced what was formerly known as visitation.⁷⁰

Section 502(b) states in the event of a conflict between the terms of a written agreement and any testimony provided at an uncontested prove-up hearing, the terms of the written agreement as incorporated into the judgment is binding.⁷¹

Section 502(f) sets forth the terms of modification of the agreement.⁷² Child support, support of children as provided in Section 513 after the children attain majority, and parental responsibility allocation of children may be modified upon a showing of a substantial change in circumstances.⁷³

“The parties may provide that maintenance is non-modifiable in amount, duration, or both.”⁷⁴ “If the parties do not provide that maintenance is non-modifiable in amount, duration, or both, then those terms are modifiable upon a substantial change of circumstances. Property divisions are permanent and un-modifiable.”⁷⁵

D. Disposition of property and debts. 750 ILCS 5/503

A judgment shall be considered marital property when a spouse is required to sue the other spouse in order to obtain insurance coverage or otherwise recover from a third party and the recovery is directly related to amounts advanced by the marital estate.⁷⁶

Retirement plans acquired prior to marriage may have both marital and non-marital characteristics.⁷⁷

69. *Id.* (amending 750 ILL. COMP. STAT. 5/502(a)-(b)).

70. *See id.* (amending 750 ILL. COMP. STAT. 5/600); *see also id.* (amending 750 ILL. COMP. STAT. 5/801(e)). Take note that erroneous definitional modifications also appear elsewhere in P.A. 99-90.

71. *Id.* (amending 750 ILL. COMP. STAT. 5/801(b)).

72. *Id.* (amending 750 ILL. COMP. STAT. 5/502(f)).

73. *Id.* (amending 750 ILL. COMP. STAT. 5/502(f)).

74. *Id.* (amending 750 ILL. COMP. STAT. 5/502(f)).

75. *Id.* (amending 750 ILL. COMP. STAT. 5/502(f)).

76. *Id.* (amending 750 ILL. COMP. STAT. 5/503(a)(5)).

77. *Id.* (amending 750 ILL. COMP. STAT. 5/503(a)(6)).

When property is acquired by a spouse by the sole use of non-marital property as collateral for a loan, and those funds are then used to acquire property during the marriage, any repayment from the marital estate shall be considered a contribution from the marital estate to the non-marital estate and is subject to reimbursement.⁷⁸

Property acquired prior to a marriage that would otherwise be non-marital property shall not be deemed to be marital property solely because the property was acquired in anticipation of the marriage.⁷⁹ The court must make specific factual findings as to its classification of assets as marital property or non-marital property, values, and other factual findings that supports the court's property award.⁸⁰ A rebuttable presumption arises that property acquired during the course of marriage, as well as any increase in the value of property, including retirement benefits, that occurs during marriage, is considered marital property; the presumption may be overcome through clear and convincing evidence.⁸¹

Upon contribution of significant personal effort by a spouse to non-marital property that results in substantial appreciation to the non-marital property, that effort shall be deemed a contribution from the marital estate, which shall receive reimbursement.⁸² If the marital estate reasonably has been compensated for the spouse's efforts, those efforts shall not be deemed a contribution to the marital estate and, thus, there shall be no reimbursement to the marital estate.⁸³

In deciding the just division of marital property, the court will consider whether a party's contribution is made after the commencement of a proceeding for dissolution of marriage or declaration of invalidity of marriage.⁸⁴

Any postnuptial agreement is now to be considered, as well as any prenuptial agreement.⁸⁵

Presumably, "custodial provisions" set forth in noted in 750 ILCS 5/503(d)(9) should be changed to "parental responsibility allocation."⁸⁶

During lengthy divorce proceedings, values of assets and property can change dramatically from the time the Petition for Dissolution is filed until judgment is entered.⁸⁷ Instead of using the date of trial to determine the

78. *Id.* (enacting 750 ILL. COMP. STAT. 5/503(a)(6.5)).

79. *Id.* (amending 750 ILL. COMP. STAT. 5/503(a)(8)).

80. *Id.* (amending 750 ILL. COMP. STAT. 5/503(b)(1)).

81. *Id.* (amending 750 ILL. COMP. STAT. 5/503(b)(1)).

82. *Id.* (amending 750 ILL. COMP. STAT. 5/503(c)(2)).

83. *Id.* (amending 750 ILL. COMP. STAT. 5/503(c)(2)(B)).

84. *Id.* (amending 750 ILL. COMP. STAT. 5/503(d)(1)(iii)).

85. *Id.* (amending 750 ILL. COMP. STAT. 5/503(d)(7)).

86. *See id.* (amending 750 ILL. COMP. STAT. 5/503(d)(9)) (stating that the legislation has yet to change definitions in essential portions of the Act).

87. *Id.* (enacting 750 ILL. COMP. STAT. 5/503(k)).

value of property for the purposes of division, the court now has discretion to use a date other than the trial date to employ a fair market value standard for property valuation.⁸⁸ The parties may also agree upon a date.⁸⁹ The same provision applies to a granted petition brought under the Illinois Relief from Judgments statute.⁹⁰

The court, in determining the value of the marital and non-marital property for purposes of dividing the property has the discretion to use the date of the trial or such other date as agreed upon by the parties, or ordered by the court within its discretion, for purposes of determining the value of assets or property.⁹¹ This procedure applies to a proceeding for dissolution of marriage or declaration of invalidity of marriage or in a proceeding for disposition of property following dissolution of marriage by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property.⁹²

To ascertain the fair market value of property and other assets,

the court may seek the advice of financial experts or other professionals, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel. Counsel may examine as a witness any professional consulted by the court designated as the court's witness. Professional personnel consulted by the court are subject to subpoena for the purposes of discovery, trial, or both. The court shall allocate the costs and fees of those professional personnel between the parties based upon the financial ability of each party and any other criteria the court considers appropriate, and the allocation is subject to reallocation under subsection (a) of Section 508. Upon the request of any party or upon the court's own motion, the court may conduct a hearing as to the reasonableness of those fees and costs.⁹³

A petition for contribution must now be filed no later than 14 days, instead of 30 days, after the closing of proofs in the final hearing or within such other period as the court orders.⁹⁴

88. *Id.* (enacting 750 ILL. COMP. STAT. 5/503(k)).

89. *Id.* (enacting 750 ILL. COMP. STAT. 5/503(k)).

90. *See* 750 ILL. COMP. STAT. 5/2-1401 (West 2015); *see* Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/503(k)).

91. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/503(f)).

92. *Id.* (enacting 750 ILL. COMP. STAT. 5/503(f)).

93. *Id.* (enacting 750 ILL. COMP. STAT. 5/503(k)).

94. *Id.* (amending 750 ILL. COMP. STAT. 5/503(j)(1)).

E. Maintenance. 750 ILCS 5/504

The maintenance provision underwent significant modification pursuant to P.A. 98-961, effective January 1, 2015.⁹⁵ A few substantive changes were made under the Act as well as clarifying language. An important added consideration by the court in determining whether maintenance is appropriate is the financial obligations imposed on the parties as a result of the dissolution of marriage.⁹⁶ Other new relevant factors include any impairment of the realistic present or future earning capacity of the party against whom maintenance is sought,⁹⁷ and all sources of public and private income, including, without limitation, all disability and retirement income.⁹⁸

Also considered by the court are any parental responsibility arrangements and its effect on the party seeking employment.⁹⁹ The previous presumption that it was inappropriate for the custodial parent to seek employment has been eliminated.¹⁰⁰ In subsection (9), the age and physical and emotional condition of the parties has been extended to include the health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each party.¹⁰¹

F. Child support; contempt; penalties. 750 ILCS 5/505

The Act added the definition of supporting parent and supplemented the list of expenditures that reduces net income in determining the minimum amount of support. The term “supporting parent” is the term used in this section to identify the parent obligated to pay support to the other parent.¹⁰² In determining net income of parents, student loan repayment expenses have been added as a specific deduction.¹⁰³

Requirements regarding the reporting of an employment change have been expanded. A child support order shall provide that either parent, rather than just the supporting parent, must report within 10 days any new

95. See generally 2014 Ill. Legis. Serv. P.A. 98-961 (S.B. 3231) (WEST); see also *Spousal Maintenance Guidelines Become Law in Illinois*, ILL. STATE BAR ASS'N (Aug. 18, 2014), <http://iln.isba.org/blog/2014/08/18/spousal-maintenance-guidelines-become-law-illinois>.

96. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/504(a)(1)).

97. *Id.* (amending 750 ILL. COMP. STAT. 5/504(a)(3)).

98. *Id.* (amending 750 ILL. COMP. STAT. 5/504(a)(10)).

99. *Id.* (amending 750 ILL. COMP. STAT. 5/504(a)(6)).

100. See generally 750 ILL. COMP. STAT. 5/504 (West 2015).

101. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/504(a)(9)).

102. *Id.* (amending 750 ILL. COMP. STAT. 5/505(a)).

103. *Id.* (amending 750 ILL. COMP. STAT. 5/505(a)(3)(h)).

employment or termination of employment.¹⁰⁴ The report must be made in writing to the other parent and the clerk of the court.¹⁰⁵ Failure to report new employment or the termination of current employment, coupled with nonpayment of support in excess of 60 days, constitutes indirect criminal contempt.¹⁰⁶ Either parent arrested for failure to report new employment, shall have bond set in the amount of child support that should have been paid during the period of unreported employment.¹⁰⁷

G. Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs. 750 ILCS 5/508

The Act contains the following provisions concerning attorney fees:

Fees incurred due to a motion filed under Section 2-1401 may be granted only to the party who substantially prevails.¹⁰⁸

Costs and attorney's fees incurred in an action under the Hague Convention on the Civil Aspects of International Child Abduction may be awarded.¹⁰⁹

A petition for temporary attorney's fees in a post-judgment case may be heard on a non-evidentiary, summary basis.¹¹⁰

A pending but undetermined Petition for Setting Final Fees and Costs shall not affect the enforceability of a judgment or other adjudication in the original proceeding.¹¹¹

H. Modification and termination of provisions for maintenance, support, educational expenses and property disposition. 750 ILCS 5/510

In a review under subsection b-4.5 of Section 504 regarding fixed term maintenance in marriages of less than 10 years, a court may enter a fixed term maintenance award that bars future maintenance only if, at the time of entry of the award, the marriage had lasted 10 years or less at the time the original action was commenced.¹¹²

"A payor's obligation to pay maintenance . . . terminates by operation of law on the date the payee remarries or the date the court finds

104. *Id.* (amending 750 ILL. COMP. STAT. 5/505(h)).

