

MEMO

TO: LRB

CC: IFLSC
STATE REPRESENTATIVE ELAINE NEKRITZ
ADAM MARGOLIN
ELANA T. VINER

FROM: P. ANDRÉ KATZ

DATE: MARCH 14, 2011

RE: SECTION 600

The Illinois State Bar Association, after devoting several years and countless hours to the issue of child custody/visitation, has drafted proposed legislation that, if adopted by the legislature, will essentially repeal and replace the current 600 Section of the IMDMA. The proposed legislation is entitled LRB097 00030 AJO 40031 b (hereinafter “LRB097”). LRB097 incorporates the scientific research that has occurred in the areas of child custody and visitation since the adoption of the IMDMA in 1997 and modernizes the statute to reflect changing family dynamics. By way of example, LRB097 introduces the following concepts:

- A. Separation of parental responsibilities (formerly akin to ‘legal custody’) and parenting time;
- B. Division of cases seeking an allocation of parenting responsibilities vs. seeking parenting time;
- C. Delineation of significant specified decision-making responsibilities;
- D. Standards for determining the division of those decision-making responsibilities;
- E. The addition of ‘Parenting Plans’ for the allocation of parenting time;
- F. Delineation of factors to be considered by the court if it is required to create the parenting plan;
- G. Rebuttable presumption that it is in the children’s best interest for each parent to enjoy not less thirty-five percent (35%) residential parenting time (the burden of proof to overcome the rebuttable presumption is “preponderance of the evidence”);
- H. Delineation of factors for restrictions on parenting responsibilities;

- I. Delineation of factors for restrictions on parenting time;
- J. Adoption of the concept of 'equitable' parents;
- K. Expansion of standing to include 'equitable' parents;
- L. Provision for handling cases of abuse of allocated parenting time, including not taking advantage of allocated parenting time; and
- M. Procedures for modification of parenting plans as to allocation of parenting time and/or responsibilities using a preponderance of the evidence standard.

Except as it relates to relocation/removal and the addition of the word "presumptively" on page 9, line 3 of the proposed legislation, the Illinois Family Law Study Committee ("IFLSC") recommends that LRB097 be adopted in its entirety. While the proposed legislation is comprehensive and detailed, a summary of how it responds to and changes the current 750 ILCS 5/600 et seq. and associated statutes is set forth below. Moreover, the recommendations below incorporate the IFLSC's discussions regarding relocation/removal and the consensus reached by the IFLSC with respect thereto, though these recommendations still need to be reconciled with LRB097.

325 ILCS 40/7.1 Intergovernmental Missing Child Recovery Act of 1984

- Changes nomenclature and statutory references to reflect new Act.
- No substantive changes.

725 ILCS 5/112A-23 Criminal Code

- Changes nomenclature in Criminal Code to reflect new Act.
- No substantive changes.

750 ILCS 5/102 Purposes; Rules of Construction

- Adds new language to purposes section to reflect changes in thrust of the IMDMA towards child-centered rather than adult-centered concepts.
- Adds as a purpose of the IMDMA to ensure predictable decision-making for the care of children.
- Adds as a purpose of the IMDMA to provide for the allocation of parenting time and parental responsibilities.
- Adds as a purpose of the IMDMA recognition of the right to children to a healthy relationship with parents and that it is the parent's responsibility to ensure those relationships.
- Expands and strengthens the legislative intent of the statute concerning the determination of the best interests of the children and the importance of the allocation of parenting time and decision-making authority.
- Recognizes a rebuttable presumption for each parent of not less than 35% of residential parenting time is in the children's best interest.
- Recognizes that parental education is an important purpose of the statute.

750 ILCS 5/505 Child Support

- Although provisions concerning changes to the child support sections of IMDMA were part of the LRB draft it suggested that in light of the proposals concerning child support that are part of the overall recommendations that this section of the proposal be deleted.
- The child support section should be drafted with the changes concerning the parenting time and responsibilities in mind including the consideration for a parenting time component.

