

## The Illinois Marriage and Dissolution of Marriage Act Effective January 1, 2016: An Overview from the Chairman of the Illinois Family Law Study Committee



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*Overview: Public Act 99-0090, the rewrite of the Illinois Marriage and Dissolution of Marriage Act ("IMDMA") and Public Act 99-0085, the rewrite of the Parentage Act, were enacted in 2015 and both were effective on January 1, 2016. The prior outdated Illinois Marriage and Dissolution of Marriage Act was enacted in 1977 and the Parentage Act was enacted in 1984.*

### History and Background

The Illinois Family Study Committee ("IFLSC") was created in 2008 by House Resolution 1101, and the IFLSC was appointed with the task of conducting a comprehensive review of the IMDMA and Parentage Act. In recognition of dramatic changes in familial societal norms since 1977, Speaker

of the House Michael Madigan appointed P. André Katz, one of the authors of this article, as chairman of the IFLSC in 2008.

Specifically, Mr. Katz was appointed to lead the bipartisan review and revision of Illinois' IMDMA and Parentage Act. The IFLSC was a bipartisan committee comprised of experienced family law practitioners, judges, and legislators and included an equal number of appointees by the House majority and minority leaders. The Illinois Supreme Court and Illinois Child Support Advisory Committee also provided appointees. In addition to those appointed to the IFLSC, members of every major bar association in Illinois were included in the initial review process, along with judges, family law experts, Illinois state representatives, attorneys, accountants, professors and other experts with extensive and diverse experience in family law. The IFLSC spent hundreds of hours examining tremendous amounts of legal data, and reviewed thousands of pages of written information and evidence. The IFLSC conducted four public hearings where judges, experts, professors, child psychiatrists and others with experience in all aspects of family law testified and the recommendations were debated (two public meetings in Chicago, one in Springfield, and one in Waukegan).

The comprehensive recommendations were then submitted by the IFLSC to the House of Representatives in 2011. The Public Act

was first introduced in the 98th General Assembly in 2014, was reintroduced in the 99th General Assembly in 2015 when it passed both the House and Senate, and was signed by Governor Rauner along with a coinciding update to the Parentage Act in late 2015.

Society and family dynamics have changed dramatically in the past 35 years. Three decades ago, it was still typically the mother's primary role to care for the children, while the father provided financial support. Pursuant to societal norms, marriage was seen as a contract that should not be broken, and if either spouse or a third party caused a breakup, they could be held responsible in a court of law. Today, in many, if not most families, both parents are employed outside the home, and both share the financial and emotional responsibilities of parenting.

The IFLSC accepted that marriages do not always work out, and when a divorce takes place, the focus should be on the needs of the children and the parties, rather than on placing blame. The overall mission of the IFLSC was to re-write the outdated Illinois IMDMA and Parentage Act, taking into consideration the diverse perspectives and professional experiences of its members.

All of the changes to the IMDMA cannot be discussed in this article, but should be carefully reviewed by all family law practitioners. Among the many improvements,

ratifications of current practice, and codification of case law that the revised IMDMA includes, the following is a brief overview of some of the most significant changes that should be noted:

**"Heart-balm actions."** In conjunction with the IMDMA, the following statutes were also effective January 1, 2016: Alienation of Affections Abolition Act, Breach of Promise Abolition Act, and Criminal Conversations Abolition Act. These "heart balm" actions are abolished in order to promote the recognition that amicable settlement of domestic relations matters are beneficial to families. Although effective January 1, 2016, litigants may still proceed under any cause of action under the acts that accrued prior to their repeal.

**Grounds.** The IMDMA now includes only one ground for dissolution — that irreconcilable differences have caused the irretrievable breakdown of the marriage. The current waiting period of six months (if the parties agree) or two years (if the parties do not agree) is repealed. The idea that we need to continue to litigate "fault" in a broken marriage wastes valuable time and money and does not promote better cooperation either during resolution of the matter or subsequent to entry of a Judgment of Dissolution of Marriage.

**Allocation of parental responsibilities (formerly custody).** Family law is no longer a winner-take-all litigation process as it pertains to parents' decision making.

Courts will no longer award “custody” or “visitation” under the new statute, so that a parent may be allowed to “visit” with his or her child. Rather, courts will allocate “parental responsibilities” (formerly custody) and “parenting time” (formerly visitation). Parental responsibilities are broken out into categories reflecting different needs a child may have. Decisions about education, health, religion, and extra-curricular activities can be divided between both parents or solely assigned to one parent. For example, if one parent is a teacher and the other a doctor, a court might allocate the decision making responsibility for education to the teacher and for health to the doctor. Ultimately, the statute still applies the same standard under current law — that the court allocates decision making responsibilities according to the child’s best interests.