105. *Id.* (amending 750 ILL. COMP. STAT. 5/505(h)).

106. 750 ILL. COMP. STAT. 5/505(h) (West 2015).

107. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (amending 750 ILL. COMP. STAT. 5/505(h)).

108. *Id.* (amending 750 ILL. COMP. STAT. 5/508(a)(4)).

109. *Id.* (amending 750 ILL. COMP. STAT. 5/508(a)(7)).

110. *Id.* (amending 750 ILL. COMP. STAT. 5/508(a)).

111. *Id.* (amending 750 ILL. COMP. STAT. 5/508(c)(2)(V)).

112. *Id.* (amending 750 ILL. COMP. STAT. 5/510(a-6)).

cohabitation began, and the payor is entitled to reimbursement for all maintenance paid beyond that date.”¹¹³

“A party receiving maintenance must advise the payor of the payee’s intention to remarry at least 30 days before the marriage, unless the decision to marry is made within that time period.”¹¹⁴ If that is the case, the recipient of the maintenance must notify the payor within 72 hours of getting married.¹¹⁵

“In an adjudicated case, the court must make specific findings of fact as to the reason for the modification, as well as the amount, nature and duration of the modified maintenance award.”¹¹⁶

The inclusion of parenting time was overlooked in subsection (f). “A petition to modify or terminate child support or allocation of parental responsibilities shall not delay any child support enforcement litigation.”¹¹⁷ The term “parenting time” once again was erroneously omitted and should have been included in the rewording of the terms for custody or visitation.¹¹⁸

I. Post-Judgment Venue. 750 ILCS 5/512.

When neither party resides in the judicial circuit in which judgment was entered or last modified, any further proceedings must be had in a circuit where either party resides.¹¹⁹ The option of holding post judgment proceedings in the circuit in which the respondent is actively employed has been removed as an alternative.¹²⁰

J. Educational Expenses for a Non-minor Child. 750 ILCS 5/513

This statute originally provided for educational expenses for a non-minor child and support for a non-minor child with disabilities.¹²¹ The latter is now covered in 750 ILCS 5/513.5.¹²² In response to extensive litigation, the Act has more specifically spelled out the types and limits of covered educational expenses. Absent good cause shown, expenses for tuition and fees, as well as housing costs, must not exceed that imposed by

113. *Id.* (amending 750 ILL. COMP. STAT. 5/510(c)).

114. *Id.* (amending 750 ILL. COMP. STAT. 5/510(e)).

115. *Id.* (amending 750 ILL. COMP. STAT. 5/510(c)).

116. *Id.* (amending 750 ILL. COMP. STAT. 5/510(c-5)).

117. *Id.* (amending 750 ILL. COMP. STAT. 5/510(f)).

118. *Id.* (amending 750 ILL. COMP. STAT. 5/510).

119. *Id.* (amending 750 ILL. COMP. STAT. 5/512(c)).

120. *Id.* (amending 750 ILL. COMP. STAT. 5/512).

121. 750 ILL. COMP. STAT. 5/513 (West 2015).

122. *See* Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/513.5).

the University of Illinois at Champaign-Urbana for the same academic year.¹²³ This Act also clarifies whether a child may recover in the form of contribution, whether recovery is retroactive to the filing date of the petition or when the expenses were incurred, and when a party has the right to enforce a prior obligation to pay.¹²⁴

Educational expenses must be incurred no later than the non-minor's twenty-third birthday, unless agreed upon by the parties, or for good cause shown.¹²⁵ In no event shall the expenses be incurred later than the student's twenty-fifth birthday.¹²⁶ The provisions for educational expenses under this section apply to not only post high school education and training, but for expenses during any period of time a child is attending high school, even though the student has attained the age of nineteen.¹²⁷

The court may order both parties and the child to complete the Free Application for Federal Student Aid (FAFSA) or other financial aid forms prior to the appropriate deadline.¹²⁸ "The court may require either party or both parties to provide financial resources for the child to pay for up to 5 college applications, 2 standardized college entrance exams, and one standardized college entrance examination preparatory course."¹²⁹

Educational expenses include, but are not limited to the following:

- (1) except for good cause shown, the actual cost of the child's post-secondary expenses, including tuition and fees, provided that the cost for tuition and fees does not exceed the amount of tuition and fees paid by a student at the University of Illinois at Urbana-Champaign for the same academic year;
- (2) except for good cause shown, the actual costs of the child's housing expenses, whether on-campus or off-campus, provided that the housing expenses do not exceed the cost for the same academic year of a double-occupancy student room, with a standard meal plan, in a residence hall operated by the University of Illinois at Urbana-Champaign;
- (3) the actual costs of the child's medical expenses, including medical insurance, and dental expenses;
- (4) the reasonable living expenses of the child during the academic year and periods of recess:

123. *Id.* (amending 750 ILL. COMP. STAT. 5/513(d)(1)-(2)).

124. *Id.* (amending 750 ILL. COMP. STAT. 5/513(i), (k)).

125. *Id.* (amending 750 ILL. COMP. STAT. 5/513(g)).

126. *Id.* (amending 750 ILL. COMP. STAT. 5/513(a)).

127. *Id.* (amending 750 ILL. COMP. STAT. 5/513(c)).

128. *Id.* (amending 750 ILL. COMP. STAT. 5/513(b)).

129. *Id.* (amending 750 ILL. COMP. STAT. 5/513(b)).

(A) if the child is a resident student attending a post-secondary educational program; or

(B) if the child is living with one party at that party's home and attending a post-secondary educational program as a non-resident student, in which case the living expenses include an amount that pays for the reasonable cost of the child's food, utilities, and transportation; and

(5) the cost of books and other supplies necessary to attend college.¹³⁰

Previously, the provision for educational expenses terminated when the child received a baccalaureate degree.¹³¹ Newly enacted conditions serving to terminate the obligation include the student's failure to maintain a cumulative 'C' grade point average (absent good cause shown), the child reaching the age of twenty-three, or marriage.¹³² The court maintains authority to order funding for educational expenses if a child enlists in the armed forces, is incarcerated, or becomes pregnant.¹³³

A savings account, established prior to the dissolution of marriage, that is to be used for the child's post-secondary education is to be considered by the court to be a resource of the child.¹³⁴ Any post-judgment contribution made by a party to the account is considered a contribution by that party.¹³⁵ The saving plan may be a state tuition program under Section 529 of the Internal Revenue Code or some other college savings program.¹³⁶

The child is not considered a third party beneficiary to a settlement agreement or judgment after trial and is not entitled to file a petition for contribution.¹³⁷ Even though a party is legally obligated to pay a child's educational expenses pursuant to a settlement agreement or court award, the court may not consider the child a third party beneficiary.¹³⁸ In the event of the death or legal disability of a party who would have the right to file a petition for contribution, the child of the party may file a petition for contribution.¹³⁹

Savings for retirement has been added as a relevant factor in awarding educational expenses.¹⁴⁰ In granting an award under this section or upon a

130. *Id.* (enacting 750 ILL. COMP. STAT. 5/513(d)(1)-(5)).

131. 750 ILL. COMP. STAT. 5/513(i)(2) (West 2015).

132. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/513(g)).

133. *Id.* (amending 750 ILL. COMP. STAT. 5/513(g)).

134. *Id.* (enacting 750 ILL. COMP. STAT. 5/513(h)).

135. *Id.* (enacting 750 ILL. COMP. STAT. 5/513(h)).

136. *Id.* (enacting 750 ILL. COMP. STAT. 5/513(h)).

137. *Id.* (amending 750 ILL. COMP. STAT. 5/513(i)).

138. *Id.* (amending 750 ILL. COMP. STAT. 5/513(i)).

139. *Id.* (amending 750 ILL. COMP. STAT. 5/513(i)).

140. *Id.* (amending 750 ILL. COMP. STAT. 5/513(j)).

petition or motion to decrease, modify, or terminate educational expenses, the court must consider (1) the present and future financial resources of both parties to meet their needs, including, but not limited to savings for retirement, (2) the standard of living the child would have enjoyed had the marriage not been dissolved, (3) the financial resources of the child, and (4) the child's academic performance.¹⁴¹

“The establishment of an obligation to pay under this section is retroactive only to the date of filing a petition.”¹⁴² “The right to enforce a prior obligation to pay may be enforced either before or after the obligation is incurred.”¹⁴³

K. Support for a non-minor child with a disability. 750 ILCS 5/513.5

The right to apply for support for a non-minor child who is disabled was previously set forth in Section 513. The Act creates a statute specifically applicable to support of a non-minor child, and is more detailed in its application.¹⁴⁴ Support may be provided for a child who is disabled under the definition of this Section, who is not otherwise emancipated.¹⁴⁵ Funding may be awarded by the court, as equity may require, out of assets and income of either or both parties, or out of the estate of a deceased parent.¹⁴⁶

The sums of money awarded may be paid to one or both parents, to a trust created by the parties for the benefit of the child, or irrevocably to a special needs trust, established by the parties and for the sole benefit of the child.¹⁴⁷ The trust must meet the appropriate requirements of the Trusts and Trustees Act and Social Security Administration Program Operating Manual System.¹⁴⁸

An application for support may be made before or after the child has attained majority.¹⁴⁹ Unless an application for educational expenses is made for a non-minor disabled child under Section 513, the disability that is the basis for the application for support must have arisen while the child was eligible for support under Section 505 or 513 of this Act.¹⁵⁰

141. *Id.* (amending 750 ILL. COMP. STAT. 5/513(j)).

142. *Id.* (enacting 750 ILL. COMP. STAT. 5/513(k)).

143. *Id.* (enacting 750 ILL. COMP. STAT. 5/513(k)).

144. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5).

145. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(a)).

146. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(a)).

147. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(a)).

148. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(a)).

149. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(a)).

150. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(a)).

All relevant factors that appear reasonable and necessary, to be considered by the court in making this award, or pursuant to a petition or motion to modify, decrease, or terminate an award include:

- (1) the present and future financial resources of both parties to meet their needs, including, but not limited to savings for retirement,
- (2) the standard of living the child would have enjoyed had the marriage not been dissolved. The court may consider factors that are just and equitable;
- (3) the financial resources of the child; and
- (4) any financial or other resource provided to or for the child including but not limited to, and Supplemental Security Income, any home-based support provided pursuant to the Home-Based Support Services Law for Mentally Disabled Adults, and any other State, federal, or local benefit available to the child.¹⁵¹

As used in this section, a “disabled” individual means an individual who has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment, or is regarded as having such an impairment.¹⁵² “Disability” is defined as a mental or physical impairment that substantially limits a major life activity.¹⁵³

VI. ALLOCATION OF PARENTAL RESPONSIBILITIES

The advent of new terms for visitation and custody, and the considerable modification of law regarding relocation of a child requires statutory definitions of vocabulary concerning those provisions. The definitions for terminology applied to the aforementioned issues are set forth below.

A. Definitions for Part VI, Allocation of Parental Responsibilities. 750 ILCS 5/600

§ 600. Definitions. For purposes of this Part VI:

- (a) “Abuse” has the meaning ascribed to that term in Section 103 of the Illinois Domestic Violence Act of 1986.
- (b) “Allocation judgment” means a judgment allocating parental responsibilities.

151. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(b)(1)-(4)).

152. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(c)).

153. *Id.* (enacting 750 ILL. COMP. STAT. 5/513.5(c)).

(c) “Caretaking functions” means tasks that involve interaction with a child or that direct, arrange, and supervise the interaction with and care of a child provided by others, or for obtaining the resources allowing for the provision of these functions. The term includes, but is not limited to, the following:

(1) satisfying a child’s nutritional needs; managing a child’s bedtime and wake-up routines; caring for a child when the child is sick or injured; being attentive to a child’s personal hygiene needs, including washing, grooming, and dressing; playing with a child and ensuring the child attends scheduled extracurricular activities; protecting a child’s physical safety; and providing transportation for a child;

(2) directing a child’s various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence, and maturation;

(3) providing discipline, giving instruction in manners, assigning and supervising chores, and performing other tasks that attend to a child’s needs for behavioral control and self-restraint;

(4) ensuring the child attends school, including remedial and special services appropriate to the child’s needs and interests, communicating with teachers and counselors, and supervising homework;

(5) helping a child develop and maintain appropriate interpersonal relationships with peers, siblings, and other family members;

(6) ensuring the child attends medical appointments and is available for medical follow-up and meeting the medical needs of the child in the home;

(7) providing moral and ethical guidance for a child; and

(8) arranging alternative care for a child by a family member, babysitter, or other child care provider or facility, including investigating such alternatives, communicating with providers, and supervising such care.

(d) “Parental responsibilities” means both parenting time and significant decision-making responsibilities with respect to a child.

(e) “Parenting time” means the time during which a parent is responsible for exercising caretaking functions and non-significant decision-making responsibilities with respect to the child.

(f) “Parenting plan” means a written agreement that allocates significant decision-making responsibilities, parenting time, or both.

(g) “Relocation” means:

(1) a change of residence from the child’s current primary residence located in the county of Cook, DuPage, Kane, Lake, McHenry, or Will

to a new residence within this State that is more than 25 miles from the child's current residence;

(2) a change of residence from the child's current primary residence located in a county not listed in paragraph (1) to a new residence within this State that is more than 50 miles from the child's current primary residence; or

(3) a change of residence from the child's current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence.

(h) "Religious upbringing" means the choice of religion or denomination of a religion, religious schooling, religious training, or participation in religious customs or practices.

(i) "Restriction of parenting time" means any limitation or condition placed on parenting time, including supervision.

(j) "Right of first refusal" has the meaning provided in subsection (b) of Section 602.3 of this Act.

(k) "Significant decision-making" means deciding issues of long-term importance in the life of a child.

(l) "Step-parent" means a person married to a child's parent, including a person married to the child's parent immediately prior to the parent's death.

(m) "Supervision" means the presence of a third party during a parent's exercise of parenting time.¹⁵⁴

B. Jurisdiction; commencement of proceeding. 750 ILCS 5/601.2

Previously, a stepparent could not file a petition for custody (now parental responsibility) unless the child was at least 12 years of age, and the custodial parent and petitioning stepparent were married and residing together with the child for at least 5 years.¹⁵⁵ Those provisions have been eliminated, and the other requirements remain in effect.¹⁵⁶

154. See Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at §§ 5-15 (enacting 750 ILL. COMP. STAT. 5/600).

155. See *id.* (enacting 750 ILL. COMP. STAT. 5/601.2(4)).

156. *Id.* (enacting 750 ILL. COMP. STAT. 5/601.2).

C. Allocation of parental responsibilities: decision making. 750 ILCS 5/602.5

The term “parental responsibility” is now used in place of “custody” and related terms such as “custodial” and “custodian.”¹⁵⁷ The court must allocate decision-making responsibilities according to the child’s best interests; the court is not required to allocate decision-making responsibilities to each parent.¹⁵⁸

The court shall make the determination of the allocation of significant decision-making responsibilities unless the parents submit a written agreement, or the issue has been reserved under Section 401.¹⁵⁹ The court must allocate to one or both parents the significant decision-making responsibility for each of four significant issues affecting the child.¹⁶⁰ Those four significant issues include education, health, religion, and extracurricular activities.¹⁶¹

The court, in determining the child’s best interests for purposes of allocating significant decision-making responsibilities, must consider all relevant factors including:

- (1) the wishes of the child, taking into account the child’s maturity and ability to express reasoned and independent preferences as to decision-making;
- (2) the child’s adjustment to his or her home, school, and community;
- (3) the mental and physical health of all individuals involved;
- (4) the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;
- (5) the level of each parent’s participation in past significant decision-making with respect to the child;
- (6) any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;
- (7) the wishes of the parents;
- (8) the child’s needs;
- (9) the distance between the parents’ residences, the cost and difficulty of transporting the child, each parent’s and the child’s daily schedules, and the ability of the parents to cooperate in the arrangement;

157. *See id.* (amending 750 ILL. COMP. STAT. 5/801(e)).

158. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(a)).

159. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(b)(1)-(4)).

160. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(b)(1)-(4)).

161. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(b)(1)-(4)).

(10) whether a restriction on decision-making is appropriate under Section 603.10;

(11) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;

(12) the physical violence or threat of physical violence by the child's parent directed against the child;

(13) the occurrence of abuse against the child or other member of the child's household;

(14) whether one of the parents is a sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and

(15) any other factor that the court expressly finds to be relevant.¹⁶²

“In allocating significant decision-making responsibilities, the court [must] not consider conduct of a parent that does not affect that parent's relationship to the child.”¹⁶³

750 ILCS 5/602.5(d) states that “[a] parent shall have sole responsibility for making routine decisions with respect to the child and for emergency decisions affecting the child's health and safety during that parent's parenting time.”¹⁶⁴ This problematic provision directly contradicts the definition of parenting time as including only non-significant decision making responsibilities.¹⁶⁵ Significant decision-making means deciding issues of long-term importance in the life of a child.¹⁶⁶ Often, parenting time extends for 48 hours over a weekend and for a two week period in the summer.¹⁶⁷ According to this subsection, a parent with significant decision-making responsibilities regarding the child's health may not be the parent making an emergency medical decision that could have a tremendous impact on the child's long-term well-being.¹⁶⁸ For example, consider the situation where a child has a life threatening medical emergency, and the parent exercising parenting time takes the child to a local hospital. If the parent with significant decision-making responsibility for medical care, insists that the child be transferred to a more prominent healthcare facility in another city, the parent exercising parenting time is not required to

162. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(c)(1)-(15)).

163. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(e)).

164. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(d)).

165. *Id.* (enacting 750 ILL. COMP. STAT. 5/600(e), 5/801(e)).

166. *See* 750 ILL. COMP. STAT. 5/2-1401 (West 2015); *see* Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/600(k)).

167. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at §§ 5-15 (amending 750 ILL. COMP. STAT. 5/602.5(d)).

168. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.5(d)).

follow that decision. If this subsection was the legislature's attempt to provide authority to the parent in physical possession of a child during parenting time to make decisions for urgently needed medical care, the legislators' effort failed and this provision must be rewritten to reflect that purpose.

D. Allocation of parental responsibilities: parenting time 750 ILCS 5/602.7

The term "parenting time" is used in place of "visitation" with respect to time during which a parent is responsible for exercising caretaking functions and non-significant decision-making responsibilities concerning the child.¹⁶⁹

The court must allocate parenting time according to the child's best interests.¹⁷⁰ The court shall allocate parenting time unless the parents submit an agreed upon written parenting plan, and that plan is approved by the court.¹⁷¹ Both parents are presumed fit and the court must not place any restrictions on parenting time unless the court finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral or emotional health.¹⁷² The provisions for restriction of parental responsibilities for decision-making and parenting time are set forth in 750 ILCS 5/603.10.¹⁷³

In determining the child's best interests for allocating parenting time, the court must consider the following relevant factors:

- (1) the wishes of each parent seeking parenting time;
- (2) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to parenting time;
- (3) the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing of any petition for allocation of parental responsibilities or, if the child is under 2 years of age, since the child's birth;
- (4) any prior agreement or course of conduct between the parents relating to caretaking functions with respect to the child;
- (5) the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;

169. *Id.* (enacting 750 ILL. COMP. STAT. 5/600(e), 5/801(e)).

170. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(a)).

171. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(b)).

172. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(b)).

173. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(b)).

