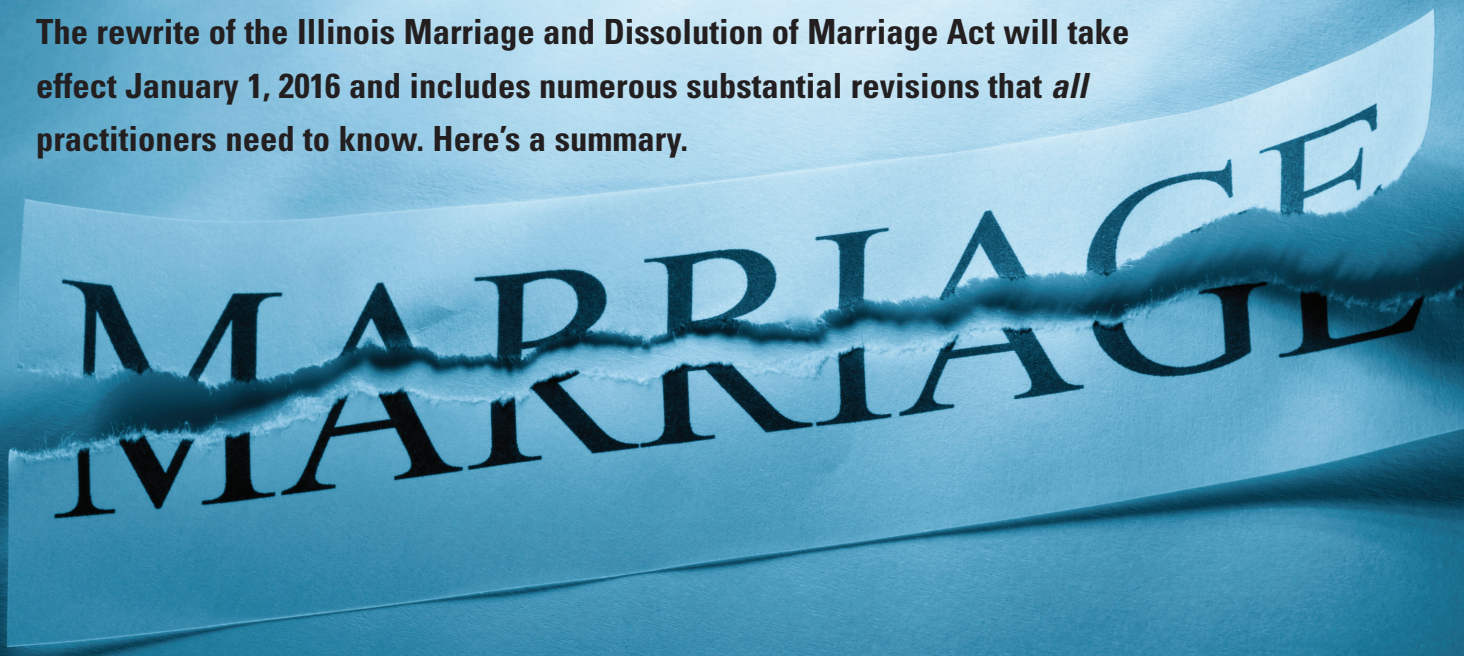
The rewrite of the Illinois Marriage and Dissolution of Marriage Act will take effect January 1, 2016 and includes numerous substantial revisions that *all* practitioners need to know. Here's a summary.



The New and Improved Illinois Marriage and Dissolution of Marriage Act

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THE OVERHAUL OF ILLINOIS' MARRIAGE, DIVORCE, AND PARENTAGE LAWS WAS LONG OVERDUE. 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 this summer and both are 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 The prior outdated Illinois Marriage and Dissolution of Marriage Act was enacted in 1977 and the Parentage Act was enacted in 1984.

Society and family dynamics have changed dramatically in the past 35 years. Three decades ago, it was still typically the mother's 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.

In recognition of the dramatic changes in familial societal norms since 1979, the Illinois General Assembly created the Illinois Family Law Study Committee ("IFLSC") in 2008. (See sidebar for more about the committee.) 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 The overall mission of the IFLSC was to re-write the outdated IMDMA and Illinois Parentage Act, taking into consideration the diverse perspectives and professional experiences of its members.

Not all of the changes to the IMDMA can be discussed in this article, but all should be carefully reviewed by family law practitioners. Among the many improvements, ratifications of current practice, and codification of caselaw that the revised IMDMA includes, what follows is a brief overview of some of the most significant changes that should be noted by *all* practitioners. Find out more about the new law at ISBA's December 4 CLE (see p. 35).