**Parenting Plan.** Both parents, within 120 days after service or filing of a petition for allocation of parental responsibilities, must file with the court a separate or joint proposed parenting plan. This is not a requirement under prior law. The time period for filing a parenting plan may be extended for good cause shown. The parenting plan must contain at a minimum information meeting 14 statutory criteria, which includes but is not limited to allocation of significant decision making responsibilities, provisions regarding parenting time, a mediation provision, rights regarding access to records, etc. If the court does not approve a joint parenting plan, it must make express findings jus-

tifying its refusal to do so. Where no agreement is reached between the parties, the court must conduct a hearing or trial to determine a parenting plan that maximizes the child’s relationship and access to both parents pursuant to the best interests of the child. The addition of the requirements for parties to complete a parenting plan early in the case will assist the parties and the court in determining if there are any disputed issues and what they are as soon as feasible.

**Relocation.** A parent who has been allocated a majority of parenting time or equal parenting time may seek to “relocate” with a child. The updated IMDMA provides a procedure for notice and objection of intent to relocate. Specifically, the parent seeking to relocate must provide written notice to the other parent and file the notice with the clerk of the circuit court and must provide 60 days’ notice. If the non-relocating parent signs the notice in agreement, no further court action is required. Thus, when there is an agreement between the parties regarding relocation, the law now provides a mechanism for them to do so without going through additional procedures and incurring additional costs. If the non-relocating parent objects or the parties cannot agree on modification of the parenting plan or allocation judgment, the parent seeking to relocate must file a petition seeking permission to relocate, just as they would under prior law.

Under current law, a custodial parent may move from Chicago to Cairo, Illinois, without asking for

permission to do so and for any reason. Under the new provisions, a parent residing in Cook, DuPage, Kane, Lake, McHenry, and Will counties may move up to 25 miles from his or her current residence without leave of court. A parent in any other county may move up to 50 miles from their current residence without leave of court. Also, a parent who lives less than 25 miles from the state border, may move *no more than 25 miles* from his or her current residence into a bordering state without leave of court, but Illinois courts will retain jurisdiction over the case pursuant to a cross-referencing amendment to the UCCJEA. For example, if a parent lives in Calumet City, Illinois (located on the Illinois/Indiana border), he or she may move to Hammond, Indiana (approximately four miles away), without leave of court or permission from the other parent. Under this same example, the same parent could move up to 25 miles from Calumet City, Illinois, into Indiana (for example, the parent could move to Merrillville, Indiana (21 miles away from Calumet City), but could *not* move to Valparaiso, Indiana (32 miles away from Calumet City), without leave of court or permission of the other parent). The relocation provision applies to parents who have been allocated a majority or equal parenting time (parents who do not have a majority or equal parenting time are not required to obtain approval for a move). These new provisions will eliminate potential costly litigation under these circumstances where the parties can determine immediately there is an

agreement.

**Child support.** Only one change was made at this time affecting the child support section. The definition of “net income” for calculation of child support was revised to allow for the deduction of student loan payments of an obligor. In addition, the IFLSC recommended an income sharing model of child support based upon net income, and the Illinois Department of Healthcare and Family Services commissioned a federally mandated economic study, which has been completed. As a result of that study, the Illinois Child Support Advisory Committee has been working on a major rewrite of Section 505 of the IMDMA which will be the subject of separate legislative action.

**Post-high school educational expenses.** The section governing educational expenses for a child who wishes to attend college has been revised to ensure more consistency and fairness. In formulating this recommendation, the IFLSC considered parents’ need to also plan and prepare for their own retirement, for example, while also meeting any statutory post-high school educational obligations on behalf of their children. For example, post-high school educational expenses must be incurred no later than the student’s 23rd birthday unless otherwise agreed to by the parties or for good cause shown. An example of good cause may be when the child was in the military, which extended his or her age to commence college. However, an award cannot be made after the student’s 25<sup>th</sup> birthday under any circumstances. Further,

the maximum amount of expenses for tuition, fees, housing, and meals is now capped at what is charged at the University of Illinois at Champaign-Urbana, unless good cause is shown. This cap does not include other expenses such as medical expenses and other reasonable living expenses. Support under this Section ends when the student fails to maintain a "C" average (unless in the instance of illness or otherwise extenuating circumstances), becomes 23 years of age or older, receives a bachelor's degree, or marries. It does not terminate the court's authority under this section if the child joins the military, becomes pregnant, or is incarcerated. Children are not third-party beneficiaries under this section and not entitled to file a petition for contribution. Relief under Section 513 is retroactive to the date of filing of the petition, which resolves split appellate court decisions on this issue.