- (6) the child's adjustment to his or her home, school, and community;
- (7) the mental and physical health of all individuals involved;
- (8) the child's needs;
- (9) the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
- (10) whether a restriction on parenting time is appropriate;
- (11) the physical violence or threat of physical violence by the child's parent directed against the child or other member of the child's household;
- (12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs;
- (13) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
- (14) the occurrence of abuse against the child or other member of the child's household;
- (15) whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph
- (16) the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed; and
- (17) any other factor that the court expressly finds to be relevant.¹⁷⁴

“In allocating parenting time, the court must not consider conduct of a parent that does not affect that parent's relationship to the child.”¹⁷⁵

The court, upon motion, may allow a parent who is a member of the Armed Forces and deployed, or possessing orders to be deployed, to designate a person known to the child for substitute visitation on behalf of the deployed parent.¹⁷⁶ The court must determine such substitution is in the child's best interest by considering the factors set forth in subsection (b) of this Section and applying those factors to the designee.¹⁷⁷ These visitation

174. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(b)(1)-(17)).

175. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(c)).

176. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(d)).

177. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(d)).

orders are subject to the conditions set forth in 750 ILCS 5/602.9(e) and (f) and 750 ILCS 5/603.10(c) and (d).¹⁷⁸

“If the street address of a parent is not provided pursuant to Section 708 of this Act, the court must require the parties to identify reasonable alternative arrangements for parenting time, including” parenting time at the residence of another person or at a local public or private location.¹⁷⁹

E. Parenting time by parents not allocated significant decision-making responsibilities. 750 ILCS 5/602.8

The provisions for parenting time are substantially the same as those previously governing visitation. A parent who has established parentage under the laws of Illinois and who is not granted significant decision-making responsibilities for a child is entitled to reasonable parenting time, subject to subsections (d) and (e) of Section 603.10, unless the court finds, after a hearing, that the parenting time would seriously endanger the child’s mental, moral or physical health or significantly impair the child’s emotional development.¹⁸⁰ In deciding parenting time, the court must consider the factors set forth in subsection (b) of Section 602.7, and determine that parenting time is in the child’s best interests.¹⁸¹

F. Visitation by certain non-parents. 750 ILCS 5/602.9

The definition of “sibling” now clarifies that a sister or brother may be of whole blood or half blood.¹⁸²

At first glance, the changes to visitation in this section regarding non-parents may seem minor, but upon close examination reveal they could have quite an impact in certain situations.

“Grandparents, great-grandparents, step-parents, and siblings of a minor child who is one year old or older may bring a petition for visitation and electronic communication under this Section if there is [(1)] an unreasonable denial of visitation by a parent that causes undue mental, physical, or emotional harm to the child,” (2) at least one of the situations in subsection (c)(1) exists, and (3) at least one parent does not object to the visitation.¹⁸³ Subsection (c)(1) maintains the previous triggering conditions: a deceased or missing parent, an incompetent parent, an incarcerated parent, a final or pending dissolution or family case, a

178. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(d)).

179. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.7(e)).

180. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.8(a)).

181. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.8(a)).

182. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(a)(2)).

183. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(c)(1)).

proceeding under Article II of the Juvenile Court, and unmarried parents not residing together where parentage has been established.¹⁸⁴ Incredibly, any proceeding regarding an Order of Protection has been added as a qualifying condition.¹⁸⁵

Notice of the petition is to be given as provided in 750 ILCS 5/601.2(c).¹⁸⁶ The drafters of that statute omitted any reference to a visitation proceeding as set forth in this Section. Children who have been relinquished pursuant to the Abandoned Newborn Infant Protection Act have been included as children for whom this section is inapplicable.¹⁸⁷

The court is mandated to consider several factors in determining whether visitation is appropriate. Three factors that the court was previously mandated to consider are now listed as factors the court “should consider.”¹⁸⁸ Those circumstances are

[(1)] whether the child resided with the petitioner for at least 6 consecutive months with or without a parent present, [(2)] whether the child had frequent and regular contact or visitation with the petitioner for at least 12 consecutive months, and [(3)] whether the petitioner was a primary caretaker of the child for a period of not less than 6 consecutive months within the 24 month period immediately preceding the commencement of the proceeding.¹⁸⁹

The 24 month time period preceding the commencement of the proceeding is a change under the Act.¹⁹⁰

The imperative factors for the court to consider in deciding whether to grant visitation are:

- (A) the wishes of the child, taking into account the child’s maturity and ability to express reasoned and independent preferences as to visitation;
- (B) the mental and physical health of the child;
- (C) the mental and physical health of the grandparent, great-grandparent, sibling, or step-parent;
- (D) the length and quality of the prior relationship between the child and the grandparent, great-grandparent, sibling, or step-parent;
- (E) the good faith of the party in filing the petition;
- (F) the good faith of the person denying visitation;

184. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(c)(1)(A)-(E)).

185. *Id.* (enacting 750 ILL. COMP. STAT. 5/601.2(c)).

186. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(b)(1)).

187. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(b)(2)(E)).

188. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(c)(2)).

189. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(c)(2)(A)-(C)).

190. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(c)(2)(C)).

(G) the quantity of the visitation time requested and the potential adverse impact that visitation would have on the child's customary activities;

(H) any other fact that establishes that the loss of the relationship between the petitioner and the child is likely to unduly harm the child's mental, physical, or emotional health; and

(I) whether visitation can be structured in a way to minimize the child's exposure to conflicts between the adults.¹⁹¹

New under the Act is the requirement that the visitation must be able to be structured in a way to minimize the child's exposure to conflicts between the adults.¹⁹²

Additionally, as has been modified under all provisions of this Section, "undue harm" to a child rather than "harm" of a child must be caused, suffered, or proven.¹⁹³ Does this mean some harm to the child's mental, physical or emotional health is acceptable and the court is to act only upon a showing of undue harm? How does one differentiate between harm and undue harm? To what extent must a child be harmed before the harm becomes undue harm?

"An order granting visitation privileges under this Section is subject to subsections (c) and (d) of Section 603.10."¹⁹⁴ Subsection (c) of Section 603.10 states,

[a]n order granting parenting time to a parent or visitation to another person may be revoked by the court if that parent or other person is found to have knowingly used his or her parenting time or visitation to facilitate contact between the child and a parent who has been barred from contact with the child or to have knowingly used his or her parenting time or visitation to facilitate contact with the child that violates any restrictions imposed on a parent's parenting time by a court of competent jurisdiction. Nothing in this subsection limits a court's authority to enforce its orders in any other manner authorized by law.¹⁹⁵

Subsection (d) of Section 603.10 provides,

If parenting time of a parent is restricted, an order granting visitation to a non-parent with a child or an order granting parenting time to the other parent shall contain the following language:

If a person granted parenting time or visitation under this order uses that time to facilitate contact between the child and a parent whose

191. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(b)(5)(A)-(I)).

192. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(b)(5)(I)).

193. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(b)(3), (b)(5)(H), (c)(1), 5/607).

194. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(c)(3)).

195. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(c)).

parenting time is restricted, or if such a person violates any restrictions placed on parenting time or visitation by the court, the parenting time or visitation granted under this order shall be revoked until further order of court.¹⁹⁶

Family members who are known sex offenders, other than parents, are still required by the court to complete a treatment program approved by the court before visitation can be awarded.¹⁹⁷ Section (e) also states that “[u]pon completion of treatment, the court may deny visitation based on the factors listed in subdivision (b)(5) of Section 607 of this Act.”¹⁹⁸ Section 607 has been repealed in its entirety. Presumably, the legislature intended to refer to 750 ILCS 602.7(b)(5).

Unlike for parents, under subsection (e) of this Section, the Act continues to apply to a misdemeanor sex offense as well as a felony sex offense, regarding the prohibition against visitation while the offender is incarcerated, on probation, conditional discharge, etc.¹⁹⁹

As previously noted, for the first time, the law allows the existence of an Order of Protection against a parent to give rise to a petition for visitation by grandparents and certain other non-parents.²⁰⁰ In light of the fact that a proceeding for an Order of Protection is now a triggering event for visitation, the question arises; are the precautionary provisions sufficient to protect a child from an abusive parent who has been denied parenting time? If a grandparent who is the parent of an abusive parent to the grandchild is awarded visitation time with that grandchild, violates this restriction and allows access to the child, will there be sufficient evidence to prove the violation? If the grandparent and abusive parent deny the occurrence, will the child be believed over the adults? Imagine a child who is told by a grandparent or by an abusive parent that if the child tells anyone about the unlawful visitation, that the child will not ever be allowed to see either of them again. The child may be threatened with physical harm or that his beloved pet or another family member will be killed if he tells anyone. The laudable purpose of the Act in facilitating, promoting, and maintaining relationships between parents and other family members may inadvertently be putting some children at risk. This potentially dangerous modification may go unnoticed by many practitioners and judges. Remarkably, no mention is even made of this change in IICLE’s “The

196. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(d)).

197. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(e), 5/603.10).

198. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9(e)).

199. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.9, 5/603.10).

200. *Id.* (amending 750 ILL. COMP. STAT. 5/601.2(c)).

Changing Face of Illinois Family Law: 2016 Marriage and Dissolution of Marriage Act Overhaul,” authored by Steven N. Peskind.²⁰¹

Based on my fifteen years of experience with domestic violence cases, judges do not grant plenary Orders of Protection on a whim. Too many others in the legal system are under the misconception that a cry of domestic violence is a manipulative attempt to obtain an advantage in a divorce. In my experience, that attempted misuse of the system occurs in a small minority of the cases. By far, the most dangerous time for a domestic violence victim is when she attempts to leave the relationship.²⁰² Consequently, filing petitions for dissolution of marriage and a protective order simultaneously, or within a short period of time of one another is rational, and should be expected. This behavior evidences reasoned and sound judgment, not a deceitful undertaking to obtain the upper hand in a divorce proceeding. Common sense tells us that when a victim makes the decision to leave an abusive and controlling relationship that she is not going to file for a dissolution proceeding without filing for a protective order.

