SUMMARY OF PUBLIC ACT 99-90 (SB 57)

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Public Act 99-90 (SB 57) amends the **Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/101 et seq.** and related statutes. The act was approved by the governor July 21, 2105 and becomes effective January 1, 2016. Here is a summary of the main provisions of the act:

I. CUSTODY, PARENTING TIME, AND VISITATION (FOR PARENTS)

The "Custody" portion of the **Illinois Marriage and Dissolution of Marriage Act** has been rewritten and renumbered. **750 ILCS 5/600 - 5/611**.

Terminology change regarding "custody" and "visitation"

In multiple sections of the **Marriage and Dissolution of the Marriage Act** and other statutes, the term "custody" is changed to "parental responsibility allocation."

In addition, in many sections, the term "parenting time" is used instead of or in addition to "visitation."

"Parenting time" is defined as "the time during which a parent is responsible for exercising caretaking functions and non-significant decision-making responsibilities with respect to the child." **750 ILCS 5/600(e)**. Other definitions, including a long definition of "caretaking functions," also are in Section 600 .

In the sections on child support, including **750 ILCS 5/505**, the term "non-custodial parent" is changed to "supporting parent." **Section 505(a)** provides: "For purposes of this Section, the term 'supporting parent' means the parent obligated to pay support to the other parent." The recipient of support usually is referred to as "the parent receiving support." [The Illinois Supreme Court held in ***In re Marriage of Turk***, 2014 IL 116730 that Section 505(a) does not preclude a trial court from ordering the custodial parent to pay child support to the noncustodial parent.]

Allocation of decision-making responsibilities

Section 602.5(a) provides: "The court shall allocate decision-making responsibilities according to the child's best interests. Nothing in this Act requires that each parent be allocated decision-making responsibilities." (The statute no longer uses the term "joint custody.")

Under **Section 602.5(b):** "Unless the parents otherwise agree in writing on an allocation of significant decision-making responsibilities, or the issue of the allocation of parental responsibilities has been reserved under Section 401, the court shall make the determination. The court shall allocate to one or both of the parents the significant decision-making responsibility for each significant issue affecting the child. Those significant issues shall include, without limitation, the following:

(1) Education, including the choice of schools and tutors.
(2) Health, including all decisions relating to the medical, dental, and psychological needs of the child and to the treatments arising or resulting from those needs.
(3) Religion, subject to the following provisions:
  (A) The court shall allocate decision-making responsibility for the child's religious upbringing in accordance with any express or implied agreement between the parents.
  (B) The court shall consider evidence of the parents' past conduct as to the child's religious upbringing in allocating decision-making responsibilities consistent with demonstrated past conduct in the absence of an express or implied agreement between the parents.
  (C) The court shall not allocate any aspect of the child's religious upbringing if it determines that the parents do not or did not have an express or implied agreement for such religious upbringing or that there is insufficient evidence to demonstrate a course of conduct regarding the child's religious upbringing that could serve as a basis for any such order.
(4) Extracurricular activities."

(The new statute adds "extracurricular activities" to the list and elaborates on decisions regarding health and religion.)

Section 602.5(d) provides: "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."

Best interests factors

The new statute contains separate lists of best interests factors for "allocating significant decision-making responsibilities," **Section 602.5(c)**, and "allocating parenting time," **Section 602.7(b)**. The factors are similar to those in the former statute **[Sections 602(a) and 602.1(c)]** with the following additions:

Factors listed in **Section 602.5(c)** regarding "allocating significant decision-making responsibilities" [that were not listed in either **Sections 602(a) and 602.1(c)**]:

(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; . . .
(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 [the prior statute referred only to the "residential circumstances of each parent"];
(10) whether a restriction on decision-making is appropriate under Section 603.10 [a section dealing with "Parenting plan"].
(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 [the prior statute referred only to "whether one of the parents is a sex offender"]
(15) any other factor that the court expressly finds to be relevant.

Factors listed in **Section 602.7(b)** regarding "allocating parenting time," [that were not listed in either **Sections 602(a) and 602.1(c)**]:

(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; . . .
(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; . . .
(12) the willingness and ability of each parent to place the needs of the child ahead of his or her own needs; . . .
(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 (15) . . .
(17) any other factor that the court expressly finds to be relevant.

Substitute visitation when a parent in the Armed Forces is deployed

Section 602.7(d) provides: "Upon motion, the court may allow a parent who is deployed or who has orders to be deployed as a member of the United States Armed Forces to designate a person known to the child to exercise reasonable substitute visitation on behalf of the deployed parent, if the court determines that substitute visitation is in the best interests of the child. In determining whether substitute visitation is in the best interests of the child, the court shall consider all of the relevant factors listed in subsection (b) of this Section and apply those factors to the person designated as a substitute for the deployed parent for visitation purposes. Visitation orders entered under this subsection are subject to subsections (e) and (f) of Section 602.9 and subsections (c) and (d) of Section 603.10." [The substance of this section under the former law was at **750 ILCS 5/607(h)**.]

Requirement of parenting plan; court hearings

Under **Section 602.10**:

"(a) All parents, within 120 days after service or filing of any petition for allocation of parental responsibilities, must file with the court, either jointly or separately, a proposed parenting plan. The time period for filing a parenting plan may be extended by the court for good cause shown.

(b) In the absence of filing of one or more parenting plans, the court must conduct an evidentiary hearing to allocate parental responsibilities.

(c) The court shall order mediation to assist the parents in formulating or modifying a parenting plan or in implementing a parenting plan unless the court determines that impediments to mediation exist. Costs under this subsection shall be allocated between the parties pursuant to the applicable statute or Supreme Court Rule."

