

## **Illinois Divorce Laws**

### **(750 ILCS 5/) Illinois Marriage and Dissolution of Marriage Act.**

#### **PART I GENERAL PROVISIONS**

##### **(750 ILCS 5/101)**

###### **Sec. 101. Short Title.**

This Act may be cited as the "Illinois Marriage and Dissolution of Marriage Act".

##### **(750 ILCS 5/102)**

###### **Sec. 102. Purposes; Rules of Construction.**

This Act shall be liberally construed and applied to promote its underlying purposes, which are to:

- (1) provide adequate procedures for the solemnization and registration of marriage;
- (2) strengthen and preserve the integrity of marriage and safeguard family relationships;
- (3) promote the amicable settlement of disputes that have arisen between parties to a marriage;
- (4) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- (5) make reasonable provision for spouses and minor children during and after litigation, including provision for timely awards of interim fees to achieve substantial parity in parties' access to funds for litigation costs;
- (6) eliminate the consideration of marital misconduct in the adjudication of rights and duties incident to the legal dissolution of marriage, legal separation and declaration of invalidity of marriage;
- (7) secure the maximum involvement and cooperation of both parents regarding the physical, mental, moral and emotional well-being of the children during and after the litigation; and
- (8) make provision for the preservation and conservation of assets during the litigation.

##### **(750 ILCS 5/103)**

###### **Sec. 103. Trial by Jury.**

There shall be no trial by jury under this Act.

##### **(750 ILCS 5/104)**

###### **Sec. 104. Venue.**

The proceedings shall be had in the county where the plaintiff or defendant resides, except as otherwise provided herein, 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. In no event shall venue be deemed jurisdictional.

##### **(750 ILCS 5/105)**

###### **Sec. 105. Application of Civil Practice Law.**

(a) The provisions of the Civil Practice Law shall apply to all proceedings under this Act, except as otherwise provided in this Act.

(b) A proceeding for dissolution of marriage, legal separation or declaration of invalidity of marriage shall be entitled "In re the Marriage of ... and ...". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of ...".

(c) The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. All other pleadings under this Act shall be denominated as provided in the Civil Practice Law.

##### **(750 ILCS 5/106)**

###### **Sec. 106. Employment of Administrative Aides.**

The employment of qualified administrative aides to assist the court of any county in the administration of proceedings hereunder may be provided for by such county as the case may be. All such aides shall be appointed by the authority which provided for them, subject to the approval of a majority of the judges of each court involved, and shall serve for such terms and shall receive such compensation as provided by ordinance.

(a) The administrative aides shall perform such nonjudicial duties with respect to proceedings hereunder and matters ancillary thereto as the court shall direct.

(b) Any county may make such appropriations as may be necessary to provide for the expense and compensation of the administrative aides.

**(750 ILCS 5/107)**

**Sec. 107. Order of protection; status.**

Whenever relief is sought under Part V, Part VI or Part VII of this Act, the court, before granting relief, shall determine whether any order of protection has previously been entered in the instant proceeding or any other proceeding in which any party, or a child of any party, or both, if relevant, has been designated as either a respondent or a protected person.

**PART II MARRIAGE**

**(750 ILCS 5/201)**

**Sec. 201. Formalities.**

A marriage between a man and a woman licensed, solemnized and registered as provided in this Act is valid in this State.

**PART III DECLARATION OF INVALIDITY OF MARRIAGE**

**(750 ILCS 5/301)**

**Sec. 301. Declaration of Invalidity - Grounds.**

The court shall enter its judgment declaring the invalidity of a marriage (formerly known as annulment) entered into under the following circumstances:

(1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(2) a party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was solemnized the other party did not know of the incapacity;

(3) a party was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(4) the marriage is prohibited.

**(750 ILCS 5/302)**

**Sec. 302. Time of Commencement.**

(a) A declaration of invalidity under paragraphs (1) through (3) of Section 301 may be sought by any of the following persons and must be commenced within the times specified:

(1) for any of the reasons set forth in paragraph (1) of Section 301, by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

(2) for the reason set forth in paragraph (2) of Section 301, by either party, no later than one year after the petitioner obtained knowledge of the described condition;

(3) for the reason set forth in paragraph (3) of Section 301, by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without needing to satisfy the omitted requirement.

(b) In no event may a declaration of invalidity of marriage be sought after the death of either party to the marriage under subsections (1), (2) and (3) of Section 301.

(c) A declaration of invalidity for the reason set forth in paragraph (4) of Section 301 may be sought by either party, the legal spouse in case of a bigamous marriage, the State's Attorney or a child of either party, at any time not to exceed 3 years following the death of the first party to die.

**(750 ILCS 5/303)**

**Sec. 303. Legitimacy of Children.**

Children born or adopted of a marriage declared invalid are the lawful children of the parties. Children whose parents marry after their birth are the lawful children of the parties.

**(750 ILCS 5/304)**

**Sec. 304. Retroactivity.**

Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive judgment on third parties, that the interests of justice would be served by making the judgment not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this Act relating to property rights of the spouses, maintenance, support and custody of children on dissolution of marriage are applicable to non-retroactive judgments of invalidity of marriage only.

**(750 ILCS 5/305)**

**Sec. 305. Putative Spouse.**

Any person, having gone through a marriage ceremony, who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited, under Section 212, or declared invalid, under Section 301. If there is a legal spouse or other putative spouse, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance and support rights among the claimants as appropriate in the circumstances and in the interests of justice. This Section shall not apply to common law marriages contracted in the State after June 30, 1905.

**(750 ILCS 5/306)**

**Sec. 306. Commencement of Action.**

Actions for declaration of invalidity of marriage shall be commenced as in other civil cases.

**PART IV DISSOLUTION AND LEGAL SEPARATION**

**(750 ILCS 5/401)**

**Sec. 401. Dissolution of marriage.**

(a) The court shall enter a judgment of dissolution of marriage if at the time the action was commenced one of the spouses was a resident of this State or was stationed in this State while a member of the armed services, and the residence or military presence had been maintained for 90 days next preceding the commencement of the action or the making of the finding; provided, however, that a finding of residence of a party in any judgment entered under this Act from January 1, 1982 through June 30, 1982 shall satisfy the former domicile requirements of this Act; and if one of the following grounds for dissolution has been proved:

(1) That, without cause or provocation by the petitioner: the respondent was at the time of such marriage, and continues to be naturally impotent; the respondent had a wife or husband living at the time of the marriage; the respondent had committed adultery subsequent to the marriage; the respondent has wilfully deserted or absented himself or herself from the petitioner for the space of one year, including any period during which litigation may have pended between the spouses for dissolution of marriage or legal separation; the respondent has been guilty of habitual drunkenness for the space of 2 years; the

respondent has been guilty of gross and confirmed habits caused by the excessive use of addictive drugs for the space of 2 years, or has attempted the life of the other by poison or other means showing malice, or has been guilty of extreme and repeated physical or mental cruelty, or has been convicted of a felony or other infamous crime; or the respondent has infected the other with a sexually transmitted disease. "Excessive use of addictive drugs", as used in this Section, refers to use of an addictive drug by a person when using the drug becomes a controlling or a dominant purpose of his life; or

(2) That the spouses have lived separate and apart

for a continuous period in excess of 2 years and 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. If the spouses have lived separate and apart for a continuous period of not less than 6 months next preceding the entry of the judgment dissolving the marriage, as evidenced by testimony or affidavits of the spouses, the requirement of living separate and apart for a continuous period in excess of 2 years may be waived upon written stipulation of both spouses filed with the court. At any time after the parties cease to cohabit, the following periods shall be included in the period of separation:

(A) any period of cohabitation during which the

parties attempted in good faith to reconcile and participated in marriage counseling under the guidance of any of the following: a psychiatrist, a clinical psychologist, a clinical social worker, a marriage and family therapist, a person authorized to provide counseling in accordance with the prescriptions of any religious denomination, or a person regularly engaged in providing family or marriage counseling; and

(B) any period of cohabitation under written agreement of the parties to attempt to reconcile.

In computing the period during which the spouses have lived separate and apart for purposes of this Section, periods during which the spouses were living separate and apart prior to July 1, 1984 are included.

(b) Judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property. The court may enter a judgment for dissolution that reserves any of these issues either upon (i) agreement of the parties, or (ii) motion of either party and a finding by the court that appropriate circumstances exist.

The death of a party subsequent to entry of a judgment for dissolution but before judgment on reserved issues shall not abate the proceedings.

If any provision of this Section or its application shall be adjudged unconstitutional or invalid for any reason by any court of competent jurisdiction, that judgment shall not impair, affect or invalidate any other provision or application of this Section, which shall remain in full force and effect.

#### **(750 ILCS 5/402)**

##### **Sec. 402. Legal Separation.**

(a) Any person living separate and apart from his or her spouse without fault may have a remedy for reasonable support and maintenance while they so live apart.