**Support of a non-minor disabled child.** An application for support of a non-minor child with a disability under this section must be made when the child was eligible for support under 750 ILCS 5/505 (child support) or 750 ILCS 5/513 (post-high school educational expenses). The court also now has authority to order that sums awarded be paid to a trust for the benefit of the non-minor child with a disability, which the court did not previously have the authority to order.

**Maintenance.** The revisions to the maintenance statute pursuant to both Public Act 98-961 (effective in 2015) and 99-0090, with

the exception of the maintenance guidelines, were based upon recommendations made by the IFLSC. Of note, the IFLSC did *not* recommend implementation of the maintenance guidelines as no economic study had been conducted (as had been conducted for child support guidelines), and there is no automatic entitlement to maintenance as a party's right to receive maintenance must be determined based upon the facts of each case. Pursuant to the changes, courts will be required to provide findings regarding maintenance in any case where it is at issue as well as for any modification of a prior maintenance order. The statute also provides the court the ability to set fixed-term maintenance awards for marriages that lasted 10 years or less. This is a change from current law and increases the options available to the court and, as a result, further encourages parties to settle their cases. Of note, before maintenance guidelines are applied pursuant to Public Act 98-961, the court must first determine that a maintenance award is appropriate; however, the guidelines do not apply to situations when the combined gross income of the parties is over \$250,000 or where there is a "multiple family situation."

Further and of significant impact, the new IMDMA provides that the court may consider "all sources of public and private income including, without limitation,

disability and retirement income" as a factor when determining maintenance.

**Non-evidentiary hearings for temporary maintenance and temporary child support.** The IMDMA now provides that hearings for temporary maintenance and temporary child support may be heard on a summary basis, except an evidentiary hearing may be held for good cause shown.

**Interim post-decree attorneys' fees.** Like temporary support, a petition for temporary attorneys' fees in a post-judgment matter may now be heard on a non-evidentiary, summary basis.

**Property allocation.** To again encourage accountability and better compliance with judgments, courts will be required to provide specific factual findings for the property allocations that are made. This will also position the appellate courts to better understand the trial court's rationale when evaluating an appeal. In addition, it is generally accepted that litigants are more likely to comply with judgments or other orders to the extent they understand the judge's rationale behind them.

**"Contemplation of marriage" notion rejected.** The updated IMDMA now rejects the notion that property acquired prior to marriage but in "contemplation of marriage" is marital property solely because it was acquired for that reason.

**Tax and estate planning exception to marital property.** An explicit exception has been added for prop-

erty that was titled jointly or in another form of co-ownership during the marriage for purposes of estate or tax planning. If one spouse is able to prove by clear and convincing evidence that the property was titled jointly for that purpose and not intended as a gift to the marital estate, it will be classified as that party's non-marital property.

**Asset or property valuation and financial experts.** The IMDMA now also gives the trial courts discretion to use one of several different dates to determine the value of assets or property to ensure fair treatment of both parties and to adjust to circumstances out of their control. As a matter of discretion, the court may use the date of trial, a date agreed upon by the parties, or any other such date as ordered by the court. The statute also now provides that the court shall employ a fair market value standard in determining the value of assets or property.

In addition, the court may appoint and seek the advice of financial experts or other professionals (similar to custody evaluations). The use of a court's witness increases the likelihood of settlement and is expected to minimize the need for retention of multiple experts (and the additional costs as a result of the same). For example, the court may appoint a single expert to conduct a business valuation, which may obviate the need for the parties to obtain two separate business valuations.

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**Judgments.** The IMDMA now requires the court to enter a Judgment of Dissolution of Marriage within 60 days of the closing of proofs unless the court enters an order specifying good cause, in which case the court shall have an additional 30 days. This will provide needed relief to divorce litigants who often wait for lengthy periods of time for the court's decision without indication when the judgment will be entered. Coinciding with this change, any petition for contribution to attorneys' fees and costs pursuant to 750 ILCS 5/503(j) must now be filed no later than 14 days after the close of proofs. Further, judges will need to also ensure that any oral or written closing arguments are ordered to be completed in a time frame that allows the court to enter a judgment in the requisite time frame.

**Effective date.** The changes were effective on January 1, 2016, and apply to new and any proceedings pending on the effective date.

**What's next?** As a result of the IFLSC's recommendations, an income-sharing model of child support based upon net income will be the subject of additional legislation in the near future, as described in additional detail above. Furthermore, additional minor changes to the IMDMA are being made via an amendment, and it is anticipated those revisions will be in effect later in 2016.

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For additional treatment of this topic, see Mr. Katz and Ms. Bodendorfer's article "The New and Improved Illinois Marriage and Dissolution of Marriage Act" in the November 2015 Illinois Bar Journal.