Under **Section 602.10(g)**: "The court shall conduct a trial or hearing to determine a plan which maximizes the child's relationship and access to both parents and shall ensure that the access and the overall plan are in the best interests of the child. The court shall take the parenting plans into consideration when determining parenting time and responsibilities at trial or hearing."

Parents' agreement on parenting plan binding upon the court unless unconscionable

Under **Section 602.10(d)**: "The agreement is binding upon the court unless it finds, after considering the circumstances of the parties and any other relevant evidence produced by the

parties, that the agreement is unconscionable. If the court does not approve the parenting plan, the court shall make express findings of the reason or reasons for its refusal to approve the plan. The court, on its own motion, may conduct an evidentiary hearing to determine whether the parenting plan is in the child's best interests."

Contents of parenting plan

Under **Section 602.10(f)**: "At a minimum, a parenting plan must set forth the following:

(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 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.

The personal information under items (6), (7), and (8) of this subsection is not required if there is evidence of or the parenting plan states that there is a history of domestic violence or abuse, or it is shown that the release of the information is not in the child's or parent's best interests."

Restriction of parental responsibilities

The broad principles of **Section 603.10** are similar to those in the former statute, **750 ILCS 5/607(a),** but **Section 603.10** provides more details, including on remedies available:

"(a) After a hearing, if 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 shall enter orders as necessary to protect the child. Such orders may include, but are not limited to, orders for 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;
(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.

(b) The court may modify an order restricting parental responsibilities if, after a hearing, the court finds by a preponderance of the evidence that a modification is in the child's best interests based on

(i) a change of circumstances that occurred after the entry of an order restricting parental responsibilities; or
(ii) conduct of which the court was previously unaware that seriously endangers the child.

In determining whether to modify an order under this subsection, the court must consider factors that include, but need not be limited to, the following:

(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.

(c) An 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."

Enforcement of parenting time

Section 607.5(a)
, similar to the former statute **750 ILCS 5/607.1**, provides "The court shall provide an expedited procedure for the enforcement of allocated parenting time." When a parent or representative of the child petitions for enforcement, the petition shall include a statement "that a reasonable attempt was made to resolve the dispute." **Section 5/607.5(c)** lists multiple remedies, many of which were contained in the former statute: "If the court finds by a preponderance of the evidence that a parent has not complied with allocated parenting time according to an approved parenting plan or a court order, the court, in the child's best interests, shall issue 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.

Under **Section 607.5(d), (f)**, additional remedies include: payment of attorney's fees and costs, suspension of driving privileges, placement of the party on probation, sentencing of a party to periodic imprisonment, not to exceed six months, and a fine of no more than $500 for each instance of the petty offense of parenting time abuse.

Court's professional

Section 604.10(b) continues the practice under the former statute, **750 ILCS 5/604(b)** of allowing the court to appoint a professional to assist the court. The new statute specifies what must be in the professional's report and provides additional procedures:

> "The court may seek the advice of any professional, whether or not regularly employed by the court, to assist the court in determining the child's best interests. The advice to the court shall be in writing and sent by the professional to counsel for the parties and to the court, under seal. The writing may be admitted into evidence without testimony from its author, unless a party objects. A professional consulted by the court shall testify as the court's witness and be subject to cross-examination. The court shall order all costs and fees of the professional to be paid by one or more of the parties, subject to reallocation in accordance with subsection (a) of Section 508. The professional's report must, at a minimum, set forth the following:
>
> (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.
>
> The professional shall send his or her report to all attorneys of record, and to any party not represented, at least 60 days before the hearing on the allocation of parental responsibilities. The court shall 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."

Evaluation by a party's retained professional

Section 604.10(c) covers evaluation of a child by a professional retained by a party. The former statute covering this issue was **750 ILCS 5/604.5**. The new section, like **Section 604.10(b)**, specifies what should be in the professional's report. **Section 604.10(c)** specifies the following procedures: "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 before the hearing on the allocation of parental responsibilities, unless otherwise ordered by the court; 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. The party calling an evaluator to testify at trial shall disclose the evaluator as a controlled expert witness in accordance with the Supreme Court Rules. Any party to the litigation may call the evaluator as a witness. That party shall pay the evaluator's fees and costs for testifying, unless otherwise ordered by the court." [The former statute provided for sending the report to opposing counsel "[w]ithin 21 days after the completion of the evaluation, if the moving party or person intends to call the evaluator as a witness."]

Investigations and reports

Section 604.10(d) covers investigations and reports. The former statute covering this issue was **750 ILCS 5/605.** The new section also specifies what should be in the investigator's report. (See prior entry regarding "Court's professional."). Under the new section, "The investigator shall send his or her report to all attorneys of record, and to any party not represented, at least 60 days before the hearing on the allocation of parental responsibilities."

Modification of orders allocating parental responsibilities

Overview – Section 610.5 governs modification of orders allocating parental responsibilities [except for orders restricting parental responsibilities, the modification of which is governed by **Section 603.10(b)]**. The new **Section 610.5** continues the requirement under the former statute, **750 ILCS 5/610**, of a showing of endangerment (or stipulation) in order modify a judgment within two years of entry. The new section, however, eliminates the former statute's requirement of clear and convincing evidence to support modifications and instead allows modifications based on a preponderance of the evidence. **Section 610.5(c)**. In addition, the new section specifies certain circumstances in which a showing of changed circumstances is not required. **Section 610.5(e)**.

Motions to modify within two years – "Unless by stipulation of the parties or except as provided in subsection (b) of this Section or Section 603.10 of this Act, no motion to modify an order allocating parental responsibilities may be made earlier than 2 years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his or her mental, moral, or physical health or significantly impair the child's emotional development." **Section 610.5(a)**.