(b) Such action shall be brought in the circuit court of the county in which the respondent resides or in which the parties last resided together as husband and wife. In the event the respondent cannot be found within the State, the action may be brought in the circuit court of the county in which the petitioner resides. Commencement of the action, temporary relief and trials shall be the same as in actions for dissolution of marriage.

(c) A proceeding or judgment for legal separation shall not bar either party from instituting an action for dissolution of marriage, and if the party so moving has met the requirements of Section 401, a judgment for dissolution shall be granted.

#### **(750 ILCS 5/403)**

##### **Sec. 403. Pleadings - Commencement - Abolition of Existing Defenses - Procedure.**

(a) The petition for dissolution of marriage or legal separation shall be verified and shall minimally set forth:

(1) the age, occupation and residence of each party and his length of residence in this State;

(2) the date of the marriage and the place at which it was registered;

(2.5) whether a petition for dissolution of marriage is pending in any other county or state;

(3) that the jurisdictional requirements of

subsection (a) of Section 401 have been met and that there exist grounds for dissolution of marriage or legal separation. The petitioner need only allege the name of the particular grounds relied upon, which shall constitute a legally sufficient allegation of the grounds; and the respondent shall be entitled to demand a bill of particulars prior to trial setting forth the facts constituting the grounds, if he so chooses. The petition must also contain:

(4) the names, ages and addresses of all living children of the marriage and whether the wife is pregnant;

(5) any arrangements as to support, custody and visitation of the children and maintenance of a spouse; and

(6) the relief sought.

(b) Either or both parties to the marriage may initiate the proceeding.

(c) The previously existing defense of recrimination is abolished. The defense of condonation is abolished only as to condonations occurring after a proceeding is filed under this Act and after the court has acquired jurisdiction over the respondent.

(d) The court may join additional parties necessary and proper for the exercise of its authority under this Act.

(e) Contested trials shall be on a bifurcated basis with the grounds being tried first. Upon the court determining that the grounds exist, the court may allow additional time for the parties to settle amicably the remaining issues before resuming the trial, or may proceed immediately to trial on the remaining issues. In cases where the grounds are uncontested and proved as in cases of default, the trial on all other remaining issues shall proceed immediately, if so ordered by the court or if the parties so stipulate, issue on the pleadings notwithstanding.

(f) Even if no bill of particulars shall have been filed demanding the specification of the particular facts underlying the allegation of the grounds, the court shall nonetheless require proper and sufficient proof of the existence of the grounds.

#### **(750 ILCS 5/404)**

##### **Sec. 404. Conciliation; mediation.**

(a) If the court concludes that there is a prospect of reconciliation, the court, at the request of either party, or on its own motion, may order a conciliation conference. The conciliation conference and counseling shall take place at the established court conciliation service of that judicial district or at any similar service or facility where no court conciliation service has been established.

(b) The facts adduced at any conciliation conference resulting from a referral hereunder, shall not be considered in the adjudication of a pending or subsequent action, nor shall any report resulting from such conference become part of the record of the case unless the parties have stipulated in writing to the contrary.

The court, upon good cause shown, may prohibit conciliation, mediation or other process that requires the parties to meet and confer without counsel.

#### **(750 ILCS 5/404.1)**

##### **Sec. 404.1.**

(a) In an action for dissolution of marriage involving minor children, or in a post-judgment proceeding involving minor children, the court may on its own motion order the parties, excluding the minor children, to attend an educational program concerning the effects of dissolution of marriage on the children, if the court finds that it would be in the best interests of the minor children. The program may be divided into sessions, which in the aggregate shall not exceed 4 hours in duration. The program shall be educational in nature and not designed for individual therapy.

(b) The facts adduced at any educational session resulting from a referral under this Section shall not be considered in the adjudication of a pending or subsequent action, nor shall any report

resulting from such educational session become part of the record of the case unless the parties have stipulated in writing to the contrary.

(c) The fees or costs of educational sessions under this Section shall be borne by the parties and may be assessed by the court as it deems equitable.

**(750 ILCS 5/405)**

**Sec. 405. Hearing on Default - Notice.**

If the respondent is in default, the court shall proceed to hear the cause upon testimony of petitioner taken in open court, and in no case of default shall the court grant a dissolution of marriage or legal separation or declaration of invalidity of marriage, unless the judge is satisfied that all proper means have been taken to notify the respondent of the pendency of the suit. Whenever the judge is satisfied that the interests of the respondent require it, the court may order such additional notice as may be required.

**(750 ILCS 5/406)**

**Sec. 406. Fault or Conduct of Petitioner.**

In every action for a dissolution of marriage or legal separation, or declaration of invalidity of marriage, the conduct of the petitioner, unless raised by the pleadings, is not a bar to the action nor a proper basis for the refusal of a judgment of dissolution of marriage or legal separation or declaration of invalidity of marriage. Defenses which may be raised by the pleadings, however, shall not include the defenses abolished under Section 403(c).

**(750 ILCS 5/407)**

**Sec. 407. Admission of Respondent.**

No admission of the respondent shall be taken as evidence unless the court shall be satisfied that such admission was made in sincerity and without fraud or collusion to enable the petitioner to obtain a dissolution of marriage or legal separation or declaration of invalidity of marriage.

**(750 ILCS 5/408)**

**Sec. 408. Collusion - Assent or Consent of Petitioner.**

If it appears, to the satisfaction of the court, that the injury complained of was occasioned by collusion of the parties, or done with the assent of the petitioner for the purpose of obtaining a dissolution of marriage or legal separation or declaration of invalidity of marriage, or that the petitioner was consenting thereto, then no dissolution of marriage or legal separation or declaration of invalidity of marriage may be adjudged.

**(750 ILCS 5/409)**

**Sec. 409. Proof of Foreign Marriage.**

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.

**(750 ILCS 5/410)**

**Sec. 410. Process - Practice - Proceedings - Publication.**

The process, practice and proceedings under this Act shall be the same as in other civil cases, except as otherwise provided by this Act, or by any law or rule of court, and except that when the parties resided in a municipality, in a county with a population under 2,000,000, at the time the cause of action arose, and if service by publication is necessary, publication shall be in a newspaper published in such municipality if there is one.

**(750 ILCS 5/411)**

**Sec. 411. Commencement of Action.**

(a) 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.

(b) When a praecipe for summons is filed without the petition, the summons shall recite that petitioner has commenced suit for dissolution of marriage or legal separation and shall require the respondent to file his or her appearance not later than 30 days from the day the summons is served and to plead to the petitioner's petition within 30 days from the day the petition is filed.

Until a petition has been filed, the court, pursuant to subsections (c) and (d) herein, may dismiss the suit, order the filing of a petition, or grant leave to the respondent to file a petition in the nature of a counter petition.

After the filing of the petition, the party filing the same shall, within 2 days, serve a copy thereof upon the other party, in the manner provided by rule of the Supreme Court for service of notices in other civil cases.

(c) Unless a respondent voluntarily files an appearance, a praecipe for summons filed without the petition shall be served on the respondent not later than 30 days after its issuance, and upon failure to obtain service upon the respondent within the 30 day period, or any extension for good cause shown granted by the court, the court shall dismiss the suit.

(d) An action for dissolution of marriage or legal separation commenced by the filing a praecipe for summons without the petition shall be dismissed unless a petition for dissolution of marriage or legal separation has been filed within 6 months after the commencement of the action.

**(750 ILCS 5/412)**

**Sec. 412. Filing of petition - Cases Requiring Service by Publication.**

In any case wherein the requisite affidavit for service by publication has been filed to obtain jurisdiction as to the party against whom a judgment of dissolution of marriage or of legal separation or of declaration of invalidity of marriage is sought, petitioner shall immediately, and without leave of court, file his or her petition.

**(750 ILCS 5/413)**

**Sec. 413. Judgment.**

(a) A judgment of dissolution of marriage or of legal separation or of declaration of invalidity of marriage is final when entered, subject to the right of appeal. An appeal from the judgment of dissolution of marriage that does not challenge the finding as to grounds does not delay the finality of that provision of the judgment which dissolves the marriage, beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or the minor child or children shall not be suspended or the enforcement thereof stayed pending the appeal.

(b) The clerk of the court shall give notice of the entry of a judgment of dissolution of marriage or legal separation or a declaration of invalidity of marriage:

(1) if the marriage is registered in this State, to the county clerk of the county where the marriage is registered, who shall enter the fact of dissolution of marriage or legal separation or declaration of invalidity of marriage in the marriage registry; and within 45 days after the close of the month in which the judgment is entered, the clerk shall forward the certificate to the Department of Public Health on a form furnished by the Department; or

(2) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution of marriage or legal separation or declaration of invalidity of marriage in the appropriate record.

(c) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

(d) A judgment of dissolution of marriage or legal separation, if made, shall be awarded to both of the parties, and shall provide that it affects the status previously existing between the parties in the manner adjudged.