750 ILCS 5/600 Definitions

- Adds a new definitions section to the 600 Sections including changing the name of the heading from 'Custody' to 'Allocation of Parental Responsibilities.'
- Defines 'Caretaking Functions.'
- Defines and introduces into the statute the concept of 'Equitable Parent.'
- Defines 'Legal Parent.'
- Defines 'Parental Responsibilities', 'Parenting Time' and 'Parenting Plan.'
- Adds or expands other significant definitions.

750 ILCS 5/601.2 Jurisdiction; commencement of proceeding

- Makes changes to and replaces 5/601.
- Provides for filing of proceeding by 'equitable' parent.
- Sets procedures for filing pleadings and notices of proceedings.

750 ILCS 5/601.5 Training

- Deleted in favor of the SCR 900 rules.

750 ILCS 5/602 Best Interests

- Moved to Section 602.5.

750 ILCS 5/602.1 Joint Custody

- Deleted in light of Section 602.5.

750 ILCS 5/602.5 Allocation of Parental Responsibilities; Decision-Making

- Replaces all provisions that would be construed as a determination of legal custody.
- Sets standards for allocating parental responsibilities between the parents according to the child's best interests.
- Denominates the areas for determination of parental responsibilities including health, education, and religion (under limited circumstances).
- Delineates best interest factors to be considered by judge when there is not an agreement.
- Creates a presumption in favor of allocating significant decision-making responsibilities to each parent.

750 ILCS 5/602.7 Allocation of Parental Responsibilities; Parenting Time

- Provides for parenting plans in dividing up the children's time with each parent

- Allows parents themselves the first opportunity to agree to a parenting plan.
- Presumes that both parents are fit to have parenting time and puts burden on parent to overcome this presumption by a preponderance of the evidence to restrict parenting time.
- Establishes factors to be considered by the judge in determining a parenting plan based on best interests when the parents cannot agree.

750 ILCS 5/602.10 Parenting Plans

- Sets standards for what is to be included in a Parenting Plan.
- Requires mediation (which would be required anyway under SCR 900s) if parents cannot agree on a Parenting Plan.
- Provides for procedures for filing Parenting Plans by agreement with affidavits
- Provides for procedures for judge to determine Parenting Plans where no agreement.
- Creates rebuttable presumption that an allocation of not less than 35% of residential time is in children's best interests.
- Sets time limits for filing initial Plans and specifies the contents of a Parenting Plan
- Contemplates the drafting of form Parenting Plans as a template for pro se parents.
- Provides for the filing of affidavits to accompany the Parenting Plans and the specific contents of those affidavits.

750 ILCS 603 Temporary Orders

- Replaced by 603.5.

750 ILCS 5/603.5 Temporary Orders

- Replaces 603.
- Provides for the entry of temporary allocation orders using the standards of 602.5 and 602.7.

750 ILCS 5/603.10 Restrictions of Parental Responsibilities

- Replaces current 750 ILCS 5/607.
- Sets standards for restricting a parent's parenting responsibilities based on serious endangerment based on proof by a preponderance of the evidence.
- Delineates specific restrictions that may be placed on parent.
- Sets standards for modifying restrictions once ordered.

750 ILCS 5/604 Interviews

- Replaced by 604.10.

750 ILCS 5/604.5 Evaluation of Child's Best Interest

- Replaced by 604.10.

750 ILCS 5/605 Investigations and Reports

- Replaced by 604.10.

750 ILCS 5/604.10

- Replaces 604, 604.5 and 605.
- Combines the provisions of those sections into one section.
- Provides for *in camera* interviews of children.
- Provides for appointment of evaluators.
- Provides for employment of evaluators.
- Sets minimum standards for evaluator reports.
- Provides for court-ordered investigations by approved agencies.

750 ILCS 5/605 Hearings

- Replaced by 606.5.

750 ILCS 5/606.5 Hearings

- Replaces 606.
- Basically tracks provisions of antecedent statute.