TAKEAWAYS >>

- Under the recently rewritten Illinois Marriage and Dissolution of Marriage Act (IMDMA) (effective Jan. 1, 2016), there is now only one ground for dissolution – that irreconcilable differences have caused the irretrievable breakdown of the marriage. The previous waiting period of six months (if the parties agree) or two years (if the parties do not agree) has been repealed.
- The IMDMA now provides for standardized statewide forms for Interim Attorneys' Fee Award Orders, Financial Affidavits, and Parenting Plans. The standardized forms are being drafted by the applicable Illinois Supreme Court Committee.
- Courts will no longer award "custody" or "visitation" under the new IMDMA, 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).

"Heart-balm actions"

In conjunction with the IMDMA, the following statutes are also effective January 1, 2016: Alienation of Affections Abolition Act, Breach of Promise Abolition Act, and Criminal Conversations Abolition Act.[1]

These "heart balm" actions are abolished 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.

Eliminating grounds, waiting period

The IMDMA will include 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.[2]

The idea that we need to continue to litigate "fault" in a broken marriage wastes valuable time and money. Abandoning it promotes better cooperation during resolution of the matter and subsequent to entry of a judgment of dissolution.

Defining 'pleadings'

The IMDMA now defines "pleadings," which clarifies which petitions and motions are subject to motions filed pursuant to sections 2-615 and 2-619 of the Illinois Code of Civil Procedure under *In re Marriage of Wolff*.[3] Specifically, the Act provides that "pleadings" include any petition or motion filed in dissolution of marriage cases which, if independently filed, would constitute a separate cause of action.[4] For example, this includes, but is not limited to, actions for declaratory judgment, injunctive relief, and orders of protection.[5]

Speeding up 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.[6] This will provide needed relief to divorce litigants who often wait for lengthy periods 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.[7] Further, judges will need to also ensure that any oral or written closing arguments are ordered to be completed in a timeframe that allows the court to enter a judgment in the requisite time frame.

Raising the monetary threshold for a joint petition for simplified dissolution

The new IMDMA modifies the requirements to file a joint petition for simplified dissolution to reflect inflation as follows: (1) neither party may have an interest in "retirement benefits" unless they are held in an IRA and the combined value of the accounts is less than $10,000; (2) the total fair market value of all marital property, after deduction of encumbrances, is less than $50,000 (previously, $10,000); (3) the combined gross annualized income from all sources is less than $60,000 (previously, $35,000); and (4) neither party has a gross annualized income from all sources in excess of $30,000 (previously, $20,000).[8]

Limiting modification of marital settlement agreements

A marital settlement agreement must be in writing unless excused for good cause shown with the approval of the court before proceeding to an oral prove-up.[9] The terms of an agreement

1. 740 ILCS 5/.01; *id.* at §§ 5/7.1, 15/.01, 15/10.1, 50/.01, 50/7.1.
2. 750 ILCS 5/401.
3. 735 ILCS 5/2-615; *id.* at § 5/2-619; *In re Marriage of Wolff*, 355 Ill. App. 3d 403 (2d Dist. 2005).
4. 750 ILCS 5/105(d).
5. *Id.*
6. *Id.* at § 5/413.
7. *Id.* at § 5/503(j).
8. *Id.* at § 5/452.
9. *Id.* at § 5/502(a).

COURTS WILL NO LONGER AWARD "CUSTODY" OR "VISITATION" UNDER THE NEW STATUTE. INSTEAD, THEY WILL ALLOCATE "PARENTAL RESPONSIBILITIES" AND "PARENTING TIME."

incorporated into a judgment trump any conflict between its terms and prove-up testimony.[10]

Regarding modification of an agreement, property provisions are never modifiable; child support, parental responsibilities, maintenance, and educational expenses are modifiable upon showing of a substantial change of circumstances.[11] The parties may agree that maintenance is non-modifiable in amount, duration, or both.[12]

New standardized forms

The revised IMDMA provides for standardized statewide forms for interim attorneys' fee award orders,[13] financial affidavits,[14] and parenting plans, which are being drafted by the applicable Illinois Supreme Court Committee.

Interim attorneys' fee award orders will include language clearly stating that any award of interim attorneys' fees is deemed to be an advance from the marital estate, in order to promote transparency and clarity to litigants. Further, the court must impose penalties and sanctions against a party intentionally or recklessly filing an inaccurate or misleading financial affidavit, and the standard form will reflect the same.[15]

Summary hearings for temporary maintenance and temporary child support

The revised IMDMA provides that hearings for temporary maintenance and temporary child support may be heard on a summary basis, but an evidentiary hearing may be held for good cause shown.[16]

Specific findings for property allocation

To encourage accountability and better compliance with judgments, courts will be required to provide specific factual findings for property allocations.[17] This will also help appellate courts 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.