**PART IV A JOINT SIMPLIFIED DISSOLUTION PROCEDURE**

**(750 ILCS 5/451)**

**Sec. 451. Applicability.**

In any proceeding under this Part IV-A, the provisions of this Part IV-A shall control where they conflict with other provisions of this Act.

**(750 ILCS 5/452)**

**Sec. 452. Petition.**

The parties to a dissolution proceeding may file a joint petition for simplified dissolution if they certify that all of the following conditions exist when the proceeding is commenced:

(a) Neither party is dependent on the other party for support or each party is willing to waive the right to support; and the parties understand that consultation with attorneys may help them determine eligibility for spousal support.

(b) Either party has met the residency requirement of Section 401 of this Act.

(c) Irreconcilable differences have caused the irretrievable breakdown of the marriage and the parties have been separated 6 months or more and efforts at reconciliation have failed or future attempts at reconciliation would be impracticable and not in the best interests of the family.

(d) No children were born of the relationship of the parties or adopted by the parties during the marriage, and the wife, to her knowledge, is not pregnant by the husband.

(e) The duration of the marriage does not exceed 8 years.

(f) Neither party has any interest in real property.

(g) The parties waive any rights to maintenance.

(h) The total fair market value of all marital property, after deducting all encumbrances, is less than \$10,000, the combined gross annualized income from all sources is less than \$35,000, and neither party has a gross annualized income from all sources in excess of \$20,000.

(i) The parties have disclosed to each other all assets and their tax returns for all years of the marriage.

(j) The parties have executed a written agreement dividing all assets in excess of \$100 in value and allocating responsibility for debts and liabilities between the parties.

**(750 ILCS 5/453)**

**Sec. 453. Procedure; Judgment.**

The parties shall use the forms provided by the circuit court clerk, and the clerk shall submit the petition to the court. The court shall expeditiously consider the cause. Both parties shall appear in person before the court and, if the court so directs, testify. The court, after examination of the petition and the parties and finding the agreement of the parties not unconscionable, shall enter a judgment granting the dissolution if the requirements of this Part IV-A have been met and the parties have submitted the affidavit required under Section 454. No transcript of proceedings shall be required.

**(750 ILCS 5/454)**

**Sec. 454. Affidavit.**

At the time of the hearing, the parties shall submit to the court an affidavit executed by both parties stating that all property has been divided in accordance with the agreement of the parties and that they have executed all documents required to effectuate the agreement.

**(750 ILCS 5/455)**

**Sec. 455. Copies of judgment.**

Upon entry of the judgment and upon payment of the fee, the circuit court clerk shall furnish to each party a certified copy of the final judgment of dissolution.

**(750 ILCS 5/456)**

**Sec. 456. Forms.**

The contents of forms to be used in simplified dissolutions shall be provided for by court rule. The circuit court clerk shall supply forms upon request for use by parties seeking simplified dissolutions under this Part IV-A.

**(750 ILCS 5/457)**

**Sec. 457. Brochure to describe proceedings.**

The circuit court clerk may make available a brochure that describes the requirements, nature, and effect of a simplified dissolution. The brochure should state, in nontechnical language, the following:

(a) It is in the best interests of each of the parties to consult attorneys regarding the dissolution of their marriage, and that the services of attorneys may be obtained.

(b) The parties should not rely exclusively on the brochure, and the brochure is intended only as a guide for self-representation.

(c) A concise summary of the provisions and procedures of the simplified dissolution procedure.

(d) The nature and availability of counseling services.

(e) If the parties waive their rights to maintenance, neither party can in the future obtain maintenance from the other.

(f) A statement in boldface type that a judgment for dissolution of marriage permanently adjudicates all financial rights arising out of the marriage, including the right to property in the name of one's spouse and the right to support from one's spouse (maintenance or alimony), that a judgment is final, and the parties waive their right to appeal, except that neither party is barred from instituting an action to set aside a final judgment for fraud, duress, accident, mistake, or other grounds at law or in equity.

(g) The parties to the marriage remain married persons and cannot remarry until a judgment dissolving the marriage is entered.

**PART V PROPERTY, SUPPORT AND ATTORNEY FEES**

**(750 ILCS 5/501)**

**Sec. 501. Temporary Relief.**

In all proceedings under this Act, temporary relief shall be as follows:

(a) Either party may move for:

(1) temporary maintenance or temporary support of a child of the marriage entitled to support, accompanied by an affidavit as to the factual basis for the relief requested;

(2) a temporary restraining order or preliminary injunction, accompanied by affidavit showing a factual basis for any of the following relief:

(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, and, if so restrained, requiring him to notify the moving party and his attorney of any proposed extraordinary expenditures made after the order is issued;

(ii) enjoining a party from removing a child from the jurisdiction of the court;

(iii) enjoining a party from striking or interfering with the personal liberty of the other party or of any child; or

(iv) providing other injunctive relief proper in the circumstances; or

(3) other appropriate temporary relief.

(b) The court may issue a temporary restraining order without requiring notice to the other party only if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(c) A response hereunder may be filed within 21 days after service of notice of motion or at the time specified in the temporary restraining order.

(c-1) As used in this subsection (c-1), "interim attorney's fees and costs" means attorney's fees and costs assessed from time to time while a case is pending, in favor of the petitioning party's current counsel, for reasonable fees and costs either already incurred or to be incurred, and "interim award" means an award of interim attorney's fees and costs. Interim awards shall be governed by the following:

(1) Except for good cause shown, a proceeding for

(or relating to) interim attorney's fees and costs shall be nonevidentiary, summary in nature, and expeditious. When a party files a petition for interim attorney's fees and costs supported by one or more affidavits that delineate relevant factors, the court (or a hearing officer) shall assess an interim award after affording the opposing party a reasonable opportunity to file a responsive pleading. 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. In assessing an interim award, the court shall consider all relevant factors, as presented, that appear reasonable and necessary, including:

(A) the income and property of each party, including alleged marital property within the sole control of one party and alleged non-marital property within access to a party;

(B) the needs of each party;

(C) the realistic earning capacity of each party;

(D) any impairment to present earning capacity of either party, including age and physical and emotional health;

(E) the standard of living established during the marriage;

(F) the degree of complexity of the issues, including custody, valuation or division (or both) of closely held businesses, and tax planning, as well as reasonable needs for expert investigations or expert witnesses, or both;

(G) each party's access to relevant information;

(H) the amount of the payment or payments made or reasonably expected to be made to the attorney for the other party; and

(I) any other factor that the court expressly finds to be just and equitable.

(2) Any assessment of an interim award (including one pursuant to an agreed order) shall be without prejudice to any final allocation and without prejudice as to any claim or right of either party or any counsel of record at the time of the award. Any such claim or right may be presented by the appropriate party or counsel at a hearing on contribution under subsection (j) of Section 503 or a hearing on counsel's fees under subsection (c) of Section 508. Unless otherwise ordered by the court at the final hearing between the parties or in a hearing under subsection (j) of Section 503 or subsection (c) of Section 508, interim awards, as well as the aggregate of all other payments by each party to counsel and related payments to third parties, shall be deemed to have been advances from the parties' marital estate. Any portion of any interim award constituting an overpayment shall be remitted back to the appropriate party or parties, or, alternatively, to successor counsel, as the court determines and directs, after notice.

(3) In any proceeding under this subsection (c 1),

the court (or hearing officer) shall assess an interim award against an opposing party in an amount necessary to enable the petitioning party to participate adequately in the litigation, upon findings that the party from whom attorney's fees and costs are sought has the financial ability to pay reasonable amounts and that the party seeking attorney's fees and costs lacks sufficient access to assets or income to pay reasonable amounts. In determining an award, the court shall consider whether adequate participation in the litigation requires expenditure of more fees and costs for a party that is not in control of assets or relevant information. Except for good cause shown, an interim award shall not be less than payments made or reasonably expected to be made to the counsel for the other party. If the court finds that both parties lack financial ability or access to assets or income for reasonable attorney's fees and costs, the court (or hearing officer) shall enter an order that allocates available funds for each party's counsel, including retainers or interim payments, or both, previously paid, in a manner that achieves substantial parity between the parties.

(4) The changes to this Section 501 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as otherwise provided in Section 508.

(d) A temporary order entered under this Section:

(1) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(2) may be revoked or modified before final judgment, on a showing by affidavit and upon hearing; and

(3) terminates when the final judgment is entered or when the petition for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed.

**(750 ILCS 5/501.1)**

**Sec. 501.1. Dissolution action stay.**

(a) Upon service of a summons and petition or praecipe filed under the Illinois Marriage and Dissolution of Marriage Act or upon the filing of the respondent's appearance in the proceeding, whichever first occurs, a dissolution action stay shall be in effect against both parties and their agents and employees, without bond or further notice, until a final judgement is entered, the proceeding is dismissed, or until further order of the court:

(1) restraining both parties from transferring, encumbering, concealing, destroying, spending, damaging, or in any way disposing of any property, without the consent of the other party or an order of the court, except in the usual course of business, for the necessities of life, or for reasonable costs, expenses, and attorney's fees arising from the proceeding, as well as requiring each party to provide written notice to the other party and his or her attorney of any proposed extraordinary expenditure or transaction;

(2) restraining both parties from physically abusing, harassing, intimidating, striking, or interfering with the personal liberty of the other party or the minor children of either party; and

(3) restraining both parties from removing any minor child of either party from the State of Illinois or from concealing any such child from the other party, without the consent of the other party or an order of the court.