Modifications based on preponderance of the evidence, substantial change, and best interests – "[T]he 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 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." **Section 610.5(c)**.

Parental agreement – "The court shall modify a parenting plan or allocation judgment in accordance with a parental agreement, unless it finds that the modification is not in the child's best interests." **Section 610.5(d)**.

Exceptions to requirement of substantial change – "The court may modify a parenting plan or allocation judgment without a showing of changed circumstances if (i) the modification is in the child's best interests; and (ii) any of the following are proven as to the modification:

(1) the modification reflects the actual arrangement under which the child has been receiving care, without parental objection, for the 6 months preceding the filing of the petition for modification, provided that the arrangement is not the result of a parent's acquiescence resulting from circumstances that negated the parent's ability to give meaningful consent;
(2) the modification constitutes a minor modification in the parenting plan or allocation judgment;
(3) the modification is necessary to modify an agreed parenting plan or allocation judgment that the court would not have ordered or approved under Section 602.5 or 602.7 had the court been aware of the circumstances at the time of the order or approval; or
(4) the parties agree to the modification." **Section 610.5(e)**

Attorney's fees – "Attorney's fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious or constitutes harassment. If the court finds that a parent has repeatedly filed frivolous motions for

modification, the court may bar the parent from filing a motion for modification for a period of time." **Section 610.5(f)**.

II. PARENT'S RELOCATION

The relocation of "[a] parent who has been allocated a majority of parenting time or either parent who has been allocated equal parenting time" is governed by **750 ILCS 5/609.2** and the definition section ,**750 ILCS 5/600(g)**. The former statutory section was entitled "Leave to Remove Children," **750 ILCS 5/609**. The new section is entitled "Parent's relocation." The new section makes multiple changes to the law:

Definition of "relocation" – with different standards for Chicago area and rest of state

Section 600(g) defines "relocation":

"(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."

Relocation constitutes a substantial change in circumstances

Section 609.2(a) provides: "A parent's relocation constitutes a substantial change in circumstances for purposes of Section 610.5."

Notice required

Section 609.2 provides:

"(c) A parent intending a relocation . . . must provide written notice of the relocation to the other parent under the parenting plan or allocation judgment. A copy of the notice required under this Section shall be filed with the clerk of the circuit court.

The court may waive or seal some or all of the information required in the notice if there is a history of domestic violence.

(d) The notice must provide at least 60 days' written notice before the relocation unless such notice is impracticable (in which case written notice shall be given at the earliest date practicable) or unless otherwise ordered by the court. At a minimum, the notice must set forth the following:

(1) the intended date of the parent's relocation;
(2) the address of the parent's intended new residence, if known; and
(3) the length of time the relocation will last, if the relocation is not for an indefinite or permanent period."

Relocation without objection

Section 609.2(e) provides: "If the non-relocating parent signs the notice that was provided pursuant to subsection (c) and the relocating parent files the notice with the court, relocation shall be allowed without any further court action. The court shall modify the parenting plan or allocation judgment to accommodate a parent's relocation as agreed by the parents, as long as the agreed modification is in the child's best interests."

Relocation if the non-relocating parent objects or does not sign the notice

Section 609.2(f) provides: "If the non-relocating parent objects to the relocation, fails to sign the notice provided under subsection (c), or the parents cannot agree on modification of the parenting plan or allocation judgment, the parent seeking relocation must file a petition seeking permission to relocate."

Determination based on best interests; factors considered

Section 609.2(g) provides: "The court shall modify the parenting plan or allocation judgment in accordance with the child's best interests. The court shall consider the following factors:

(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;
(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."

In addition, **Section 609.2(d)** provides: "The court may consider a parent's failure to comply with the notice requirements of this Section without good cause (i) as a factor in determining whether the parent's relocation is in good faith; and (ii) as a basis for awarding reasonable attorney's fees and costs resulting from the parent's failure to comply with these provisions.

The former statute, **750 ILCS 5/609(a)** provided: "The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal." The new statute does not contain this provision.

Relationship to Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Section 609.2(h) provides: "If a parent moves with the child 25 miles or less from the child's current primary residence to a new primary 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. Any 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."

Section 202 of the Uniform Child-Custody Jurisdiction and Enforcement Act, 750 ILCS 36/202,was amended to add a new subsection (c): "A court of this State shall continue to exercise exclusive jurisdiction and be considered the home state of a child if a parent moves with a child under subsection (h) of Section 609.2 of the Illinois Marriage and Dissolution of Marriage Act."

III. CUSTODY AND VISITATION BY NON-PARENTS

Stepparent standing

Section 601.2(b) provides "[a] proceeding for allocation of parental responsibilities with respect to a child" may be commenced "(4) by a stepparent . . . if all of the following circumstances are met:

(A) the parent having the majority of parenting time is deceased or is disabled and cannot perform the duties of a parent to the child;
(B) the step-parent provided for the care, control, and welfare of the child prior to the initiation of proceedings for allocation of parental responsibilities;
(C) the child wishes to live with the step-parent; and
(D) it is alleged to be in the best interests and welfare of the child to live with the step-parent as provided in Section 602.5 of this Act."

The new statute eliminates the former statute's requirements that the child be 12 years old and the custodial parent and stepparent had been married for at least five years.

Visitation by non-parents

Section 602.9 governs "Visitation by certain non-parents." The following are the key features of the statute.

Persons entitled to seek visitation: "Grandparents, great-grandparents, step-parents, and siblings of a minor child who is one year old or older." [Note that stepparents also may seek "allocation of parental responsibilities" under **Section 601.2(b)(4)**.]