Court-appointed financial experts for asset or property valuation

The revised IMDMA gives 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 for 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.[18]

In addition, the court may appoint and seek the advice of financial experts or other professionals (similar to a custody evaluations pursuant to current 750 ILCS 5/604(b)).[19] The use of a court's witness increases the likelihood of settlement and is likely 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.

The Illinois Family Law Study Committee

The IFLSC was a bipartisan committee composed of experienced family law practitioners, judges, and legislators. It included an equal number of appointees by the Illinois House majority and minority leaders. The Illinois Supreme Court and the Illinois Child Support Advisory Committee also made appointments. In addition, 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 others experienced in family law.

The IFLSC spent hundreds of hours examining thousands of pages of written information and evidence. It conducted four public hearings where judges, experts, professors, child psychiatrists, and others with experience in all aspects of family law testified (two in Chicago, one in Springfield, and one in Waukegan).

House Speaker Michael Madigan appointed P. André Katz chair of the group. Other appointees were as follows: (1) Margaret Bennett, Richard Felice, Sidney Mathias, Steven Peskind, David Schaffer (replaced Sen. Chapin Rose), Rep. Jill Tracy, and Hon. Jane Waller (Ret.) (replaced JoAnn Osmond), appointed by Representative Tom Cross; (2) Karen Conti, Jill Egizii, Yehuda Lebovits, Hon. Mark Lopez (replaced Hon. William Boyd), Hon. Benjamin Mackoff (Ret.), Michael McCormick, appointed by Speaker Madigan; (3) Howard Feldman and Hon. Celia Gamrath, appointed by the Illinois Supreme Court; and (4) Ada Skyles (replaced Jerry Stermer) and Richard Zuckerman were appointed by the Child Support Commission.

10. *Id.* at § 5/502(b).
11. *Id.* at § 5/502(f).
12. *Id.*
13. *Id.* at § 5/501(c-1).
14. *Id.* at § 5/501(a)(1).
15. *Id.*
16. *Id.* at § 5/501(a)(3).
17. *Id.* at § 5/503(a).
18. *Id.* at §§ 5/503(f), (k).
19. *Id.* at § 5/503(l).

Child support – big changes coming later

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.[20] 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.

Maintenance formula adjustments

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 included in PA 98-961, as no economic study had been conducted (as had been conducted for child support guidelines) and there is no automatic entitlement to maintenance – a party's right to maintenance must be based upon the facts of each case, for example. (See Jeffrey Hirsch's article in the September *Journal* for more about the guidelines.)

Pursuant to the changes in PA 99-0090, 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.[21] The statute also gives the court the ability to set fixed-term maintenance awards for marriages that lasted 10 years or less, for example.[22]

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. In addition, the new provisions also clarify that the maintenance guidelines included in Public Act 98-961 do not apply to a payor with obligations to pay child support or maintenance or both from a prior relationship.[23]

Of note, before maintenance guidelines are applied pursuant to Public Act 98-961, the court must first determine that a maintenance award is appropriate, and 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."[24]

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.[25] Under the Illinois Supreme Court's rulings in *Crook* and in *Mueller*, the court may not consider either party's Social Security benefits when allocating property and debts between the parties.[26] However, this addition codifies the Court's holding in *Wojcik* and incorporates into the factors delineated in Section 504 that the court *may* consider either party's Social Security benefits when awarding maintenance.[27]

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.[28]

Limiting 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 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.[29] 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 25th birthday under any circumstances.[30]

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.[31] 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.[32] It does not terminate the court's authority 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.[33] It does add to the criteria for the court to determine what effect an award will have on the present and future financial resources of both parties to meet their needs, including, but not limited to, savings for retirement. Relief under section 513 is retroactive to the date of filing of the petition, which resolves split appellate court decisions on this issue.[34]

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20. *Id.* at § 5/505(a)(3)(h).
21. *Id.* at § 5/504(b-2); *id.* at § 5/510(c-5).
22. *Id.* at § 5/504; *id.* at § 5/510(a-6).
23. *Id.* at § 5/504(b-1)(1).
24. *Id.* at § 5/504(b-1).
25. *Id.* at § 5/504(a)(10).
26. *In re Marriage of Crook*, 211 Ill. 2d 437 (2004); *In re Marriage of Mueller*, 2015 IL 117876.
27. *In re Marriage of Wojcik*, 362 Ill. App. 3d 144 (2d Dist. 2005); 750 ILCS 5/504 (a)(10).
28. 750 ILCS 5/508(a).
29. *Id.* at § 5/513(a).
30. *Id.*
31. *Id.* at § 5/513(d).
32. *Id.* at § 5/513(g).
33. *Id.* at § 5/513(i).
34. *Id.* at § 5/513(j).

New controls on support for 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).[35] 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.