The restraint provided in this subsection (a) does not operate to make unavailable any of the remedies provided in the Illinois Domestic Violence Act of 1986.

A restraint of the parties' actions under this Section does not affect the rights of a bona fide purchaser or mortgagee whose interest in real property or whose beneficial interest in real property under an Illinois land trust was acquired before the filing of a lis pendens notice under Section 2-1901 of the Code of Civil Procedure.

(b) Notice of any proposed extraordinary expenditure or transaction, as required by subsection (a), shall be given as soon as practicable, but not less than 7 days before the proposed date for the carrying out or commencement of the carrying out of the extraordinary expenditure or transaction, except in an emergency, in which event notice shall be given as soon as practicable under the circumstances. If proper notice is given and if the party receiving the notice does not object by filing a petition for injunctive relief under the Code of Civil Procedure within 7 days of receipt of the notice, the carrying out of the proposed extraordinary expenditure or transaction is not a violation of the dissolution action stay. The dissolution action stay shall remain in full force and effect against both parties for 14 days after the date of filing of a petition for injunctive relief by the objecting party (or a shorter period if the court so orders); and no extension beyond that 14 day period shall be granted by the court. For good cause shown, a party may file a petition for a reduction in time with respect to any 7 day notice requirement under this subsection.

(c) A party making any extraordinary expenditure or carrying out any extraordinary transaction after a dissolution action stay is in effect shall account promptly to the court and to the other party for all of those expenditures and transactions. This obligation to account applies throughout the pendency of the proceeding, irrespective of (i) any notice given by any party as to any proposed extraordinary expenditure or transaction, (ii) any filing of an objection and petition under this Section or the absence of any such filing, or (iii) any court ruling as to an issue presented to it by either party.

(d) If the party making an extraordinary expenditure or transaction fails to provide proper notice or if despite proper notice the other party filed a petition and prevailed on that petition, and the extraordinary expenditure or transaction results in a loss of income or reduction in the amount or in the value of property, there is a presumption of dissipation of property, equal to the amount of the loss or reduction, charged against the party for purposes of property distribution under Section 503.

(e) In a proceeding filed under this Act, the summons shall provide notice of the entry of the automatic dissolution action stay in a form as required by applicable rules.

**(750 ILCS 5/502)**

**Sec. 502. Agreement.**

(a) To promote amicable settlement of disputes between parties to a marriage attendant upon the dissolution of their marriage, the parties may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children.

(b) The terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(c) If the court finds the agreement unconscionable, it may request the parties to submit a revised agreement or upon hearing, may make orders for the disposition of property, maintenance, child support and other matters.

(d) Unless the agreement provides to the contrary, its terms shall be set forth in the judgment, and the parties shall be ordered to perform under such terms, or if the agreement provides that its terms shall not be set forth in the judgment, the judgment shall identify the agreement and state that the court has approved its terms.

(e) Terms of the agreement set forth in the judgment are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(f) Except for terms concerning the support, custody or visitation of children, the judgment may expressly preclude or limit modification of 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.

**(750 ILCS 5/503)**

**Sec. 503. Disposition of property.**

(a) For purposes of this Act, "marital property" means all property acquired by either spouse subsequent to the marriage, except the following, which is known as "non-marital property":

(1) property acquired by gift, legacy or descent;

(2) property acquired in exchange for property

acquired before the marriage or in exchange for property acquired by gift, legacy or descent;

(3) property acquired by a spouse after a judgment of legal separation;

(4) property excluded by valid agreement of the parties;

(5) any judgment or property obtained by judgment awarded to a spouse from the other spouse;

(6) property acquired before the marriage;

(7) the increase in value of property acquired by a method listed in paragraphs (1) through (6) of this subsection, irrespective of whether the increase results from a contribution of marital property, non marital property, the personal effort of a spouse, or otherwise, subject to the right of reimbursement provided in subsection (c) of this Section; and

(8) income from property acquired by a method listed in paragraphs (1) through (7) of this subsection if the income is not attributable to the personal effort of a spouse.

(b)(1) For purposes of distribution of property pursuant to this Section, all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage, including non-marital property transferred into some form of co-ownership between the spouses, is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, or community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a) of this Section.

(2) For purposes of distribution of property pursuant to this Section, all pension benefits (including pension benefits under the Illinois Pension Code) acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of the marriage are presumed to be marital property, regardless of which spouse participates in the pension plan. The presumption that these pension benefits are marital property is overcome by a showing that the pension benefits were acquired by a method listed in subsection (a) of this Section. The right to a division of pension benefits in just proportions under this Section is enforceable under Section 1-119 of the Illinois Pension Code.

The value of pension benefits in a retirement system subject to the Illinois Pension Code shall be determined in accordance with the valuation procedures established by the retirement system.

The recognition of pension benefits as marital property and the division of those benefits pursuant to a Qualified Illinois Domestic Relations Order shall not be deemed to be a diminishment, alienation, or impairment of those benefits. The division of pension benefits is an allocation of property in which each spouse has a species of common ownership.

(3) For purposes of distribution of property under this Section, all stock options granted to either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage, whether vested or non vested or whether their value is ascertainable, are presumed to be marital property. This presumption of marital property is overcome by a showing that the stock options were acquired by a method listed in subsection (a) of this Section. The court shall allocate stock options between the parties at the time of the judgment of dissolution of marriage or declaration of invalidity of marriage recognizing that the value of the stock options may not be then determinable and that the actual division of the options may not occur until a future date. In making the allocation between the parties, the court shall consider, in addition to the factors set forth in subsection (d) of this Section, the following:

(i) All circumstances underlying the grant of the

stock option including but not limited to whether the grant was for past, present, or future efforts, or any combination thereof.

(ii) The length of time from the grant of the option to the time the option is exercisable.

(c) Commingled marital and non-marital property shall be treated in the following manner, unless otherwise agreed by the spouses:

(1) When marital and non-marital property are

commingled by contributing one estate of property into another resulting in a loss of identity of the contributed property, the classification of the contributed property is transmuted to the estate receiving the contribution, subject to the provisions of paragraph (2) of this subsection; provided that if marital and non marital property are commingled into newly acquired property resulting in a loss of identity of the contributing estates, the commingled property shall be deemed transmuted to marital property, subject to the provisions of paragraph (2) of this subsection.

(2) When one estate of property makes a contribution

to another estate of property, or when a spouse contributes personal effort to non marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift, or, in the case of a contribution of personal effort of a spouse to non-marital property, unless the effort is significant and results in substantial appreciation of the non-marital property. Personal effort of a spouse shall be deemed a contribution by the marital estate. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution.

(d) In a proceeding for dissolution of marriage or declaration of invalidity of marriage, or in a proceeding for disposition of property following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall assign each spouse's non marital property to that spouse. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including:

(1) the contribution of each party to the

acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including the contribution of a spouse as a homemaker or to the family unit;

(2) the dissipation by each party of the marital or non-marital property;

(3) the value of the property assigned to each

spouse;

(4) the duration of the marriage;

(5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;

(6) any obligations and rights arising from a prior marriage of either party;

(7) any antenuptial agreement of the parties;

(8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

(9) the custodial provisions for any children;

(10) whether the apportionment is in lieu of or in addition to maintenance;

(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties.

(e) Each spouse has a species of common ownership in the marital property which vests at the time dissolution proceedings are commenced and continues only during the pendency of the action. Any such interest in marital property shall not encumber that property so as to restrict its transfer, assignment or conveyance by the title holder unless such title holder is specifically enjoined from making such transfer, assignment or conveyance.

(f) In a proceeding for dissolution of marriage or declaration of invalidity of marriage or in a proceeding for disposition of property following dissolution of marriage by a court that lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, in determining the value of the marital and non marital property for purposes of dividing the property, shall value the property as of the date of trial or some other date as close to the date of trial as is practicable.

(g) The court if necessary to protect and promote the best interests of the children may set aside a portion of the jointly or separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent child of the parties. In making a determination under this subsection, the court may consider, among other things, the conviction of a party of any of the offenses set forth in Section 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal Code of 1961 if the victim is a child of one or both of the parties, and there is a need for, and cost of, care, healing and counseling for the child who is the victim of the crime.

(h) Unless specifically directed by a reviewing court, or upon good cause shown, the court shall not on remand consider any increase or decrease in the value of any "marital" or "non marital" property occurring since the assessment of such property at the original trial or hearing, but shall use only that assessment made at the original trial or hearing.