Limitation or prohibition of visitation for persons who have committed sex offenses or murder: Section 602.9(e) prohibits third party visitation if the person seeking visitation "was convicted of any offense involving an illegal sex act perpetrated upon a victim less than 18 years of age . . . until the person successfully completes a treatment program approved by the court." **Section 602.9(f)** prohibits visitation if the person seeking visitation "has been convicted of first degree murder of a parent, grandparent, great-grandparent, or sibling of the child who is the subject of the visitation request."

Circumstances in which visitation may be sought: Like the prior statute, the new statute lists circumstances in which non-parents may seek visitation: **Under Section 602.9(c)**, "at least one of the following conditions exists:

(A) the child's other parent is deceased or has been missing for at least 90 days. For the purposes of this subsection a parent is considered to be missing if the parent's location has not been determined and the parent has been reported as missing to a law enforcement agency; or

(B) a parent of the child is incompetent as a matter of law; or

(C) a parent has been incarcerated in jail or prison for a period in excess of 90 days immediately prior to the filing of the petition; or

(D) the child's parents have been granted a dissolution of marriage or have been legally separated from each other or there is pending a dissolution proceeding involving a parent of the child or another court proceeding involving parental responsibilities or visitation of the child (other than an adoption proceeding of an unrelated child, a proceeding under Article II of the Juvenile Court Act of 1987, or an action for an order of protection under the Illinois Domestic Violence Act of 1986 or Article 112A of the Code of Criminal Procedure of 1963) and at least one parent does not object to the grandparent, great-grandparent, step-parent, or sibling having visitation with the child. The visitation of the grandparent, great-grandparent, step-parent, or sibling must not diminish the parenting time of the parent who is not related to the grandparent, great-grandparent, step-parent, or sibling seeking visitation; or

(E) the child is born to parents who are not married to each other, the parents are not living together, and the petitioner is a grandparent, great-grandparent, step-parent, or sibling of the child, and parentage has been established by a court of competent jurisdiction."

Circumstances in which the statute does not apply: This section does not apply if a case involving he child is pending under **Section 2–13 of the Juvenile Court Act** or **the Adoption Act**; the parent(s) have voluntarily surrendered the child, except for a surrender to the Department of Children and Family Services or a foster care facility; the child has been adopted by individual(s) who are not related to the biological parents; the child has been relinquished pursuant to the **Abandoned Newborn Infant Protection Act**. **Section 602.9(b)(2)**. Under **Section 602.9(b)(6)**: "Any visitation rights granted under this Section before the filing of a petition for adoption of the child shall automatically terminate by

operation of law upon the entry of an order terminating parental rights or granting the adoption of the child, whichever is earlier. If the person or persons who adopted the child are related to the child, as defined by Section 1 of the Adoption Act, any person who was related to the child as grandparent, great-grandparent, or sibling prior to the adoption shall have standing to bring an action under this Section requesting visitation with the child."

Section 602.9(c)(4) provides: "A petition for visitation privileges may not be filed pursuant to this subsection (c) by the parents or grandparents of a parent of the child if parentage between the child and the related parent has not been legally established."

Requirements of filing a petition (unreasonable denial of visitation and showing of harm): "A petition for visitation may be filed under this Section only if there has been an unreasonable denial of visitation by a parent and the denial has caused the child undue mental, physical, or emotional harm." **Section 602.9(b)(3)**. *See also* **Section 602.9(c)(1)**.

Presumption in favor of parent; burden of proof: "There is a rebuttable presumption that a fit parent's actions and decisions regarding grandparent, great-grandparent, sibling, or step-parent visitation are not harmful to the child's mental, physical, or emotional health. The burden is on the party filing a petition under this Section to prove that the parent's actions and decisions regarding visitation will cause undue harm to the child's mental, physical, or emotional health." **Section 602.9(b)(4)**.

Factors considered: Section 602.9(b)(5)(I) provides the court "shall consider" the usual best interests factors (which also were contained in the prior statute). In addition, the statute adds the factor of: "whether visitation can be structured in a way to minimize the child's exposure to conflicts between the adults." **Section 602.9(c)(2)** states: "In addition to the factors set forth in subdivision (b)(5) of this Section, the court should consider:

(A) whether the child resided with the petitioner for at least 6 consecutive months with or without a parent present;

(B) whether the child had frequent and regular contact or visitation with the petitioner for at least 12 consecutive months; and

(C) whether the grandparent, great-grandparent, sibling, or step-parent 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."

Types of visitation or contact that may be granted: "The court may order visitation rights . . . that include reasonable access without requiring overnight or possessory visitation." **Section 602.9(b)(7)**. In addition, grandparents, great-grandparents, step-parents, and siblings of a child who is one year old or older may bring a petition for "electronic communication" with the child. **Section 602.9(c)(1)**.

Modification of orders: As with modification of a custody judgment (now called "an order allocating parental responsibilities"), a visitation order in favor of a non-parent shall not be modified without a heightened burden of proof. **Section 602.9(d)** provides:

"(1) Unless by stipulation of the parties, no motion to modify a grandparent, great-grandparent, sibling, or step-parent visitation order may be made earlier than 2 years after the date the order was filed, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously the child's mental, physical, or emotional health.

(2) The court shall not modify an order that grants visitation to a grandparent, great-grandparent, sibling, or step-parent unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior visitation order or that were unknown to the court at the time of entry of the prior visitation order, that a change has occurred in the circumstances of the child or his or her parent, and that the modification is necessary to protect the mental, physical, or emotional health of the child. The court shall state in its decision specific findings of fact in support of its modification or termination of the grandparent, great-grandparent, sibling, or step-parent visitation. A child's parent may always petition to modify visitation upon changed circumstances when necessary to promote the child's best interests."