750 ILCS 606.10 Designation of Custodian For Purposes of Other Statutes

- Bridges the gap for the interface of State and Federal statutes that cannot be changed by this statutory change.
- Provides designation of parent without the granting of any additional rights or responsibilities.

750 ILCS 5/607 Visitation

- Deleted.

750 ILCS 5/607.1 Enforcement of Visitation Orders-Visitation Abuse

- Replaced by 607.5.

750 ILCS 5/607.10 Abuse of Allocated Parenting Time

- Replaces 607.1.
- Provides mechanisms for enforcement of allocation orders.
- Sets standard of proof for non-compliance as preponderance of the evidence.
- Provides for remedies for violation of statute including family counseling, monetary awards, attorney fees, posting of cash bond, make-up time, reimbursement for out-of-pocket costs incurred as a result of failure to use parenting time.

750 ILCS 5/608 Judicial Supervision

- Deleted.

750 ILCS 5/609 Leave to Remove Children

- Replaced by 609.2.

750 ILCS 5/609.2 Parent's Relocation

- The IFLSC's proposal as detailed below has not yet been reconciled with LRB097.
- Except as set forth below, IFLSC recommends that no changes be made to the current 609(a) and the standards that apply before a parent may relocate with a child.
- The statute should apply to a parent who desires to relocate his or her principal residence more than a twenty-five (25) mile radius from the other parent's principal residence.
- 609(a) should also require a parent seeking removal to provide the other parent with sufficient notice of the same (including statement of intent to move, location of proposed new residence, reasons for proposed relocation, proposed revised parenting time schedule, statement that the other parent may file a petition in opposition to the move within 30 days of receipt of said notice).
- There should be no such thing as a temporary removal hearing pending permanent removal (as this procedure essentially makes it a *fait accompli*). That being said, the wording of the statute needs to be clear that a parent contemplating removal must bring the matter to Court immediately and also that the Court will deal with said cases on an expedited basis.
- A parent's failure to provide notice prior to relocation (as set forth in the revised 609(a)) shall be deemed to be in indirect civil contempt. Proper notice shall *not* be required if it conflicts with an active order entered pursuant to the IDVA or pursuant to any criminal proceedings.
- The IFLSC proposes a "temporary removal" to address unique circumstances where a party's intention is clearly to leave for a fixed period of time and return (e.g., a one-year sabbatical abroad, a two-year teaching fellowship, etc.). The wording of the statute again needs to be clear that a party contemplating said temporary removal must bring the matter to Court immediately and also that the Court will deal with said cases on an expedited basis.
- The procedures prior to a removal as set forth in the current 609(b) remain the same except that a parent who desires to leave with a child for a period of fourteen (14) days or more must first obtain the other parent's written agreement or a court order.

750 ILCS 5/609.5 Notification of Remarriage or Residency With A Sex Offender

- Deleted.

750 ILCS 5/610 Modification

- Replaced with 610.5.

750 ILCS 610.5

- Replaces 610.
- Does away with the two-tier approach, the 2-year rule and the clear and convincing standard.

- Replaces it with provisions concerning agreed modifications, modifications based on unanticipated changes since the entry of the parenting plan, modifications based on serious endangerment and *per se* modifications.
- Sets the burden of proof in all cases at preponderance of the evidence.

750 ILCS 611 Enforcement of Custody Order or Order Prohibiting Removal of Child From Jurisdiction of the Court

- Deleted.

750 ILCS 5/612 Application of Provisions Concerning Allocation of Parental Responsibilities

- Provides for implementation of new statute.
- Provides as to which proceedings the statute will apply and under what circumstances.

The rest of the draft contains changes to other statutes required by the changes to the IMDMA. Of significant note is the interrelationship with the Parentage Act particularly in light of the revisions contemplated by the Illinois Family Law Study Committee. The determination of incorporation and reference-back will need to be dealt with by the Committee in this proposal.

Other significant statutes that will be affected by the proposed IMDMA language changes are Domestic Violence Act and Probate Act.