(i) The court may make such judgments affecting the marital property as may be just and may enforce such judgments by ordering a sale of marital property, with proceeds therefrom to be applied as determined by the court.

(j) After proofs have closed in the final hearing on all other issues between the parties (or in conjunction with the final hearing, if all parties so stipulate) and before judgment is entered, a party's petition for contribution to fees and costs incurred in the proceeding shall be heard and decided, in accordance with the following provisions:

(1) A petition for contribution, if not filed before the final hearing on other issues between the parties, shall be filed no later than 30 days after the closing of proofs in the final hearing or within such other period as the court orders.

(2) Any award of contribution to one party from the other party shall be based on the criteria for division of marital property under this Section 503 and, if maintenance has been awarded, on the criteria for an award of maintenance under Section 504.

(3) The filing of a petition for contribution shall not be deemed to constitute a waiver of the attorney client privilege between the petitioning party and current or former counsel; and such a waiver shall not constitute a prerequisite to a hearing for contribution. If either party's presentation on contribution, however, includes evidence

within the scope of the attorney client privilege, the disclosure or disclosures shall be narrowly construed and shall not be deemed by the court to constitute a general waiver of the privilege as to matters beyond the scope of the presentation.

(4) No finding on which a contribution award is based or denied shall be asserted against counsel or former counsel for purposes of any hearing under subsection (c) or (e) of Section 508.

(5) A contribution award (payable to either the petitioning party or the party's counsel, or jointly, as the court determines) may be in the form of either a set dollar amount or a percentage of fees and costs (or a portion of fees and costs) to be subsequently agreed upon by the petitioning party and counsel or, alternatively, thereafter determined in a hearing pursuant to subsection (c) of Section 508 or previously or thereafter determined in an independent proceeding under subsection (e) of Section 508.

(6) The changes to this Section 503 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as otherwise provided in Section 508.

**(750 ILCS 5/504)**

**Sec. 504. Maintenance.**

(a) In a proceeding for dissolution of marriage or legal separation or declaration of invalidity of marriage, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a temporary or permanent maintenance award for either spouse in amounts and for periods of time as the court deems just, without regard to marital misconduct, in gross or for fixed or indefinite periods of time, and the maintenance may be paid from the income or property of the other spouse after consideration of all relevant factors, including:

(1) the income and property of each party, including marital property apportioned and non marital property assigned to the party seeking maintenance;

(2) the needs of each party;

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

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) 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 is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.

(b) (Blank).

(b-5) Any maintenance obligation including any unallocated maintenance and child support obligation, or any portion of any support obligation, that becomes due and remains unpaid shall accrue simple interest as set forth in Section 505 of this Act.

(b-7) Any new or existing maintenance order including any unallocated maintenance and child support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder. Each such judgment to be in the amount

of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order, except no judgment shall arise as to any installment coming due after the termination of maintenance as provided by Section 510 of the Illinois Marriage and Dissolution of Marriage Act or the provisions of any order for maintenance. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced. A lien arises by operation of law against the real and personal property of the obligor for each installment of overdue support owed by the obligor.

(c) The court may grant and enforce the payment of maintenance during the pendency of an appeal as the court shall deem reasonable and proper.

(d) No maintenance shall accrue during the period in which a party is imprisoned for failure to comply with the court's order for the payment of such maintenance.

(e) When maintenance is to be paid through the clerk of the court in a county of 1,000,000 inhabitants or less, the order shall direct the obligor to pay to the clerk, in addition to the maintenance payments, all fees imposed by the county board under paragraph (3) of subsection (u) of Section 27.1 of the Clerks of Courts Act. Unless paid in cash or pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payment and shall be made to the order of the Clerk.

**(750 ILCS 5/505)**

**Sec. 505. Child support; contempt; penalties.**

(a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity of marriage, a proceeding for child support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, a proceeding for modification of a previous order for child support under Section 510 of this Act, or any proceeding authorized under Section 501 or 601 of this Act, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable and necessary for his support, without regard to marital misconduct. The duty of support owed to a child includes the obligation to provide for the reasonable and necessary physical, mental and emotional health needs of the child. For purposes of this Section, the term "child" shall include any child under age 18 and any child under age 19 who is still attending high school.

(1) The Court shall determine the minimum amount of support by using the following guidelines:

Number of Children Percent of Supporting Party's

Net Income

- 1 20%
- 2 28%
- 3 32%
- 4 40%
- 5 45%
- 6 or more 50%

(2) The above guidelines shall be applied in each case unless the court makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child in light of evidence including but not limited to one or more of the following relevant factors:

- (a) the financial resources and needs of the child;
- (b) the financial resources and needs of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child, and his educational needs; and
- (e) the financial resources and needs of the non-custodial parent.

If the court deviates from the guidelines, the

court's finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines.

(3) "Net income" is defined as the total of all income from all sources, minus the following deductions:

- (a) Federal income tax (properly calculated withholding or estimated payments);
- (b) State income tax (properly calculated withholding or estimated payments);
- (c) Social Security (FICA payments);
- (d) Mandatory retirement contributions required by law or as a condition of employment;
- (e) Union dues;
- (f) Dependent and individual health/hospitalization insurance premiums;
- (g) Prior obligations of support or maintenance actually paid pursuant to a court order;
- (h) Expenditures for repayment of debts that

represent reasonable and necessary expenses for the production of income, medical expenditures necessary to preserve life or health, reasonable expenditures for the benefit of the child and the other parent, exclusive of gifts. The court shall reduce net income in determining the minimum amount of support to be ordered only for the period that such payments are due and shall enter an order containing provisions for its self executing modification upon termination of such payment period.

(4) In cases where the court order provides for health/hospitalization insurance coverage pursuant to Section 505.2 of this Act, the premiums for that insurance, or that portion of the premiums for which the supporting party is responsible in the case of insurance provided through an employer's health insurance plan where the employer pays a portion of the premiums, shall be subtracted from net income in determining the minimum amount of support to be ordered.

(4.5) In a proceeding for child support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, and in which the court is requiring payment of support for the period before the date an order for current support is entered, there is a rebuttable presumption that the supporting party's net income for the prior period was the same as his or her net income at the time the order for current support is entered.

(5) If the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case. The final order in all cases shall state the support level in dollar amounts. However, if the court finds that the child support amount cannot be expressed exclusively as a dollar amount because all or a portion of the payor's net income is uncertain as to source, time of payment, or amount, the court may order a percentage amount of support in addition to a specific dollar amount and enter such other orders as may be necessary to determine and enforce, on a timely basis, the applicable support ordered.

(6) If (i) the non-custodial parent was properly served with a request for discovery of financial information relating to the non-custodial parent's ability to provide child support, (ii) the non custodial parent failed to comply with the request, despite having been ordered to do so by the court, and (iii) the non-custodial parent is not present at the hearing to determine support despite having received proper notice, then any relevant financial information concerning the non-custodial parent's ability to provide child support that was obtained pursuant to subpoena and proper notice shall be admitted into evidence without the need to establish any further foundation for its admission.

(a.5) In an action to enforce an order for support based on the respondent's failure to make support payments as required by the order, notice of proceedings to hold the respondent in contempt for that failure may be served on the respondent by personal service or by regular mail addressed to the respondent's last known address. The respondent's last known address may be determined from records of the clerk of the court, from the Federal Case Registry of Child Support Orders, or by any other reasonable means.

(b) Failure of either parent to comply with an order to pay support shall be punishable as in other cases of contempt. In addition to other penalties provided by law the Court may, after finding the parent guilty of contempt, order that the parent be:

- (1) placed on probation with such conditions of probation as the Court deems advisable;
- (2) sentenced to periodic imprisonment for a period not to exceed 6 months; provided, however, that the Court may permit the parent to be released for periods of time during the day or night to:
  - (A) work; or
  - (B) conduct a business or other self-employed occupation.

The Court may further order any part or all of the earnings of a parent during a sentence of periodic imprisonment paid to the Clerk of the Circuit Court or to the parent having custody or to the guardian having custody of the children of the sentenced parent for the support of said children until further order of the Court.

If there is a unity of interest and ownership sufficient to render no financial separation between a non-custodial parent and another person or persons or business entity, the court may pierce the ownership veil of the person, persons, or business entity to discover assets of the non-custodial parent held in the name of that person, those persons, or that business entity. The following circumstances are sufficient to authorize a court to order discovery of the assets of a person, persons, or business entity and to compel the application of any discovered assets toward payment on the judgment for support:

- (1) the non-custodial parent and the person, persons, or business entity maintain records together.
- (2) the non-custodial parent and the person, persons, or business entity fail to maintain an arms length relationship between themselves with regard to any assets.
- (3) the non-custodial parent transfers assets to the person, persons, or business entity with the intent to perpetrate a fraud on the custodial parent.