G. Parenting plan. 750 ILCS 5/602.10

All parents, either separately or jointly, must file a proposed parenting plan with the court within 120 days after service or filing of a petition for allocation of parental responsibilities.²⁰³ “The time requirement may be extended by the court for good cause shown.”²⁰⁴ If one or both parents fail to file a parenting plan, the court must conduct an evidentiary hearing to allocate parental responsibilities.²⁰⁵ Unless the court determines that impediments to mediation exist, the court shall order mediation to assist the parents in formulating, modifying, or implementing a parenting plan.²⁰⁶ The cost of the mediation will be allocated pursuant to the applicable statute or Supreme Court Rule.²⁰⁷

201. Steven Peskind, *The Changing Face of Illinois Family Law: 2016 Marriage and Dissolution of Marriage Act Overhaul*, ILL. INST. FOR CONTINUING LEGAL EDUC. (2015).

202. *What is Domestic Violence*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE (Mar. 26, 2016), <http://www.ncadv.org/need-help/what-is-domestic-violence>; *see also About DVIP; DOMESTIC VIOLENCE INTERVENTION PROGRAM* (Nov. 17, 2015) <http://www.dvipiowa.org/how-can-i-help/>; *Barriers To Leaving An Abusive Relationship*, CTR; FOR RELATIONSHIP ABUSE AWARENESS (Nov. 17, 2015), <http://stoprelationshipabuse.org/educated/barriers-to-leaving-an-abusive-relationship/>.

203. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/602.10(a)).

204. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(a)).

205. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(a)).

206. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(b)).

207. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(c)).

If parents agree on a parenting plan, the plan must be in writing, signed by both parties, and submitted to the court for approval within 120 days after service or filing, except for good cause shown.²⁰⁸ Notwithstanding the 120 day filing requirement, parents may submit an agreed upon parenting plan at any time after the commencement of a proceeding until prior to the entry of judgment of dissolution of marriage.²⁰⁹ Unless the court finds the agreement is unconscionable, the agreement is binding upon the court. If the court rejects the agreement, the court must make express findings as to the reasons for refusal.²¹⁰ “The court may, upon its own motion, conduct an evidentiary hearing to determine whether the parenting plan is in the child’s best interests.”²¹¹

If parents fail to agree on a parenting plan, each parent must file and submit to the court a written and signed parenting plan within 120 days after the filing of an appearance, except for good cause shown.²¹² “The court’s determination of parenting time should be based on the child’s best interest.”²¹³ The court may excuse the filing of the plan if the parties have commenced mediation for the purpose of formulating a plan, the parents have agreed in writing to extend the time and the court has approved the extension, or the court extends the filing time for good cause shown.²¹⁴

The parenting plan must include:

- (1) an allocation of significant decision-making responsibilities;
- (2) provisions for the child’s living arrangements and for each parent’s parenting time, including either:
 - (A) a schedule that designates in which parent’s home the minor child will reside on given days; or
 - (B) a formula or method for determining such a schedule in sufficient detail to be enforced in a subsequent proceeding;
- (3) a mediation provision addressing any proposed reallocation of parenting time or regarding the terms of allocation of parental responsibilities, except that this provision is not required if one parent is allocated all significant decision-making responsibilities;
- (4) each parent’s right of access to medical, dental, and psychological records (subject to the Mental Health and Developmental Disabilities Confidentiality Act), child care records, and school and extracurricular

208. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(d)).

209. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(d)).

210. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(d)).

211. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(d)).

212. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(e)).

213. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(e)).

214. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(e)).

records, reports, and schedules, unless expressly denied by a court order or denied under subsection (g) of Section 602.5;

(5) a designation of the parent who will be denominated as the parent with the majority of parenting time for purposes of Section 606.10;

(6) the child's residential address for school enrollment purposes only;

(7) each parent's residence address and phone number, and each parent's place of employment and employment address and phone number;

(8) a requirement that a parent changing his or her residence provide at least 60 days prior written notice of the change to any other parent under the parenting plan or allocation judgment, unless such notice is impracticable or unless otherwise ordered by the court. If such notice is impracticable, written notice shall be given at the earliest date practicable. At a minimum, the notice shall set forth the following:

(A) the intended date of the change of residence; and

(B) the address of the new residence;

(9) provisions requiring each parent to notify the other of emergencies, health care, travel plans, or other significant child-related issues;

(10) transportation arrangements between the parents;

(11) provisions for communications, including electronic communications, with the child during the other parent's parenting time;

(12) provisions for resolving issues arising from a parent's future relocation, if applicable;

(13) provisions for future modifications of the parenting plan, if specified events occur;

(14) provisions for the exercise of the right of first refusal, if so desired, that are consistent with the best interests of the minor child; provisions in the plan for the exercise of the right of first refusal must include:

(i) the length and kind of child-care requirements invoking the right of first refusal;

(ii) notification to the other parent and for his or her response;

(iii) transportation requirements; and

(iv) any other provision related to the exercise of the right of first refusal necessary to protect and promote the best interests of the minor child; and

(15) any other provision that addresses the child's best interests or that will otherwise facilitate cooperation between the parents.²¹⁵

The personal information required in paragraphs (6), (7), and (8) does not have to be provided if there is evidence of a history of domestic violence or abuse, or if the parenting plan states that there is a history of domestic violence or abuse.²¹⁶ That information may also be excluded upon a showing that the release of the information is not in the child's or parent's best interests.²¹⁷

The court must take the parenting plans into consideration, and conduct a trial or hearing to determine a plan which maximizes the child's relationship and access to both parents.²¹⁸ The court must ensure that access to both parents and the overall plan are in the best interests of the child.²¹⁹

The court may consider whether to award the right of first refusal, under Section 602.3 to one or both parents; this decision must be consistent with the best interests of the child as defined in Section 602.7(a).²²⁰

H. Access to health care, child care, and school records by parents. 750 ILCS 5/602.11

A parent who has not been allocated parental responsibility is allowed access to a child's medical, dental, child care and school records unless that parent has been denied parenting time.²²¹ A parent who is not allocated parenting time is denied access to the child's records unless the court finds it is in the child's best interests for the parent to receive such information.²²²

Health care professionals and medical care providers must grant access to health records of a child to both parents unless prohibited by court order from doing so.²²³ A respondent in an Order of Protection is prohibited from obtaining the medical records of a child declared a protected person under the order, provided the health care provider has received a copy of the Order of Protection.²²⁴ Access to the records is prohibited for the duration of the order, or as otherwise determined by court order.²²⁵

215. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(f)(1)-(15)).

216. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(f)).

217. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(f)).

218. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(g)).

219. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.10(g)).

220. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.3, 5/602.7(a)).

221. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.11(a)).

222. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.11(a)).

223. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.11(b)).

224. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.11(b)).

225. *Id.* (enacting 750 ILL. COMP. STAT. 5/602.11(b)).

I. Temporary orders. 750 ILCS 5/603.5

The court, in the child's best interests, may enter an order for temporary allocation of parental responsibilities.²²⁶ The court must adhere to the standards set forth in Sections 602.5 and 602.7, pertaining to decision making and parenting time. The order may be entered after a hearing or, absent an objection, on the basis of a parenting plan that complies with subsection (f) of Section 602.10 that sets forth the minimum information to be included in a parenting plan.²²⁷

A temporary order allocating parental responsibilities is vacated when the action in which it was granted is dismissed, unless a parent moves to continue the action for allocation of parental responsibilities under Section 602.5 concerning decision making.²²⁸

J. Restriction of parental responsibilities. 750 ILCS 5/603.10

If, subsequent to a hearing, the court finds by a preponderance of the evidence that a parent engaged in any conduct that seriously endangered the child's mental, moral, or physical health or that significantly impaired the child's emotional development, the court must enter orders necessary to protect the child.²²⁹ The order(s) may include, but are not limited to, one or more of the following:

- (1) a reduction, elimination, or other adjustment of the parent's decision-making responsibilities or parenting time, or both decision-making responsibilities and parenting time;
- (2) supervision, including ordering the Department of Children and Family Services to exercise continuing supervision under Section 5 of the Children and Family Services Act;
- (3) requiring the exchange of the child between the parents through an intermediary or in a protected setting;
- (4) restraining a parent's communication with or proximity to the other parent or the child;
- (5) requiring a parent to abstain from possessing or consuming alcohol or non-prescribed drugs while exercising parenting time with the child and within a specified period immediately preceding the exercise of parenting time;

226. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.5(a)).

227. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.5(a)).

228. *See id.* (enacting 750 ILL. COMP. STAT. 5/603.5(b)). Note: Subsection (b) contains a typographical error. The statute makes reference to Section 601.5 in subsection (b) instead of Section 602.5; Section 601.5 pertains to training of Guardians at Litem, and is repealed by Public Act 99-90.

229. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(a)).

- (6) restricting the presence of specific persons while a parent is exercising parenting time with the child;
- (7) requiring a parent to post a bond to secure the return of the child following the parent's exercise of parenting time or to secure other performance required by the court;
- (8) requiring a parent to complete a treatment program for perpetrators of abuse, for drug or alcohol abuse, or for other behavior that is the basis for restricting parental responsibilities under this Section; and
- (9) any other constraints or conditions that the court deems necessary to provide for the child's safety or welfare.²³⁰

If, after a hearing, the court finds by a preponderance of the evidence that a modification is in the child's best interests, the court may modify an order restricting parental responsibilities.²³¹ The modification shall be based on (1) a change of circumstances that occurred after the entry of an order restricting parental responsibilities, or (2) conduct by a parent of which the court was previously unaware that seriously endangers the child.²³²

The following factors to be considered by the court in determining whether to modify an order under this subsection, include but are not limited to:

- (1) abuse, neglect, or abandonment of the child;
- (2) abusing or allowing abuse of another person that had an impact upon the child;
- (3) use of drugs, alcohol, or any other substance in a way that interferes with the parent's ability to perform caretaking functions with respect to the child; and
- (4) persistent continuing interference with the other parent's access to the child, except for actions taken with a reasonable, good-faith belief that they are necessary to protect the child's safety pending adjudication of the facts underlying that belief, provided that the interfering parent initiates a proceeding to determine those facts as soon as practicable.²³³

Note that a parent who keeps a child from the other parent for purported safety reasons must commence a timely court proceeding to adjudicate the issue, thereby, placing the onus on the non-offending parent.²³⁴

230. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(a)(1)-(9)).

231. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(b)).

232. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(b)).

233. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(b)(1)-(4)).