In addition, "Attorney's fees and costs shall be assessed against a party seeking modification of the visitation order if the court finds that the modification action is vexatious and constitutes harassment." **Section 602.9(d)(4)**.

IV. CHILD SUPPORT

Deductions to determine "net income" – Under **750 ILCS 5/505(a)(3)**, deductions from income for the purpose of determining "net income" include (with new language underlined): "(h) Expenditures for repayment of debts that represent reasonable and necessary expenses for the production of income <u>including, but not limited to, student loans</u>, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts."

Use of child's initials – Under **750 ILCS 5/505(f)**, when a order specifies that a minor is covered under a health insurance policy, "only the initials of any covered minors shall be included."

Parents' duty to report new employment – 750 ILCS 5/505(h) provides: "An order entered under this Section shall include a provision requiring either parent to report to the other parent and to the clerk of court within 10 days each time either parent obtains new employment, and each time either parent's employment is terminated for any reason." (The former statute imposed that duty only on "the obligor.") In addition, this section also provides: "For either parent arrested for failure to report new employment bond shall be set in the amount of the child support that should have been paid during the period of unreported employment.")

V. EDUCATIONAL EXPENSES FOR A NON-MINOR CHILD

750 ILCS 5/513 was rewritten, although much of the substance of the section remained the same. The new section provides more specifics and limitations regarding educational expenses. The obligation to support a disabled child is now the subject of a separate section (**Section 513.5**).

Age limitations for payment of expenses – Section 513(a) provides: "Unless otherwise agreed to by the parties, all educational expenses which are the subject of a petition brought pursuant to this Section shall be incurred no later than the student's 23rd birthday, except for good cause shown, but in no event later than the child's 25th birthday."

Completing student aid forms; payment for college applications and entrance exams – Section 513(b) provides: "Regardless of whether an award has been made under subsection (a), the court may require both parties and the child to complete the Free Application for Federal Student Aid (FAFSA) and other financial aid forms and to submit any form of that type prior to the designated submission deadline for the form. The court may require either or both parties to provide funds for the child so as to pay for the cost of up to 5 college applications, the cost of 2 standardized college entrance examinations, and the cost of one standardized college entrance examination preparatory course."

Points of reference regarding cost of tuition and housing – Section 513(d) provides: "Educational expenses may include, but shall not be 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."

Child living at home, including during recess from school – Section 513(d)(4) provides that educational expenses may include: "the reasonable living expenses of the child during the academic year and periods of recess:

(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."

Persons or entities to whom payments may be made – Section 513(e) provides: "Sums may be ordered payable to the child, to either party, or to the educational institution, directly or

through a special account or trust created for that purpose, as the court sees fit."

Bases for termination of payment of educational expenses – Section 513(g) provides: "The authority under this Section to make provision for educational expenses terminates when the child either: fails to maintain a cumulative 'C' grade point average, except in the event of illness or other good cause shown; attains the age of 23; receives a baccalaureate degree; or marries. A child's enlisting in the armed forces, being incarcerated, or becoming pregnant does not terminate the court's authority to make provisions for the educational expenses for the child under this Section." (The prior law also provided that the authority to order educational support "terminates when the child receives a baccalaureate degree.")

College saving plans – Section 513(h) provides: "An account established prior to the dissolution that is to be used for the child's post-secondary education, that is an account in a state tuition program under Section 529 of the Internal Revenue Code, or that is some other college savings plan, is to be considered by the court to be a resource of the child, provided that any post-judgment contribution made by a party to such an account is to be considered a contribution from that party."

Child's standing (the child is not a third party beneficiary) – Section 513(i) provides: "The child is not a third party beneficiary to the settlement agreement or judgment between the parties after trial and is not entitled to file a petition for contribution. If the parties' settlement agreement describes the manner in which a child's educational expenses will be paid, or if the court makes an award pursuant to this Section, then the parties are responsible pursuant to that agreement or award for the child's educational expenses, but in no event shall the court consider the child a third party beneficiary of that provision. 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."

Factors considered – Section 513(j) lists the factors to be considered in making or modifying an order of educational support. The former factor of "[t]he financial resources of both parents" is expanded to "[t]he present and future financial resources of both parties to meet their needs, including, but not limited to, savings for retirement ."

Retroactivity to date of filing petition – Section 513(k) provides: "The establishment of an obligation to pay under this Section is retroactive only to the date of filing a petition. The right to enforce a prior obligation to pay may be enforced either before or after the obligation is incurred."

VI. SUPPORT FOR A DISABLED CHILD

P.A. 99-90 creates a new section – **750 ILCS 5/513.5** – regarding "Support for a non-minor child with a disability." The former statute **(750 ILCS 5/513)** was relatively brief and provided: "When the child is mentally or physically disabled and not otherwise emancipated, an application for support may be made before or after the child has attained majority" and listed factors to be considered. The new statute provides more details, including provisions about use of educational trusts:

"(a) The court may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the support of a child of the parties who has attained majority when the child is mentally or physically disabled and not otherwise emancipated. The sums awarded may be paid to one of the parents, to a trust created by the parties for the benefit of the non-minor child with a disability, or irrevocably to a special needs trust, established by the parties and for the sole benefit of the non-minor child with a disability, pursuant to subdivisions (d)(4)(A) or (d)(4)(C) of 42 U.S.C. 1396p, Section 15.1 of the Trusts and Trustees Act, and applicable provisions of the Social Security Administration Program Operating Manual System. An application for support for a non-minor disabled child may be made before or after the child has attained majority. Unless an application for educational expenses is made for a mentally or physically 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.