With respect to assets which are real property, no order entered under this paragraph shall affect the rights of bona fide purchasers, mortgagees, judgment creditors, or other lien holders who acquire their interests in the property prior to the time a notice of lis pendens pursuant to the Code of Civil Procedure or a copy of the order is placed of record in the office of the recorder of deeds for the county in which the real property is located.

The court may also order in cases where the parent is 90 days or more delinquent in payment of support or has been adjudicated in arrears in an amount equal to 90 days obligation or more, that the parent's Illinois driving privileges be suspended until the court determines that the parent is in compliance with the order of support. The court may also order that the parent be issued a family financial responsibility driving permit that would allow limited driving privileges for employment and medical purposes in accordance with Section 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit court shall certify the order suspending the driving privileges of the parent or granting the issuance of a family financial responsibility driving permit to the Secretary of State on forms prescribed by the Secretary. Upon receipt of the authenticated documents, the Secretary of State shall suspend the parent's driving privileges until further order of the court and shall, if ordered by the court, subject to the provisions of Section 7-702.1 of the Illinois Vehicle Code, issue a family financial responsibility driving permit to the parent.

In addition to the penalties or punishment that may be imposed under this Section, any person whose conduct constitutes a violation of Section 15 of the Non-Support Punishment Act may be prosecuted under that Act, and a person convicted under that Act may be sentenced in accordance with that Act. The sentence may include but need not be limited to a requirement that the person perform community service under Section 50 of that Act or participate in a work alternative program under Section 50 of that Act. A person may not be required to participate in a work alternative program under Section 50 of that Act if the person is currently participating in a work program pursuant to Section 505.1 of this Act.

A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure. An order for support entered or modified on or after January 1, 2006 shall contain a statement that a support obligation required under the order, or any portion of

a support obligation required under the order, that becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure. Failure to include the statement in the order for support does not affect the validity of the order or the accrual of interest as provided in this Section.

(c) A one-time charge of 20% is imposable upon the amount of past-due child support owed on July 1, 1988 which has accrued under a support order entered by the court. The charge shall be imposed in accordance with the provisions of Section 10-21 of the Illinois Public Aid Code and shall be enforced by the court upon petition.

(d) Any new or existing support order entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support thereunder, each such judgment to be in the amount of each payment or installment of support and each such judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order. Each such judgment shall have the full force, effect and attributes of any other judgment of this State, including the ability to be enforced. A lien arises by operation of law against the real and personal property of the noncustodial parent for each installment of overdue support owed by the noncustodial parent.

(e) When child support is to be paid through the clerk of the court in a county of 1,000,000 inhabitants or less, the order shall direct the obligor to pay to the clerk, in addition to the child support payments, all fees imposed by the county board under paragraph (3) of subsection (u) of Section 27.1 of the Clerks of Courts Act. Unless paid in cash or pursuant to an order for withholding, the payment of the fee shall be by a separate instrument from the support payment and shall be made to the order of the Clerk.

(f) All orders for support, when entered or modified, shall include a provision requiring the obligor to notify the court and, in cases in which a party is receiving child and spouse services under Article X of the Illinois Public Aid Code, the Illinois Department of Public Aid, within 7 days, (i) of the name and address of any new employer of the obligor, (ii) whether the obligor has access to health insurance coverage through the employer or other group coverage and, if so, the policy name and number and the names of persons covered under the policy, and (iii) of any new residential or mailing address or telephone number of the non-custodial parent. In any subsequent action to enforce a support order, upon a sufficient showing that a diligent effort has been made to ascertain the location of the non-custodial parent, service of process or provision of notice necessary in the case may be made at the last known address of the noncustodial parent in any manner expressly provided by the Code of Civil Procedure or this Act, which service shall be sufficient for purposes of due process.

(g) An order for support shall include a date on which the current support obligation terminates. The termination date shall be no earlier than the date on which the child covered by the order will attain the age of 18. However, if the child will not graduate from high school until after attaining the age of 18, then the termination date shall be no earlier than the earlier of the date on which the child's high school graduation will occur or the date on which the child will attain the age of 19. The order for support shall state that the termination date does not apply to any arrearage that may remain unpaid on that date. Nothing in this subsection shall be construed to prevent the court from modifying the order or terminating the order in the event the child is otherwise emancipated.

(g-5) If there is an unpaid arrearage or delinquency (as those terms are defined in the Income Withholding for Support Act) equal to at least one month's support obligation on the termination date stated in the order for support or, if there is no termination date stated in the order, on the date the child attains the age of majority or is otherwise emancipated, the periodic amount required to be paid for current support of that child immediately prior to that date shall automatically continue to be an obligation, not as current support but as periodic payment toward satisfaction of the unpaid arrearage or delinquency. That periodic payment shall be in addition to any periodic payment previously required for satisfaction of the arrearage or delinquency. The total periodic amount to be paid toward satisfaction of the arrearage or delinquency may be enforced and collected by any method provided by law for enforcement and collection of child support, including but not limited to income withholding under the Income Withholding for Support Act. Each order for support entered or modified on or after the effective date of this amendatory Act of the 93rd General Assembly must contain a statement notifying the parties of the requirements of this subsection. Failure to include the statement in the order for support does not affect the validity of the order or the operation of the provisions of this subsection with regard to the order. This subsection shall not be construed to prevent or affect the establishment or modification of an order

for support of a minor child or the establishment or modification of an order for support of a non minor child or educational expenses under Section 513 of this Act.

(h) An order entered under this Section shall include a provision requiring the obligor to report to the obligee and to the clerk of court within 10 days each time the obligor obtains new employment, and each time the obligor's employment is terminated for any reason. The report shall be in writing and shall, in the case of new employment, include the name and address of the new employer. Failure to report new employment or the termination of current employment, if coupled with nonpayment of support for a period in excess of 60 days, is indirect criminal contempt. For any obligor 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. An order entered under this Section shall also include a provision requiring the obligor and obligee parents to advise each other of a change in residence within 5 days of the change except when the court finds that the physical, mental, or emotional health of a party or that of a child, or both, would be seriously endangered by disclosure of the party's address.

(i) The court does not lose the powers of contempt, driver's license suspension, or other child support enforcement mechanisms, including, but not limited to, criminal prosecution as set forth in this Act, upon the emancipation of the minor child or children.

**(750 ILCS 5/505.1)**

**Sec. 505.1.**

(a) Whenever it is determined in a proceeding to establish or enforce a child support or maintenance obligation that the person owing a duty of support is unemployed, the court may order the person to seek employment and report periodically to the court with a diary, listing or other memorandum of his or her efforts in accordance with such order. Additionally, the court may order the unemployed person to report to the Department of Employment Security for job search services or to make application with the local Job Training Partnership Act provider for participation in job search, training or work programs and where the duty of support is owed to a child receiving child support enforcement services under Article X of the Illinois Public Aid Code, as amended, the court may order the unemployed person to report to the Illinois Department of Public Aid for participation in job search, training or work programs established under Section 9-6 and Article IXA of that Code.

(b) Whenever it is determined that a person owes past-due support for a child or for a child and the parent with whom the child is living, and the child is receiving assistance under the Illinois Public Aid Code, the court shall order at the request of the Illinois Department of Public Aid:

(1) that the person pay the past-due support in accordance with a plan approved by the court; or

(2) if the person owing past-due support is unemployed, is subject to such a plan, and is not incapacitated, that the person participate in such job search, training, or work programs established under Section 9-6 and Article IXA of the Illinois Public Aid Code as the court deems appropriate.

**(750 ILCS 5/505.2)**

**Sec. 505.2. Health insurance.**

(a) Definitions. As used in this Section:

(1) "Obligee" means the individual to whom the duty of support is owed or the individual's legal representative.

(2) "Obligor" means the individual who owes a duty of support pursuant to an order for support.

(3) "Public office" means any elected official or any State or local agency which is or may become responsible by law for enforcement of, or which is or may become authorized to enforce, an order for support, including, but not limited to: the Attorney General, the Illinois Department of Public Aid, the Illinois Department of Human Services, the Illinois Department of Children and Family Services, and the various State's Attorneys, Clerks of the Circuit Court and supervisors of general assistance.

(4) "Child" shall have the meaning ascribed to it in Section 505.

(b) Order.

(1) Whenever the court establishes, modifies or

enforces an order for child support or for child support and maintenance the court shall include in the order a provision for the health care coverage of the child which shall, upon request of the obligee or Public Office, require that any child covered by the order be named as a beneficiary of any health insurance plan that is available to the obligor through an employer or labor union or trade union. If the court finds that such a plan is not available to the obligor, or that the plan is not accessible to the obligee, the court may, upon request of the obligee or Public Office, order the obligor to name the child covered by the order as a beneficiary of any health insurance plan that is available to the obligor on a group basis, or as a beneficiary of an independent health insurance plan to be obtained by the obligor, after considering the following factors:

(A) the medical needs of the child;

(B) the availability of a plan to meet those needs; and

(C) the cost of such a plan to the obligor.

