

Chicago Daily Law Bulletin®

Volume 161, No. 220

New statutes recognize divorce's impact

As attorneys, working with families is unquestionably different from all other areas of the law. We are asked to guide clients who once functioned as part of a systematic family through an extremely emotional and often devastating process.

Clients with children often focus on what will happen to their relationship with their children both during and after the divorce. An amendment to the Illinois Marriage and Dissolution of Marriage Act taking effect Jan. 1 reflects on these needs, and it is clear the legislature has taken these concerns seriously.

The marriage act has been restructured to focus the discussion on the children, rather than solely on the parents' disputes. Now, more than ever, attorneys and judges will be called to focus on the best interests of the child in an effort to minimize the effects of divorce on children.

Past and present

Until Jan. 1, the marriage act utilizes the terms "joint custody" and "sole custody." Even though the effect of such designations are simply that one parent has decision-making authority, or that both parents have shared authority, parents often do not see it this way.

Since there is no happy medium, the two distinct categories tend to make each parent feel like one side wins, while the other side loses if they cannot agree on joint custody.

For obvious reasons, courts are reluctant, under the current statute, to order parents to work together and award joint custody if the case goes to trial.

The new amendments to the act abandon the concept of custody entirely. Custody is redesigned to allocate parental responsibilities and parenting time.

Why? It is clear the legislature realized the adversarial dynamics of the legal system were not necessarily built for families and that the system was most

certainly not built for children who get tangled in the litigation.

The stated purpose of the new marriage act is to focus on safeguarding family relationships, protecting children from exposure to conflict and violence, to mandate that issues pertaining to children be resolved expeditiously, to ensure predictable decision-making for children, to promote educational programs for parents as needed and to recognize that children have the right to an ongoing healthy relationship with both parents.

What's new?

As of Jan. 1, parental responsibility issues are to be heard as a priority. This process reflects the desire for courts to resolve issues pertaining to children expeditiously to provide children with necessary stability as early as possible.

Sections 602.5, 602.7, 602.8, 602.10, 603.10, 606.10 and 607.5 of the marriage act (among others) address the new concepts of allocating parental responsibilities and parenting time.

• 750 ILCS 602.5: Allocation of Parental Responsibilities

Decision-making responsibilities are to be allocated using the best interests of the child standard; if the parties are unable to agree on decision-making between themselves, the court will allocate decision-making to one or both parents regarding education, health care, religion and extracurricular activities. Nothing requires that each parent be allocated decision-making responsibilities. There are 15 factors for the court to consider. For example, the court will consider the ability of parents to make decisions together and the level of conflict both past and present; the child's needs; geographical location; the willingness and ability of each parent to facilitate and encourage a relationship with the other parent; physical violence and any threat toward the child.

• 750 ILCS 5/602.7: Allocation of Parenting Time

Parenting time is to be deter-

COLLABORATIVE CONCEPTS



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mined using the best interests of the child standard. Unless parents present an agreed upon written parenting plan, and the court approves it, the court will allocate parenting time. The same 15 factors are utilized from Section 602.5. The burden to restrict parenting time is the serious endangerment standard, which must be shown by a preponderance of the evidence.

• 750 ILCS 5/602.8: Decision-making

Parents who are not given substantial decision-making authority are still entitled to reasonable parenting time, unless such time would seriously endanger the child.

• 750 ILCS 5/702.10: Parenting Plan

All parents must submit jointly or separately a proposed parenting plan, with a supporting affidavit within 120 days after service or file a petition for allocation of parental responsibilities. The plan is to cover decision-making and parenting time. If need be, the court shall order the parties to mediation to help them produce a joint plan. The court is instructed to make express findings justifying any refusal of a joint parenting plan.

• 750 ILCS 5/603.10: Restriction of Parental Responsibilities

The standard for restricting parental responsibilities is the serious endangerment standard. The court can now order a

plethora of remedies. Two examples are requiring a parent to abstain from possessing or consuming alcohol or nonprescribed drugs while exercising parenting time and the time preceding parenting time and requiring a parent to complete a treatment program for substance abuse or other detrimental behaviors.

• 750 ILCS 5/606.10: Designation of Custodian

A parenting plan shall designate the parent with the majority of parenting time as the child's custodian for the purposes of the Illinois School Code. This designation does not afford such parent any increased rights.

• 750 ILCS 5/607.5: Abuse of Allocated Parenting Time

These issues must be handled expeditiously by the court. The standard for demonstrating a parent has failed to comply with allocated parenting time is by the preponderance of the evidence.

There are nine available remedies. For example, the court may require that either or both parents attend a parent education program at the expense of the non-complying parent, and the court may impose a fine per each incident of denied parenting time on the noncomplying parent.

The legislature clearly recognizes issues throughout divorce pertaining to children are often manipulated and perpetuated by the adversarial nature of the current legal system. These changes to the marriage act are welcomed advancements to remind attorneys that the best interests of the child are paramount.

While there is some concern that these changes will inflame child-related issues between parents, the hope is that by prioritizing and resolving parental responsibility and parenting time issues expeditiously, practitioners will be more equipped to protect the most vulnerable individuals when it comes to the divorce process — the children.