(b) In making awards under this Section, or pursuant to a petition or motion to decrease, modify, or terminate any such award, the court shall consider all relevant factors that appear reasonable and necessary, including:

(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, any 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 non-minor disabled child.

(c) 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.
>
> 'Disability' means a mental or physical impairment that substantially limits a major life activity."

VII. PROPERTY

Date of valuation of property

750 ILCS 5/403(e) provides: "The court 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." A similar provision contained in **750 ILCS 5/503(f)**. These amendments overrule the Illinois Supreme Court's decision in ***In re Marriage of Mathis***, 2012 IL 113496, ¶ 30, which held, "[I]n a bifurcated dissolution proceeding, the date of valuation for marital property is the date the court enters judgment for dissolution following a trial on grounds for dissolution or another date near it," even if the trial on property issues is held at a much later date than the judgment of dissolution.

Explicit inclusion of debts

Section 503 now explicitly covers disposition of "debts" as well as "property." "Marital property" includes "debts and other obligations." **Section 503(a)**.

Types of non-marital property

Non-marital property under **Section 503(a)** includes (with new language underlined):

(4) property excluded by valid agreement of the parties<u>, including a premarital agreement or a postnuptial agreement</u>;

(5) any judgment or property obtained by judgment awarded to a spouse from the other spouse <u>except, however, 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, the</u>

judgment shall be considered marital property;

(6) property acquired before the marriage, except as it relates to retirement plans that may have both marital and non-marital characteristics;

(6.5) all property acquired by a spouse by the sole use of non-marital property as collateral for a loan that then is used to acquire property during the marriage; to the extent that the marital estate repays any portion of the loan, it shall be considered a contribution from the marital estate to the non-marital estate subject to reimbursement; . . . ."

Overcoming presumption of marital property

Regarding the presumption of marital property under **Section 503(b)(1)**, the statute provides: "A spouse may overcome the presumption of marital property by a showing through clear and convincing evidence that the property was acquired by a method listed in subsection (a) of this Section or was done for estate or tax planning purposes or for other reasons that establish that the transfer was not intended to be a gift."

Factors considered when dividing marital property

New factors under **Section 503(d)**:

– When evaluating each party's contribution to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, a new subfactor is added to **Section 503(d)(1)**: "(iii) whether the contribution is after the commencement of a proceeding for dissolution of marriage or declaration of invalidity of marriage."

– Under **Section 503(d)(2)**, consideration of dissipation when dividing property is now only for dissipation of marital property – not dissipation of non-marital property. (On the other hand, as noted above, **Section 503(d)(1)** provides for consideration of a party's contribution to the decrease in value of marital or non-marital property.)

– The seventh factor under **Section 503(d)** is now "any prenuptial or postnuptial agreement of the parties." The former statute listed only "any antenuptial agreement."

Valuing assets and use of experts

Section 503 adds two new subsections regarding valuing property and use of experts:

"(k) In determining the value of assets or property under this Section, the court shall employ a fair market value standard. The date of valuation for the purposes of division of assets shall be the date of trial or such other date as agreed by the parties or ordered by the court, within its discretion. If the court grants a petition brought under Section 2-1401 of the Code of Civil Procedure, then the court 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.

(l) 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."

VIII. MAINTENANCE

Factors for determining maintenance

750 ILCS 5/504(a) was amended to add the following factors for determining maintenance (new language underlined):

"(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance as well as all financial obligations imposed on the parties as a result of the dissolution of marriage; . . .

(3) the realistic present and future earning capacity of each party; . . .

(5) any impairment of the realistic present or future earning capacity of the party

against whom maintenance is sought;

(6) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or any parental responsibility arrangements and its effect on the party seeking employment; (the prior statute made reference to “the custodian of a child”) . . .

(9) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties; (the prior statute made reference to “the age and the physical and emotional condition of both parties) . . .

(10) all sources of public and private income including, without limitation, disability and retirement income;”

Application of guidelines

Section 504(b-1)(1)(B) clarifies that when applying guidelines for the duration of maintenance based on the length of marriage, the length of marriage is determined “at the time the action was commenced.”

Barring future maintenance after a fixed term

Consistent with **750 ILCS 5/504(b-4.5)**, the section on modification of maintenance – **750 ILCS 5/510** – adds a new subsection: “(a–6) In a review under subsection (b–4.5) of Section 504 of this Act, the court may enter a fixed-term maintenance award that bars future maintenance only if, at the time of the entry of the award, the marriage had lasted 10 years or less at the time the original action was commenced.” [**Section 504(b–4.5)** provides: “Fixed-term maintenance in marriages of less than 10 years. If a court grants maintenance for a fixed period under subsection (a) of this Section at the conclusion of a case commenced before the tenth anniversary of the marriage, the court may also designate the termination of the period during which this maintenance is to be paid as a ‘permanent termination’. The effect of this designation is that maintenance is barred after the ending date of the period during which maintenance is to be paid.”]

Effect of cohabitation; notice of marriage

New provisions are added to **750 ILCS 5/510(c)**: "A payor's obligation to pay maintenance or unallocated maintenance terminates by operation of law on the date the recipient remarries or the date the court finds cohabitation began. The payor is entitled to reimbursement for all maintenance paid from that date forward. . . . A party receiving maintenance must advise the payor of his or her intention to marry at least 30 days before the remarriage, unless the decision is made within this time period. In that event, he or she must notify the other party within 72 hours of getting married."

Findings of fact required for modification

A new subsection is added to **750 ILCS 5/510**: "(c–5) In an adjudicated case, the court shall make specific factual findings as to the reason for the modification as well as the amount, nature, and duration of the modified maintenance award."