(2) If the employer or labor union or trade union offers more than one plan, the order shall require the obligor to name the child as a beneficiary of the plan in which the obligor is enrolled.

(3) Nothing in this Section shall be construed to limit the authority of the court to establish or modify a support order to provide for payment of expenses, including deductibles, copayments and any other health expenses, which are in addition to expenses covered by an insurance plan of which a child is ordered to be named a beneficiary pursuant to this Section.

(c) Implementation and enforcement.

(1) When the court order requires that a minor child be named as a beneficiary of a health insurance plan, other than a health insurance plan available through an employer or labor union or trade union, the obligor shall provide written proof to the obligee or Public Office that the required insurance has been obtained, or that application for insurability has been made, within 30 days of receiving notice of the court order. Unless the obligor was present in court when the order was issued, notice of the order shall be given pursuant to Illinois Supreme Court Rules. If an obligor fails to provide the required proof, he may be held in contempt of court.

(2) When the court requires that a child be named as a beneficiary of a health insurance plan available through an employer or labor union or trade union, the court's order shall be implemented in accordance with the Income Withholding for Support Act.

(d) Failure to maintain insurance. The dollar amount of the premiums for court-ordered health insurance, or that portion of the premiums for which the obligor is responsible in the case of insurance provided under a group health insurance plan through an employer or labor union or trade union where the employer or labor union or trade union pays a portion of the premiums, shall be considered an additional child support obligation owed by the obligor. Whenever the obligor fails to provide or maintain health insurance pursuant to an order for support, the obligor shall be liable to the obligee for the dollar amount of the premiums which were not paid, and shall also be liable for all medical expenses incurred by the child which would have been paid or reimbursed by the health insurance which the obligor was ordered to provide or maintain. In addition, the obligee may petition the court to modify the order based solely on the obligor's failure to pay the premiums for court-ordered health insurance.

(e) Authorization for payment. The signature of the obligee is a valid authorization to the insurer to process a claim for payment under the insurance plan to the provider of the health care services or to the obligee.

(f) Disclosure of information. The obligor's employer or labor union or trade union shall disclose to the obligee or Public Office, upon request, information concerning any dependent coverage plans which would be made available to a new employee or labor union member or trade union member. The employer or labor union or trade union shall disclose such information whether or not a court order for medical support has been entered.

(g) Employer obligations. If a parent is required by an order for support to provide coverage for a child's health care expenses and if that coverage is available to the parent through an employer who does business in this State, the employer must do all of the following upon receipt of a copy of the order of support or order for withholding:

(1) The employer shall, upon the parent's request,

permit the parent to include in that coverage a child who is otherwise eligible for that coverage, without regard to any enrollment season restrictions that might otherwise be applicable as to the time period within which the child may be added to that coverage.

(2) If the parent has health care coverage through the employer but fails to apply for coverage of the child, the employer shall include the child in the parent's coverage upon application by the child's other parent or the Illinois Department of Public Aid.

(3) The employer may not eliminate any child from the parent's health care coverage unless the employee is no longer employed by the employer and no longer covered under the employer's group health plan or unless the employer is provided with satisfactory written evidence of either of the following:

(A) The order for support is no longer in effect.

(B) The child is or will be included in a comparable health care plan obtained by the parent under such order that is currently in effect or will take effect no later than the date the prior coverage is terminated.

The employer may eliminate a child from a parent's health care plan obtained by the parent under such order if the employer has eliminated dependent health care coverage for all of its employees.

### **(750 ILCS 5/505.3)**

#### **Sec. 505.3. Information to State Case Registry.**

(a) In this Section:

"Order for support", "obligor", "obligee", and "business day" are defined as set forth in the Income Withholding for Support Act.

"State Case Registry" means the State Case Registry established under Section 10-27 of the Illinois Public Aid Code.

(b) Each order for support entered or modified by the circuit court under this Act shall require that the obligor and obligee (i) file with the clerk of the circuit court the information required by this Section (and any other information required under Title IV, Part D of the Social Security Act or by the federal Department of Health and Human Services) at the time of entry or modification of the order for support and (ii) file updated information with the clerk within 5 business days of any change. Failure of the obligor or obligee to file or update the required information shall be punishable as in cases of contempt. The failure shall not prevent the court from entering or modifying the order for support, however.

(c) The obligor shall file the following information: the obligor's name, date of birth, social security number, and mailing address.

If either the obligor or the obligee receives child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, the obligor shall also file the following information: the obligor's telephone number, driver's license number, and residential address (if different from the obligor's mailing address), and the name, address, and telephone number of the obligor's employer or employers.

(d) The obligee shall file the following information:

(1) The names of the obligee and the child or children covered by the order for support.

(2) The dates of birth of the obligee and the child or children covered by the order for support.

(3) The social security numbers of the obligee and the child or children covered by the order for support.

(4) The obligee's mailing address.

(e) In cases in which the obligee receives child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, the order for support shall (i) require that the obligee file the information required under subsection (d) with the Illinois Department of Public Aid for inclusion in the State Case Registry, rather than file the information with the clerk, and (ii) require that the obligee include the following additional information:

(1) The obligee's telephone and driver's license numbers.

(2) The obligee's residential address, if different from the obligee's mailing address.

(3) The name, address, and telephone number of the

obligee's employer or employers.

The order for support shall also require that the obligee update the information filed with the Illinois Department of Public Aid within 5 business days of any change.

(f) The clerk shall provide the information filed under this Section, together with the court docket number and county in which the order for support was entered, to the State Case Registry within 5 business days after receipt of the information.

(g) In a case in which a party is receiving child support enforcement services under Article X of the Illinois Public Aid Code, the clerk shall provide the following additional information to the State Case Registry within 5 business days after entry or modification of an order for support or request from the Illinois Department of Public Aid:

(1) The amount of monthly or other periodic support owed under the order for support and other amounts, including arrearage, interest, or late payment penalties and fees, due or overdue under the order.

(2) Any such amounts that have been received by the clerk, and the distribution of those amounts by the clerk.

(h) Information filed by the obligor and obligee under this Section that is not specifically required to be included in the body of an order for support under other laws is not a public record and shall be treated as confidential and subject to disclosure only in accordance with the provisions of this Section, Section 10-27 of the Illinois Public Aid Code, and Title IV, Part D of the Social Security Act.

**(750 ILCS 5/506)**

**Sec. 506. Representation of child.**

(a) Duties. In any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, and subject to the terms or specifications the court determines, appoint an attorney to serve in one of the following capacities:

(1) as an attorney to represent the child;

(2) as a guardian ad litem to address issues the court delineates;

(3) as a child's representative whose duty shall be

to advocate what the representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child's representative shall have the same power and authority to take part in the conduct of the litigation as does an attorney for a party and shall possess all the powers of investigation and recommendation as does a guardian ad litem. The child's representative shall consider, but not be bound by, the expressed wishes of the child. A child's representative shall have received training in child advocacy or shall possess such experience as determined to be equivalent to such training by the chief judge of the circuit where the child's representative has been appointed. The child's representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child's representative shall not be called as a witness regarding the issues set forth in this subsection.

During the proceedings the court may appoint an additional attorney to serve in another of the capacities described in subdivisions (a)(1), (a)(2), or (a)(3) on its own motion or that of a party only for good cause shown and when the reasons for the additional appointment are set forth in specific findings.

(b) Fees and costs. The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian ad litem, or child's representative is appointed, and thereafter as necessary. Such orders shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate. The court may not order payment by the Illinois Department of Public Aid in cases in which the Department is providing child support enforcement services under Article X of the Illinois Public Aid Code. Unless otherwise ordered by the court at the time fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child's representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy under 11 U.S.C.A. 523. The provisions of Sections 501 and 508 of this Act shall apply to fees and costs for attorneys appointed under this Section.

**(750 ILCS 5/507)**

## **Sec. 507. Payment of maintenance or support to court.**

(a) In actions instituted under this Act, the court shall order that maintenance and support payments be made to the clerk of court as trustee for remittance to the person entitled to receive the payments. However, the court in its discretion may direct otherwise where circumstances so warrant.

(b) The clerk of court shall maintain records listing the amount of payments, the date payments are required to be made and the names and addresses of the parties affected by the order. For those cases in which support is payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid by order of the court or upon notification of the Illinois Department of Public Aid, and the Illinois Department of Public Aid collects support by assignment, offset, withholding, deduction or other process permitted by law, the Illinois Department shall notify the clerk of the date and amount of such collection. Upon notification, the clerk shall record the collection on the payment record for the case.

(c) The parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order.

(d) The provisions of this Section shall not apply to cases that come under the provisions of Sections 709 through 712.

(e) To the extent the provisions of this Section are inconsistent with the requirements pertaining to the State Disbursement Unit under Section 507.1 of this Act and Section 10 26 of the Illinois Public Aid Code, the requirements pertaining to the State Disbursement Unit shall apply.