234. *See id.* (enacting 750 ILL. COMP. STAT. 5/603.10).

Any individual who facilitates improper contact, or otherwise promotes a violation of a restriction of parenting time with a parent or visitation with another person, shall have their parenting time or visitation revoked.²³⁵ A printed warning to that effect shall be included in an order restricting parenting time or visitation with a non-parent.²³⁶

A parent who has committed a sex offense, particularly a misdemeanor sex offense, may now have fewer barriers to parenting time.²³⁷ Previously, a parent convicted of various sex crimes whose victim(s) had not yet reached the age of 18 was prohibited from visitation until the perpetrator successfully completed a treatment program approved by the court.²³⁸ The Act eliminated the mandatory treatment and made such treatment discretionary with the court.²³⁹ Currently, the court, in determining the child's best interests takes "into account the exact nature of the offense and what, if any, treatment in which the parent successfully participated."²⁴⁰ The statute retains the prohibition against parenting time while incarcerated or on parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for a felony offense.²⁴¹ However, those restrictions have been removed from the prior law as it related to a misdemeanor offense.²⁴²

A child may not be present while a parent visits a person granted visitation or parenting time who has been convicted for first degree murder unless the court finds it would be in the child's best interests for the child to be present.²⁴³ The factors set forth in subsection (b) of Section 602.7 are to be considered by the court regarding the best interests of the child.²⁴⁴ The statute previously stated that "no person shall visit, with the child present, a person who has been convicted of first degree murder of the parent, grandparent, great-grand-parent, or sibling of the child without the consent of the child's parent, other than a parent convicted of first degree murder as set forth herein, or legal guardian."²⁴⁵ This subsection now applies to anyone convicted of first degree murder; the prior requirement that the child be related to the murder victim has been eliminated.

235. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(c)).

236. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(d)).

237. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(e)).

238. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(e)).

239. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(e)).

240. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(e)).

241. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(e)).

242. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(e)).

243. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(f)).

244. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(f)).

245. *Id.* (enacting 750 ILL. COMP. STAT. 5/603.10(f)).

K. Interviews; evaluations; investigation. 750 ILCS 5/604.10

Numerous and substantial changes have been implemented in the areas concerning child interviews, professionals employed by the court for assistance in determining a child's best interests and the provisions governing evaluators and investigators.²⁴⁶ The transcript of a child's interview in chambers and the report of a professional employed by the court must now be filed under seal.²⁴⁷ The cost of the court reporter and transcript must be borne by the court.²⁴⁸

Unless a party objects, a hearsay exception is made under subsection (b) for admission of the court's professional's report.²⁴⁹ Reports provided to the court and the parties by the court's employed professional, an evaluator or an investigator must now contain more detailed data and specific information as set forth in the statute.²⁵⁰ The due date for each report has been set to a minimum of 60 days prior to hearing.²⁵¹ The court must not examine and consider a court employed professional's report or an investigator's report until the report has been admitted into evidence or the parties have waived their right to cross-examine the investigator.²⁵² As detailed below, the limitations on who may perform an investigation to assist the court in allocating parental responsibilities have been reduced.²⁵³

Any professional may be employed by the court to assist the court in determining the child's best interests.²⁵⁴ Such advice must in writing and sent by the professional to counsel and to the court, under seal.²⁵⁵ Absent a party objection, the writing may be admitted into evidence without testimony from its author.²⁵⁶ The professional must testify as the court's witness and is subject to cross-examination.²⁵⁷ Costs and fees of the professional shall be ordered to be paid by one or more of the parties, subject to reallocation in accordance with subsection (a) of Section 508.²⁵⁸

A professional employed by the court must include in its written report the same minimum information as is required in a report filed by a party's retained professional evaluator under subsection (c) of this Section. That information includes:

246. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10).

247. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(a)).

248. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(a)).

249. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

250. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

251. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

252. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

253. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

254. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

255. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

256. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

257. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

258. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

- (1) a description of the procedures employed during the evaluation;
- (2) a report of the data collected;
- (3) all test results;
- (4) any conclusions of the professional relating to the allocation of parental responsibilities under Sections 602.5 and 602.7;
- (5) any recommendations of the professional concerning the allocation of parental responsibilities or the child's relocation; and
- (6) an explanation of any limitations in the evaluation or any reservations of the professional regarding the resulting recommendations.²⁵⁹

The professional must send the report to all attorneys of record and to any unrepresented party at least 60 days prior to the hearing on the allocation of parental responsibilities.²⁶⁰ The court must examine and consider the professional's report only after it has been admitted into evidence or after the parties have waived their right to cross-examine the professional.²⁶¹ Previously, if the moving party intended to call the evaluator as a witness, the written evaluation had to be provided within 21 days of the completion of the evaluation.²⁶²

"In a proceeding to allocate parental responsibilities or to relocate a child, a parent or any party to the litigation may, upon notice and motion within a reasonable time before trial," request an evaluation by a professional to assist the court in determining the child's best interests.²⁶³ The court must order the evaluation unless it finds the motion is untimely or not in the best interests of the child.²⁶⁴ The evaluation may be in addition to the employment by the court of a professional under subsection (b), or the evaluation may be in lieu of such an appointment.²⁶⁵

The motion for an evaluation under this subsection must, at a minimum, identify the proposed evaluator and the evaluator's specialty or discipline.²⁶⁶ An order must contain the evaluator's name, address, telephone number, and the time, place, conditions, and scope of the evaluation.²⁶⁷ The party requesting the evaluation is liable for the fees unless otherwise ordered by the court.²⁶⁸

259. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)(1)-(6)).

260. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

261. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(b)).

262. *Id.*

263. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

264. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

265. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

266. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

267. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

268. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

The evaluator's report, must at a minimum, contain the same information as required by a court employed professional as set forth in subsection (b)(1-6) above and as is required by an investigator's report as set forth in subsection (d)(1-6).²⁶⁹

A party who retains a professional to conduct an evaluation under this subsection shall cause the evaluator's written report to be sent to the attorneys of record no less than 60 days prior to the hearing, unless otherwise ordered by the court.²⁷⁰ If a party fails to comply with this provision, the court may not admit the evaluator's report into evidence and may not allow the evaluator to testify.²⁷¹ The evaluator shall be disclosed by the retaining party as a controlled expert witness. Any party may call the evaluator as a witness, and shall pay the evaluator's fees and costs for testifying, unless otherwise ordered by the court.²⁷²

Upon notice and a motion by a parent or any party to the litigation, or upon the court's own motion, the court may order an investigation and report to assist the court in allocating parental responsibilities.²⁷³ Prior to the Act, that investigation had to have been performed by a child welfare agency approved by the Department of Children and Family Services (DCFS), and DCFS was prohibited from conducting the investigation unless the court determined no other child welfare agency was available or the child's custodian did not have the financial resources to pay for an investigation or report.²⁷⁴ Currently, the investigation may be made by any agency, private entity, or individual deemed appropriate by the court, provided that the investigator has expertise in the area of allocation of parental responsibilities.²⁷⁵

The investigator's report must set forth, at a minimum, the same information as required in a court employed professional's report in subsection (b) or the evaluator's report in subsection (c).²⁷⁶ The time requirement for providing a report is the same as demanded of a professional employed by the court, or an evaluator, i.e., 60 days before the hearing on the allocation of parental responsibilities.²⁷⁷ This is a substantial increase in the minimum of 10 days prior to hearing under 750 ILCS 5/605 (c). The court shall examine and consider the investigator's report only

269. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)(1)-(6)).

270. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

271. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

272. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

273. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(c)).

274. *Id.* (enacting 750 ILL. COMP. STAT. 5/605(a)).

275. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

276. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

277. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

after it has been admitted into evidence or after the parties have waived their right to cross-examine the investigator.²⁷⁸

The investigator must make available to all attorneys of record, and to any unrepresented party, the investigator's file, and the names and addresses of all persons whom the investigator consulted, unless such disclosure would risk abuse to the party or any member of the party's immediate family. If disclosure of an address would result in revealing the confidential address of a domestic violence shelter, that information may be omitted. Any party to the proceeding may call the investigator, or any person consulted by the investigator as a court's witness, for cross-examination.²⁷⁹ No governmental agency conducting the investigation is entitled to be paid fees.²⁸⁰ Fees incurred by any other investigator will be allocated in accordance with Section 508.²⁸¹

L. Hearings. 750 ILCS 5/606.5

If the court finds that a public hearing may be detrimental to the child's best interests, the court must exclude the public from the hearing.²⁸² Previously, the court had discretion as to whether to exclude the public from the hearing.²⁸³ The court may admit to a hearing any person having (1) a direct and legitimate interest in the case, or (2) a legitimate educational or research interest in the work of the court, but only with the permission of both parties and subject to court approval.²⁸⁴ Permission of the parties is a new requirement.

The court may make an appropriate order sealing the records of any interview, report, investigation, or testimony.²⁸⁵ Under 750 ILCS 5/606(d), the court could seal the record, or any part thereof, if the court found it necessary, in order to protect the child's welfare.²⁸⁶

Provisions under subsections (f) and (g) of Section 606 concerning parents who are members of the United States Armed Forces receiving expedited priority in being set for hearing and the opportunity, upon request, to testify electronically have been eliminated.²⁸⁷

278. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

279. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

280. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

281. *Id.* (enacting 750 ILL. COMP. STAT. 5/604.10(d)).

282. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.5(d)).

283. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.5(c)).

284. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.5(d)).

285. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.5(e)).

286. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.5(d)).

287. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.5(f), (g)).