IX. ATTORNEY'S FEES

Interim fees – Regarding requests for interim attorney's fees in a pre-judgment dissolution proceeding under **750 ILCS 501(c-1)**, the following language applies to responsive pleading (with new language underlined): "A responsive pleading shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. <u>A responsive pleading shall include costs incurred, and shall indicate whether the costs are paid or unpaid.</u>" **750 ILCS 5/501(c-1)(2)** provides: "An order for the award of interim attorney's fees shall be a standardized form order and labeled 'Interim Fee Award Order'."

Time for filing petition for contribution to fees and costs – Under **750 ILCS 5/503(j)**, a petition for contribution to fees and costs, "shall be filed no later than 14 days after the closing of proofs in the final hearing or within such other period as the court orders." The former statute set the deadline at 30 days.

Maintenance or defense of a petition brought under Section 2-1401 – The following language is added to **750 ILCS 5/508(a)(4)** regarding contribution for fees: "Fees incurred with respect to motions under Section 2-1401 of the Code of Civil Procedure may be granted only to the party who substantially prevails."

Fees and costs for Hague Convention actions – An additional type of proceeding for which costs and fees can be awarded under **750 ILCS 5/508(a)**: "(7) Costs and attorney's fees incurred in an action under the Hague Convention on the Civil Aspects of International Child Abduction."

Hearings for temporary fees in a post-judgment case may be heard on a non-evidentiary, summary basis – 750 ILCS 5/508(a) now explicitly provides: "A petition for temporary attorney's fees in a post-judgment case may be heard on a non-evidentiary, summary basis." [Similarly, **750 ILCS 5/501(c-1)(1)** provides: "(1) Except for good cause shown, a proceeding for (or relating to) interim attorney's fees and costs in a pre-judgment dissolution proceeding shall be nonevidentiary and summary in nature."]

Standardized forms for interim fees – 750 ILCS 5/501(c-1)(2) provides: "An order for the award of interim attorney's fees shall be a standardized form order and labeled 'Interim Fee Award Order'."

X. GROUNDS FOR DISSOLUTION

The fault-based grounds for dissolution of marriage have been eliminated, leaving a single ground for dissolution: irreconcilable differences. **750 ILCS 5/401.** In addition, **P.A. 99-90** adds a new **subsection (a-5)** which provides: "If the parties live separate and apart for a continuous period of not less than 6 months immediately preceding the entry of the judgment dissolving the marriage, there is an irrebuttable presumption that the requirement of irreconcilable differences has been met." [There is no longer a requirement of a two-year period of separation (subject to waiver), and the presumption that the requirement has been met by living separate and apart for the designated period is no longer rebuttable.] The definition of "irreconcilable differences" remains the same: " Irreconcilable differences have caused the irretrievable breakdown of the marriage and the court determines that efforts at reconciliation have failed or that future attempts at reconciliation would be impracticable and not in the best interests of the family."

XI. TEMPORARY RELIEF

Affidavits and remedies for inaccurate affidavits – Regarding financial affidavits for temporary relief under **750 ILCS 5/501**, the following new language is added: "One form of financial affidavit, as determined by the Supreme Court, shall be used statewide. The financial

affidavit shall be supported by documentary evidence including, but not limited to, income tax returns, pay stubs, and banking statements. Unless the court otherwise directs, any affidavit or supporting documentary evidence submitted pursuant to this paragraph shall not be made part of the public record of the proceedings but shall be available to the court or an appellate court in which the proceedings are subject to review, to the parties, their attorneys, and such other persons as the court may direct. Upon motion of a party, a court may hold a hearing to determine whether and why there is a disparity between a party's sworn affidavit and the supporting documentation. If a party intentionally or recklessly files an inaccurate or misleading financial affidavit, the court shall impose significant penalties and sanctions including, but not limited to, costs and attorney's fees."

Additional remedies – Temporary relief may include "in the discretion of the court, ordering the purchase or sale of assets and requiring that a party or parties borrow funds in the appropriate circumstances."

Summary disposition of requests for financial support – In addition, "[i]ssues concerning temporary maintenance or temporary support of a child entitled to support shall be dealt with on a summary basis based on allocated parenting time, financial affidavits, tax returns, pay stubs, banking statements, and other relevant documentation, except an evidentiary hearing may be held upon a showing of good cause."

Interim fees – Regarding requests for interim attorney's fees in a pre-judgment dissolution proceeding under **750 ILCS 501(c-1)**, the following language applies to responsive pleading (with new language underlined): "A responsive pleading shall set out the amount of each retainer or other payment or payments, or both, previously paid to the responding party's counsel by or on behalf of the responding party. A responsive pleading shall include costs incurred, and shall indicate whether the costs are paid or unpaid." **750 ILCS 5/501(c-1)(2)** provides: "An order for the award of interim attorney's fees shall be a standardized form order and labeled 'Interim Fee Award Order'."

Allocation of use of marital residence – 750 ILCS 5/501(c-2) – the subject matter of which formerly was at **750 ILCS 5/701** – provides: "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."

Allocation of mediation fees – 750 ILCS 5/501(e) provides: "The fees or costs of mediation shall be borne by the parties and may be assessed by the court as it deems equitable without prejudice and are subject to reallocation at the conclusion of the case."

XII. OTHER ISSUES

Solemnization of marriage by person not legally qualified to solemnize it – 750 ILCS 5/209(b) was amended to provide: "The solemnization of the marriage is not invalidated: (1) by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if a reasonable person would believe the person solemnizing the marriage to be so qualified . . . ." The prior version of the section (in effect through December 31, 2015) provided that a marriage is not invalidated "if either party to the marriage believed [the person solemnizing the marriage] to be so qualified."