Goodbye 'custody' and 'visitation,' hello 'allocation of parental responsibilities'

Family law will no longer be a winner-take-all litigation process. 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.[36] 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.[37]

Requiring a 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.[38] This is not a requirement under pre-revision law.

The time 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.[39]

If the court does not approve a joint parenting plan, it must make express findings justifying its refusal to do so.[40] 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.[41] The addition of the requirements for parties to complete a parenting plan early in the case will help reveal whether there are disputed issues and what they are as soon as feasible.

New rules for relocation with child (formerly known as 'removal')

A parent who has been allocated a majority of parenting time or equal parenting time may seek to "relocate" with a child.[42] Again, the "relocation" language has replaced the prior "removal" language.

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 circuit court clerk and must provide 60 days' notice.[43]

If the non-relocating parent signs the notice in agreement, no further court action is required.[44] 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.[45]

Under current law, a custodial parent may move from Chicago to Cairo without asking for permission 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.[46] A parent in any other county may move up to 50 miles from their current residence without leave of court.[47]

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

35. *Id.* at § 5/513.5.
36. *Id.* at § 5/602.5.
37. *Id.* at § 5/602.5(a).
38. *Id.* at § 5/602.10(a).
39. *Id.* at § 5/602.10(f).
40. *Id.* at § 5/602.10(d).
41. *Id.* at § 5/602.10(g).
42. *Id.* at § 5/609.2(b).
43. *Id.* at §§ 5/609.2(c), (d).
44. *Id.* at § 5/609.2(e).
45. *Id.* at § 5/609.2(f).
46. *Id.* at § 5/600(g); *id.* at § 5/609.2.
47. *Id.*

ISBA RESOURCES >>

- Jeffrey L. Hirsch, *Solving for the X & Y: The Illinois Spousal Maintenance Guidelines*, 103 Ill. B.J. 32 (Sept. 2015), http://www.isba.org/ibj/2015/09/solvingxyillinoisspousalmaintenance.
- David H. Hopkins, *New Spousal Support Guidelines for Divorcing Couples in Illinois*, Family Law (Oct. 2014), http://www.isba.org/sections/familylaw/newsletter/2014/10/newspousalsupportguidelinesdivorcin.
- Brian A. Schroeder, *The New Illinois Spousal Maintenance Law: Retroactive or Prospective?*, 103 Ill. B.J. 32 (Jan. 2015), http://www.isba.org/ibj/2015/01/newillinoisspousalmaintenancelawret.

UCCJEA.[48]

For example, if a parent lives in Calumet City (located on the Illinois/Indiana border), he or she may move to Hammond, Indiana (approximately 4 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 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).[49] These new provisions will eliminate potential costly litigation under these circumstances where the parties can determine immediately there is an agreement.

New modification provision

The new general rule is that a court is required to modify a parenting plan or allocation judgment if necessary to serve the child's best interests if the court finds by a preponderance of the evidence: (1) a substantial change of circumstances has occurred with the child or of any parent caused by facts that have arisen since the entry of the existing parenting plan or allocation judgment or were not anticipated in the plan or judgment; or (2) that the existing allocation of parental responsibilities seriously endangers the child's physical, mental, moral, or emotional health.[50]

The court may modify a parenting plan or allocation judgment without a showing of changed circumstances if it is in the child's best interests and any of the following circumstances occur: (1) the modification is minor; (2) the modification reflects the actual arrangement under which the child has been living (without parental objection) for the six months preceding the filing of the petition for modification; (3) the modification is necessary to modify an agreed parenting plan or allocation judgment that the court would not have approved or ordered if the court had been aware of the circumstances at the time of the order or approval; or (4) the parties agree to the modification.[51]

The intent of the new statute is that its implementation will not serve as a substantial change in circumstances to modify current custody judgments, similar to when the child support guideline percentages were modified and that did not constitute a substantial change in circumstances for modification purposes. All pending cases will be decided based upon the new model.[52]

Effective date

The changes are effective on January 1, 2016 and apply to new and pending proceedings.[53]

The changes set forth in the revised IMDMA and Parentage Act provide much needed updates to these laws that significantly impact families in Illinois. With a growing number of divorces and children born to unmarried couples in society as a whole, these laws impact more and more families every year. In addition, for those attorneys practicing family law, the implementation of the updated laws will be a time of transition, as they must know and understand the changes and adapt not only to the revised laws, but to changes in terminology, standard forms, and procedure in some instances.

48. *Id.*; *id.* at § 36/202(c).
49. *Id.* at § 5/600(g); *id.* at § 5/609.2.
50. *Id.* at § 5/610.5.
51. *Id.* at § 5/610.5(e).
52. *Id.* at § 5/801.
53. *Id.*

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