M. Designation of custodian for purposes of other statutes. 750 ILCS 5/606.10

A parenting plan must designate the parent who is allocated the majority of parenting time.²⁸⁸ This designation is solely for the purposes of state and federal statutes that require a designation or determination of custody or custodian, and does not affect parents' rights and responsibilities under the parenting plan.²⁸⁹ For Section 10-20.12b of the school code, the parent with the majority of parenting time is considered to have legal custody.²⁹⁰

N. Abuse of allocated parenting time. 750 ILCS 5/607.5

A parent commencing an action for abuse of allocated parenting time must file a petition that sets forth (1) the petitioner's name and address, unless disclosure of the address would put petitioner at risk of abuse or reveal the confidential address of a domestic violence shelter, (2) the respondent's name and address, (3) the terms of the parenting plan or allocation judgment, (4) nature of the violation, giving dates and other relevant information, and (5) that a reasonable attempt was made to resolve the dispute.²⁹¹

Previously, under 750 ILCS 5/607.1, no exception was made for the petitioner to omit petitioner's address in the petition due to risk of abuse.²⁹² However, counseling and mediation were waived where there was evidence of domestic violence; this constituted a more progressive and enlightened approach than is demonstrated in the new version.²⁹³ Additionally, the petitioner is no longer requested to set forth in the petition the relief sought by the petitioner.²⁹⁴

The legislature has dramatically increased the potential sanctions for violations for abuse of parenting time, both in the variety of potential sanctions and in the severity of the punishment. Under 750 ILCS 5/607.1, visitation abuse occurred when a party willfully and without justification, (1) denied a party visitation as ordered by the court, or (2) a party exercised his visitation rights in a manner that was harmful to the child or the child's custodian. Upon a finding of abuse, the court could enter an order for one or more of the following: modification or restriction of visitation,

288. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.10).

289. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.10).

290. *Id.* (enacting 750 ILL. COMP. STAT. 5/606.10).

291. *Id.* (enacting 750 ILL. COMP. STAT. 5/607.5(b)).

292. *See* 750 ILL. COMP. STAT. 5/607.1 (2014).

293. *See id.*

294. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/607.5(b)).

supervised visitation, make up visitation, counseling or mediation (except in cases involving domestic violence), or any other appropriate relief.²⁹⁵ Currently, upon a finding by a preponderance of the evidence that a parent violated parenting time, the court, in the child's best interest must enter an order that may include one or more of the following:

- (1) an imposition of additional terms and conditions consistent with the court's previous allocation of parenting time or other order;
- (2) a requirement that either or both of the parties attend a parental education program at the expense of the non-complying parent;
- (3) upon consideration of all relevant factors, particularly a history or possibility of domestic violence, a requirement that the parties participate in family or individual counseling, the expense of which shall be allocated by the court;
- (4) a requirement that the non-complying parent post a cash bond or other security to ensure future compliance, including a provision that the bond or other security may be forfeited to the other parent for payment of expenses on behalf of the child as the court shall direct;
- (5) a requirement that makeup parenting time be provided for the aggrieved parent or child under the following conditions:
 - (A) that the parenting time is of the same type and duration as the parenting time that was denied, including but not limited to parenting time during weekends, on holidays, and on weekdays and during times when the child is not in school;
 - (B) that the parenting time is made up within 6 months after the noncompliance occurs, unless the period of time or holiday cannot be made up within 6 months, in which case the parenting time shall be made up within one year after the noncompliance occurs;
- (6) a finding that the non-complying parent is in contempt of court;
- (7) an imposition on the non-complying parent of an appropriate civil fine per incident of denied parenting time;
- (8) a requirement that the non-complying parent reimburse the other parent for all reasonable expenses incurred as a result of the violation of the parenting plan or court order; and
- (9) any other provision that may promote the child's best interests.²⁹⁶

Moreover, except for good cause shown, the court must order a parent who has failed to provide allocated parenting time or to exercise allocated

295. 750 ILL. COMP. STAT. 5/607.1 (2014).

296. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/607.5(c)(1)-(9)).

parenting time to pay to the aggrieved party reasonable attorney's fees, court costs, and any other expenses associated with the action.²⁹⁷ If the court finds the respondent did not violate the allocated parenting time, the court may order the petitioner to pay the respondent's reasonable attorney's fees, court costs, or other expenses incurred as a result of the action.²⁹⁸ Previously, attorney's fees and costs were only to be assessed against a party if the court found that the enforcement actions was vexatious and constituted harassment.²⁹⁹

The imposition of sanctions under this section does not preclude a party from maintaining any other action provided by law.³⁰⁰ An individual convicted of unlawful visitation or parenting time interference under the criminal code may also be subject to penalties under this provision, contrary to the law as previously set forth in 750 ILCS 5/607.1(g).³⁰¹

No changes were made regarding those situations where the court issues an order holding a party in contempt for violation of parenting time and finds the party engaged in parenting time abuse.³⁰² Those sanctions include the suspension of a party's driver's license, probation, periodic imprisonment for up to six months, and a conviction of a petty offense, which includes a fine of no more than \$500 per each finding of parenting time abuse.³⁰³

The magnitude of the modification of this statute and the changes herein may well have a chilling effect on the protection of domestic violence victims. Removed from the law are both the defense of justification for withholding parenting time, and the finding of abuse if a party uses visitation rights in a way that is harmful to the child or other party. Incredibly, evidence of domestic violence now allows the court to require the parties to participate in family counseling or individual counseling.³⁰⁴ The most massive overhaul of the IMDMA in forty years has not edged forward one year in its understanding of domestic violence and its impact on child and adult victims. Indeed, this particular Section has moved backwards in time. The legislature's intent seems to be to punish a parent who withholds parenting time no matter the circumstances, including the potential for harm, a justification under the previous statute.

297. *Id.* (enacting 750 ILL. COMP. STAT. 5/607.5(d)).

298. *Id.* (enacting 750 ILL. COMP. STAT. 5/607.5(d)).

299. 750 ILL. COMP. STAT. 5/607.1(f) (2014).

300. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/607.5(e)).

301. 750 ILL. COMP. STAT. 5/607.1(g) (2014).

302. Compare Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/607.5(f), (g), (h)), with 750 ILL. COMP. STAT. 5.607.1 (2014).

303. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/607.5(f), (g), (h)).

304. *Id.* (enacting 750 ILL. COMP. STAT. 5/607.5(c)(3)).

Sanctions for the misuse of parenting time appear to no longer exist, merely the violation of the allocated parenting time, an omission some may consider a misogynistic approach. The provision in Subsection (c)(3) that allows the court to require a domestic violence victim to undergo family counseling and possibly even have to pay the expense for that wholly inappropriate counseling is potentially unsafe, risky, and insulting to a victim of abuse.³⁰⁵

The Faith Trust Institute states in its policy statement on domestic violence couple counseling, what has become common knowledge among anyone informed about domestic violence:

[C]ouple counseling is beneficial to work on marital problems. Wife battering, however, is a violent criminal act, not a marital problem. It is illegal. It is a behavior that is solely the responsibility of the violent person, is chosen by him, and he alone is capable of changing it. *Couple counseling is not a viable therapeutic tool for use in violent family relationships* (emphasis in original). We define a violent family relationship as one in which physical or sexual assaults occur, threats of violence occur, and/or [a] woman lives in an environment of fear caused by her partner. Couple counseling remains inappropriate even when both parties request it and/or want to maintain the couple relationship.³⁰⁶

Sadly, the changes to this area of the IMDMA are draconian and offer reasonable sanctions only for those situations where a parent is withholding parenting time to be vindictive. Impartiality, fairness and a child's best interests require appropriate exceptions to an action under this Section.

A parent should be able to justifiably withhold parenting time for good cause, without suffering undue punishment, and under Section 607.1(a), could do so. Particularly disturbing are those situations in which a child is being sexually abused by a parent, and insufficient evidence exists to prove the abuse and protect the child. Sometimes, a non-offending parent's attempt to safeguard her child backfires. If a mother of a child reports abuse by the father to the Department of Children and Family Services (DCFS), and DCFS does not indicate a finding of abuse, a judge may erroneously view the report as false. Making "too many unfounded reports" may be seen as an attempt to harass a parent rather than an effort to protect an abused child. "Unfounded" means insufficient evidence upon which to indicate; it does not mean the abuse didn't occur. I have seen a mother fail to report suspected sexual abuse of her young daughter to DCFS

305. *Why We Don't Recommend Couples Counseling for Abusive Relationships*, THE NAT'L COALITION AGAINST DOMESTIC VIOLENCE HOTLINE (Mar. 26, 2016), <http://www.thehotline.org/2014/08/why-we-dont-recommend-couples-counseling-for-abusive-relationships/>.

306. *Faith Trust Institute: Working Together to End Sexual & Domestic Abuse*, FAITH TRUST INST. (Nov. 7, 2015), <http://www.faithtrustinstitute.org>.

because she had been told by the judge she would be held in contempt if she filed another report. I have seen a father who is a registered sex offender granted unsupervised overnight visits; he sexually penetrated his seven-year-old daughter during these visits. The child was diagnosed with PTSD as a result of the abuse, and suffers from serious behavioral and emotional issues. The legislature's goal in enacting and modifying laws under the IMDMA should be to promote and foster healthy relationships between a child and family members. But, the legislature should also take a stand for those children and adults who are in abusive relationships, are trying to escape them, and need the protection of the legal system to keep them safe. Removing statutory safeguards and increasing barriers for victims trying to keep themselves and their children safe are disconcerting results of some of the modifications under the Act.

O. Parent's relocation. 750 ILCS 5/609.2

Relocation under this Act is defined as a circumstance under one of three categories: (1) as a change of residence from the child's current primary residence located in the county of Cook, DuPage, Kane, Lake, McHenry, or Will to a new residence within this state that is more than 25 miles from the child's current residence, (2) a change of residence from the child's current primary residence located in a county not listed in paragraph (1) to a new residence within this state that is more than 50 miles from the child's current primary residence, or (3) a change of residence from the child's current primary residence to a residence outside the borders of this state that is more than 25 miles from the current primary residence.³⁰⁷

Prior to the Act, the standard used by the court in making the determination of whether to approve the removal of a child by a parent having sole custody, or joint custody, was the best interests of the child. However, no statutory factors were listed to be included in the court's consideration of the child's best interests.³⁰⁸ The relocation statute now sets forth specific requirements and considerations.³⁰⁹ A parent who has been awarded equal parenting time or the majority of parenting time may request to relocate with the child.³¹⁰ A parent intending to relocate must provide written notice to the other parent under the parenting plan or allocation judgment, and a copy of the notice must be filed with Circuit Clerk's

307. Marriage and Dissolution of Marriage Reform Act, *supra* note 2, at § 5-15 (enacting 750 ILL. COMP. STAT. 5/609.2(g)).