Proof of foreign marriage – 750 ILCS 5/409 provides: "Certified copies of records of a marriage performed in any foreign state or country obtained from an authorized state governmental unit, embassy, or consulate may be admitted as an exception to the hearsay rule. The prior version of Section 409 provided: "A marriage which may have been celebrated or had in any foreign state or country, may be proved by the acknowledgment of the parties, their cohabitation, and other circumstantial testimony."

Venue when neither party resides in county in which initial pleading is filed – Current law, **750 ILCS 5/104**, provides, "The proceedings shall be had in the county where the plaintiff or defendant resides, . . . but process may be directed to any county in the State. Objection to venue is barred if not made within such time as the defendant's response is due. . . ." **P.A. 99-90** adds a paragraph to this section : "In any case brought pursuant to this Act where neither the petitioner nor respondent resides in the county in which the initial pleading is filed, the petitioner shall file with the initial pleading a written motion, which shall be set for hearing and ruled upon before any other issue is taken up, advising that the forum selected is not one of proper venue and seeking an appropriate order from the court allowing a waiver of the venue requirements of this Section."

Application of Civil Practice Law regarding defenses raised in response – Current law, **750 ILCS 5/105(a)** provides: "The provisions of the Civil Practice Law shall apply to all proceedings under this Act, except as otherwise provided in this Act.**"** **P.A. 99-90** adds a provision: "If new matter by way of defense is pleaded in the response, a reply may be filed by the petitioner, but the failure to reply is not an admission of the legal sufficiency of the new matter." **750 ILCS 5/105(c).**

Praecipes – **750 ILCS 5/411(a)** regarding praecipe, provides (with new language underlined): "Actions for dissolution of marriage or legal separation shall be commenced as in other civil cases or, at the option of petitioner, by filing a praecipe for summons with the clerk of the court and paying the regular filing fees, in which latter case, a petition shall be filed within 6 months thereafter<u>, or any extension for good cause shown granted by the court.</u>"

Requirements for filing a joint petition for simplified dissolution – **750 ILCS 5/452** was amended to add the following additional requirements to "file a joint petition for simplified dissolution":

- "The requirements of Section 401 regarding residence or military presence and proof of irreconcilable differences have been met."
- "Neither party has any interest in real property <u>or retirement benefits unless the retirement benefits are exclusively held in individual retirement accounts and the combined value of the accounts is less than $10,000.</u> (New language underlined)
- "The total fair market value of all marital property, after deducting all encumbrances, is less than $50,000, the combined gross annualized income from all sources is less than $60,000, and neither party has a gross annualized income from all sources in excess of $30,000." (Increased dollar amounts)
- "The parties have disclosed to each other all assets <u>and liabilities</u> and their tax returns for all years of the marriage." (New language underlined)

Time of entry of judgments – The following language is added to **750 ILCS 5/413(a)**: "A judgment of dissolution of marriage or of legal separation or of declaration of invalidity of marriage shall be entered within 60 days of the closing of proofs; however, if the court enters an order specifying good cause as to why the court needs an additional 30 days, the judgment shall be entered within 90 days of the closing of proofs, including any hearing under subsection (j) of Section 503 of this Act and submission of closing arguments."

Agreements

In writing unless good cause – 750 ILCS 5/502(a) provides: "Any agreement pursuant to this Section must be in writing, except for good cause shown with the approval of the court, before proceeding to an oral prove up." The former statute provided that agreements could be "written or oral." In addition the new statute explicitly allows agreements concerning support under Section 513 (regarding non-minor children and educational support). The former statute just referred to "support."

Agreement binding – 750 ILCS 5/502(b) provides: "The terms of the agreement incorporated into the judgment are binding if there is any conflict between the terms of the agreement and any testimony made at an uncontested prove-up hearing on the grounds or the substance of the agreement."

Modification – 750 ILCS 5/502(f) provides: "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. The parties may provide that maintenance is non-modifiable in amount, duration, or both. 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 provisions of an agreement are never modifiable. The judgment may expressly preclude or limit modification of other terms set forth in the judgment if the agreement so provides. Otherwise, terms of an agreement set forth in the judgment are automatically modified by modification of the judgment."

Relief in cases of legal separation – Actions for temporary relief in cases of legal separation under **750 ILCS 5/402** may be brought in the county in which either the petitioner or respondent resides. (Formerly, the action could only be brought in the county in which the respondent resided, unless the respondent could not be found in the state.) Temporary relief available in actions for legal separation is the same as relief available in actions for dissolution under **750 ILCS 5/501** – except that relief under **750 ILCS 5/501(a)(2)(i)** "restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life" is not for legal separations.

P.A. 99-90 also provides: "(b) . . . If the court deems it appropriate to enter a judgment for legal separation, the court may approve a property settlement agreement that the parties have requested the court to incorporate into the judgment, subject to the following provisions: (1) the court may not value or allocate property in the absence of such an agreement;(2) the court may disapprove such an agreement only if it finds that the agreement is unconscionable; and (3) such an agreement is final and non-modifiable. (c) . . . Absent an agreement set forth in a separation agreement that provides for non-modifiable permanent maintenance, if a party to a judgment for legal separation files an action for dissolution of marriage, the issues of temporary and permanent maintenance shall be decided de novo."

Heart balm actions abolished – P.A. 99-90 abolishes three categories of heart balm actions based on facts that occurred on or after the effective date of the act (January 1, 2016):

- **Alienation of affections – 740 ILCS 5/7.1(b).**
- **Breach of promise to marry – 740 ILCS 15/10.1.**
- **Criminal conversation – 740 ILCS 50/7.1(b).** ["Criminal conversation" refers to a tort action for adultery brought against a third party.]