308. *See id.* (enacting 750 ILL. COMP. STAT. 5/609.2(g)) (stating that there are no factors listed within the Act).

309. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(c)).

310. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(b)).

Office.³¹¹ If there is a history of domestic violence, the court may waive or seal some or all of the information required in the notice.³¹²

The written notice must be provided at least 60 days prior to the relocation, or if 60 days' notice is impracticable, at the earliest practicable date, unless otherwise ordered by the court.³¹³ The notice, at a minimum, must set forth the following information: the intended date of the relocation, the address at the new residence (if known), and unless the relocation is indefinite, the length of time the relocation will last.³¹⁴ Failure to comply with these requirements without good cause may be considered by the court as a factor in determining whether the parent's relocation is in good faith, and as a basis for rewarding reasonable attorney's fees and costs.³¹⁵

If the non-relocating parent signs the notice, and the relocating parent files the notice with the court, the relocation shall be allowed without further court action.³¹⁶ Upon a relocation agreement by the parents, the court must modify the parenting plan or allocation judgment per their wishes, as long as the modification is in the child's best interests.³¹⁷

Absent a signed agreement by the parties, the parent seeking to relocate must file a petition with the court asking permission to relocate.³¹⁸ The court must modify the parenting plan or allocation judgment in accordance with the child's best interests. The court must consider the following factors in determining the child's best interests:

- (1) the circumstances and reasons for the intended relocation;
- (2) the reasons, if any, why a parent is objecting to the intended relocation;
- (3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;
- (4) the educational opportunities for the child at the existing location and at the proposed new location;
- (5) the presence or absence of extended family at the existing location and at the proposed new location;
- (6) the anticipated impact of the relocation on the child;

311. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(c)).

312. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(c)).

313. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(d)).

314. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(d)(1)-(3)).

315. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(d)).

316. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2 (e)).

317. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(e)).

318. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(f)).

- (7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;
- (8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;
- (9) possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child;
- (10) minimization of the impairment to a parent-child relationship caused by a parent's relocation; and
- (11) any other relevant factors bearing on the child's best interests.³¹⁹

If a parent moves with the child 25 miles or less to a new residence outside Illinois, Illinois continues to be the home state of the child under subsection (c) of Section 202 of the Uniform Child-Custody Jurisdiction and Enforcement Act.³²⁰ A subsequent move from the new primary residence outside Illinois greater than 25 miles from the child's original primary residence in Illinois must be in compliance with the provisions of this section.³²¹

P. Modification. 750 ILCS 5/610.5

No motion to modify an order allocating parental responsibilities may be made earlier than 2 years after date of entry of the order, unless the court permits the hearing on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's mental, moral or physical health, or significantly impair the child's emotional development.³²² Excluded from the two year limitation is a motion to modify based on stipulation of the parties, a party's intent to marry or reside with a sex offender, or a restriction of parental responsibilities based on Section 603.10.³²³

Except in a case concerning the modification of any restriction of parental responsibilities under Section 603.10, the court shall modify a parenting plan or allocation judgment when necessary to serve the child's best interests if the court finds, by a preponderance of the evidence, that on the basis of facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated therein, a substantial

319. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(g)).

320. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(h)).

321. *Id.* (enacting 750 ILL. COMP. STAT. 5/609.2(h)).

322. *Id.* (enacting 750 ILL. COMP. STAT. 5/610.5(a)).

323. *Id.* (enacting 750 ILL. COMP. STAT. 5/610.5(a)-(b)).

change has occurred in the circumstances of the child or of either parent and that a modification is necessary to serve the child's best interests.³²⁴

The court must modify a parenting plan or allocation judgment in accordance with a parental agreement, unless the court finds the modification to not be in the child's best interests.³²⁵

The court may modify a parenting plan or allocation judgment without a showing of changed circumstances if the modification is in the child's best interests and any of the following are proven: (1) the modification reflects the actual arrangement for care, absent parental objection for the 6 months preceding the filing of the petition for modification, providing that the arrangement was not due to a parent's acquiescence resulting from circumstances that negated the parent's ability to give meaningful consent, (2) the modification constitutes a minor modification, (3) the modification is necessary to modify an agreed plan or judgment that the court would not have ordered or approved regarding the allocation of parental responsibilities for decision-making and parenting time, had the court been aware of the circumstances at the time of the order or approval, or (4) the parties agree to a modification.³²⁶

If the court finds the modification action is vexatious or constitutes harassment, attorney's fees and costs shall be assessed against the party seeking modification.³²⁷ A parent who has repeatedly filed frivolous motions for modification may be barred by the court from filing a motion for modification for a period of time.³²⁸

VII. APPLICATION

A. Application. 750 ILCS 5/801

On and after the effective date of the Act, the term "parenting time" is used in place of "visitation" with respect to time during which a parent is responsible for exercising caretaking functions and non-significant decision-making responsibilities concerning the child.³²⁹ The term "parental responsibility" is used in place of "custody" and related terms such as "custodial" and "custodian."³³⁰ It is not the intent of the General Assembly to modify or change the rights arising under any order entered

324. *Id.* (enacting 750 ILL. COMP. STAT. 5/610.5(c)).

325. *Id.* (enacting 750 ILL. COMP. STAT. 5/610.5(d)).

326. *Id.* (enacting 750 ILL. COMP. STAT. 5/610.5(e)).

327. *Id.* (enacting 750 ILL. COMP. STAT. 5/610.5(f)).

328. *Id.* (amending 750 ILL. COMP. STAT. 5/610.5(f)).

329. *Id.* (amending 750 ILL. COMP. STAT. 5/801(c)).

330. *Id.* (enacting 750 ILL. COMP. STAT. 5/801(e)).

concerning custody or visitation prior to the effective date of this Act, January 1, 2016.³³¹

IX. CONCLUSION

The Act is a lost opportunity to attempt to increase the safety and well-being of domestic violence victims, including abused children. The Act failed to recognize and acknowledge the prevalence of domestic violence in our society and to make provisions, whenever possible, to assist those victims. Conversely, abusers seem to have been given greater access to their victims. The presumption that maintaining and promoting relationships between a child and all family members is in the child's best interests, while true under most circumstances, does not apply in domestic violence situations. Exceptions must be carved out to protect child and adult victims of domestic violence; the same rules cannot apply. Evidence of domestic violence should always create the presumption of detriment to a child's best interests. Batterers use children as pawns to gain access to their victims. More victims may stay in abusive relationships in order to be with their children and to try to protect them.

The Act made some sorely needed and constructive changes in the Illinois Marriage and Dissolution of Marriage Act, but not all the modifications constitute an improvement in the law. The Illinois legislature is no stranger to unforeseen consequences of good intentions in family law situations, as is evidenced by The Workplace Violence Prevention Act,³³² the Illinois Public Aid Code,³³³ and the 2015 amendments to Maintenance

331. *Id.* (enacting 750 ILL. COMP. STAT. 5/801(e)).

332. *See, e.g.*, 2013 Ill. Legis. Service. P.A. 98-430 (H.B. 2590) (WEST) (eff. Jan. 1, 2014) [hereinafter Workplace Violence Prevention Act]; 820 ILL. COMP. STAT. 275/5, 275/15, 275/21(a)(2) (West 2015). The Workplace Violence Prevention Act was originally passed on August 16, 2013 and became effective on January 1, 2014. *See generally* Workplace Violence Prevention Act. The Act was intended to assist employers in providing a safe workplace environment for employees and customers by limiting access to the workplace by potentially violent individuals. *Id.* at § 5. The Act allowed an employer to obtain an order of protection on behalf of an employee. *Id.* at § 15. The employer was not required to get permission from the employee/victim; nor, was the employer required to even consult with that individual, potentially putting the victim's life in danger. *See generally id.* Additionally, PA 98-0430 was originally passed under the Illinois Domestic Violence Act (IDVA), completely ignoring the family or household member requirement of the IDVA. *See* 750 ILL. COMP. STAT. 60/103(6) (West 2015); *see also Legislative Update: Violence Against Women and Girls, Public Benefits, and the Health and Safety of Minors*, SARGENT SHRIVER CENTER ON POVERTY LAW (Oct. 13, 2014), <http://povertylaw.org.index.php?q=civicrm/mailling/view&reset=1&id=605> (explaining that by efforts of the Shriver Center and support of other domestic violence agencies, the legislature amended the Workplace Violence Prevention Act by removing the law from the IDVA, and adding safeguards for the victim/employee); *see generally* 820 ILL. COMP. STAT. 275/25(1)(2).

333. *See, e.g.*, 305 ILL. COMP. STAT. 5/10-17.7 (West 2015). Enacted in August, 1996, the provision for a Voluntary Acknowledgment of Paternity, signed by the unwed parents upon the birth of a child, made it easier to establish paternity; thus, making it less burdensome for Illinois Public Aid

laws.³³⁴ Regrettably, I expect the unplanned ramifications of the Act to be numerous and harsh for domestic violence victims and abused children, and have tried to point out the potential for such harm throughout this survey.

to collect child support. *See id.* While this benefits the State of Illinois in collecting child support payments through Illinois Public Aid, the effects can be devastating to mothers and children. Family cases filed by the state in order to collect child support give putative fathers, who otherwise would never take the initiative to file for custody or visitation, a vehicle by which to petition for custody or visitation. I have seen a judge deny custody and visitation in one such case involving a fourteen-year-old child; the father had shown no interest whatsoever in his daughter until the motion for child support was filed. Unfortunately, this is not always the end result.

334. *See, e.g.*, 750 ILL. COMP. STAT 5/504 (West 2015). The amendments to Maintenance laws under the IMDMA that went into effect on January 1, 2015, have resulted in some terribly unjust situations for domestic violence victims. Marital misconduct is statutorily required to be ignored when a court determines maintenance. As a result, I have seen a victim abused by her spouse for forty years obligated to pay her abuser permanent maintenance of \$17,000 per year. After finally garnering the courage to get out of a lengthy, terribly abusive, marriage, her reward was to financially support her abusive ex-husband.