### **(750 ILCS 5/507.1)**

#### **Sec. 507.1. Payment of Support to State Disbursement Unit.**

(a) As used in this Section:

"Order for support", "obligor", "obligee", and "payor" mean those terms as defined in the Income Withholding for Support Act, except that "order for support" shall not mean orders providing for spousal maintenance under which there is no child support obligation.

(b) Notwithstanding any other provision of this Act to the contrary, each order for support entered or modified on or after October 1, 1999 shall require that support payments be made to the State Disbursement Unit established under Section 10 26 of the Illinois Public Aid Code if:

(1) a party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(2) no party to the order is receiving child support enforcement services, but the support payments are made through income withholding.

(c) Support payments shall be made to the State Disbursement Unit if:

(1) the order for support was entered before October 1, 1999, and a party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(2) no party to the order is receiving child support enforcement services, and the support payments are being made through income withholding.

(c-5) If no party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code, and the support payments are not made through income withholding, then support payments shall be made as directed by the order for support.

(c-10) At any time, and notwithstanding the existence of an order directing payments to be made elsewhere, the Department of Public Aid may provide notice to the obligor and, where applicable, to the obligor's payor:

(1) to make support payments to the State Disbursement Unit if:

(A) a party to the order for support is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(B) no party to the order for support is receiving child support enforcement services under Article X of the Illinois Public Aid Code, but the support payments are made through income withholding; or

(2) to make support payments to the State

Disbursement Unit of another state upon request of another state's Title IV-D child support enforcement agency, in accordance with the requirements of Title IV, Part D of the Social Security Act and regulations promulgated under that Part D.

The Department of Public Aid shall provide a copy of the notice to the obligee and to the clerk of the circuit court.

(c-15) Within 15 days after the effective date of this amendatory Act of the 91st General Assembly, the clerk of the circuit court shall provide written notice to the obligor to make payments directly to the clerk of the circuit court if no party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code, the support payments are not made through income withholding, and the order for support requires support payments to be made directly to the clerk of the circuit court. The clerk shall provide a copy of the notice to the obligee.

(c-20) If the State Disbursement Unit receives a support payment that was not appropriately made to the Unit under this Section, the Unit shall immediately return the payment to the sender, including, if possible, instructions detailing where to send the support payment.

(d) The notices under subsections (c-10) and (c-15) may be sent by ordinary mail, certified mail, return receipt requested, facsimile transmission, or other electronic process, or may be served upon the obligor or payor using any method provided by law for service of a summons.

### **(750 ILCS 5/508)**

#### **Sec. 508. Attorney's Fees; Client's Rights and Responsibilities Respecting Fees and Costs.**

(a) The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees. Interim attorney's fees and costs may be awarded from the opposing party, in accordance with subsection (c-1) of Section 501. At the conclusion of the case, contribution to attorney's fees and costs may be awarded from the opposing party in accordance with subsection (j) of Section 503. Fees and costs may be awarded to counsel from a former client in accordance with subsection (c) of this Section. Awards may be made in connection with the following:

- (1) The maintenance or defense of any proceeding under this Act.
- (2) The enforcement or modification of any order or judgment under this Act.
- (3) The defense of an appeal of any order or judgment under this Act, including the defense of appeals of post-judgment orders.
  - (3.1) The prosecution of any claim on appeal (if the prosecuting party has substantially prevailed).
- (4) The maintenance or defense of a petition brought under Section 2-1401 of the Code of Civil Procedure seeking relief from a final order or judgment under this Act.
- (5) The costs and legal services of an attorney rendered in preparation of the commencement of the proceeding brought under this Act.
- (6) Ancillary litigation incident to, or reasonably connected with, a proceeding under this Act.

The court may order that the award of attorney's fees and costs (including an interim or contribution award) shall be paid directly to the attorney, who may enforce the order in his or her name, or that it shall be paid to the appropriate party. Judgment may be entered and enforcement had accordingly. Except as otherwise provided in subdivision (e)(1) of this Section, subsection (c) of this Section is exclusive as to the right of any counsel (or former counsel) of record to petition a court for an award and judgment for final fees and costs during the pendency of a proceeding under this Act.

(b) In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party. If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence. If at any time a court finds that a hearing under this Section was precipitated or conducted for any improper purpose, the court shall allocate fees and costs of all parties for the hearing to the party or counsel found to have acted improperly. Improper purposes include, but are not limited to, harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation.

(c) Final hearings for attorney's fees and costs against an attorney's own client, pursuant to a Petition for Setting Final Fees and Costs of either a counsel or a client, shall be governed by the following:

(1) No petition of a counsel of record may be filed

against a client unless the filing counsel previously has been granted leave to withdraw as counsel of record or has filed a motion for leave to withdraw as counsel. On receipt of a petition of a client under this subsection (c), the counsel of record shall promptly file a motion for leave to withdraw as counsel. If the client and the counsel of record agree, however, a hearing on the motion for leave to withdraw as counsel filed pursuant to this subdivision (c)(1) may be deferred until completion of any alternative dispute resolution procedure under subdivision (c)(4). As to any Petition for Setting Final Fees and Costs against a client or counsel over whom the court has not obtained jurisdiction, a separate summons shall issue. Whenever a separate summons is not required, original notice as to a Petition for Setting Final Fees and Costs may be given, and documents served, in accordance with Illinois Supreme Court Rules 11 and 12.

(2) No final hearing under this subsection (c) is

permitted unless: (i) the counsel and the client had entered into a written engagement agreement at the time the client retained the counsel (or reasonably soon thereafter) and the agreement meets the requirements of subsection (f); (ii) the written engagement agreement is attached to an affidavit of counsel that is filed with the petition or with the counsel's response to a client's petition; (iii) judgment in any contribution hearing on behalf of the client has been entered or the right to a contribution hearing under subsection (j) of Section 503 has been waived; (iv) the counsel has withdrawn as counsel of record; and (v) the petition seeks adjudication of all unresolved claims for fees and costs between the counsel and the client. Irrespective of a Petition for Setting Final Fees and Costs being heard in conjunction with an original proceeding under this Act, the relief requested under a Petition for Setting Final Fees and Costs constitutes a distinct cause of action. A pending but undetermined Petition for Setting Final Fees and Costs shall not affect appealability of any judgment or other adjudication in the original proceeding.

(3) The determination of reasonable attorney's fees

and costs either under this subsection (c), whether initiated by a counsel or a client, or in an independent proceeding for services within the scope of subdivisions (1) through (5) of subsection (a), is within the sound discretion of the trial court. The court shall first consider the written engagement agreement and, if the court finds that the former client and the filing counsel, pursuant to their written engagement agreement, entered into a contract which meets applicable requirements of court rules and addresses all material terms, then the contract shall be enforceable in accordance with its terms, subject to the further requirements of this subdivision (c)(3). Before ordering enforcement, however, the court shall consider the performance pursuant to the contract. Any amount awarded by the court must be found to be fair compensation for the services, pursuant to the contract, that the court finds were reasonable and necessary. Quantum meruit principles shall govern any award for legal services performed that is not based on the terms of the written engagement agreement (except that, if a court expressly finds in a particular case that aggregate billings to a client were unconscionably excessive, the court in its discretion may reduce the award otherwise determined appropriate or deny fees altogether).

(4) No final hearing under this subsection (c) is

permitted unless any controversy over fees and costs (that is not otherwise subject to some form of alternative dispute resolution) has first been submitted to mediation, arbitration, or any other court approved alternative dispute resolution procedure, except as follows:

(A) In any circuit court for a single county

with a population in excess of 1,000,000, the requirement of the controversy being submitted to an alternative dispute resolution procedure is mandatory unless the client and the counsel both affirmatively opt out of such procedures; or

(B) In any other circuit court, the requirement

of the controversy being submitted to an alternative dispute resolution procedure is mandatory only if neither the client nor the counsel affirmatively opts out of such procedures.

After completion of any such procedure (or after one

or both sides has opted out of such procedures), if the dispute is unresolved, any pending motion for leave to withdraw as counsel shall be promptly granted and a final hearing under this subsection (c) shall be expeditiously set and completed.

(5) A petition (or a praecipe for fee hearing

without the petition) shall be filed no later than the end of the period in which it is permissible to file a motion pursuant to Section 2-1203 of the Code of Civil Procedure. A praecipe for fee

hearing shall be dismissed if a Petition for Setting Final Fees and Costs is not filed within 60 days after the filing of the praecipe. A counsel who becomes a party by filing a Petition for Setting Final Fees and Costs, or as a result of the client filing a Petition for Setting Final Fees and Costs, shall not be entitled to exercise the right to a substitution of a judge without cause under subdivision (a)(2) of Section 2-1001 of the Code of Civil Procedure.

(d) A consent judgment, in favor of a current counsel of record against his or her own client for a specific amount in a marital settlement agreement, dissolution judgment, or any other instrument involving the other litigant, is prohibited. A consent judgment between client and counsel, however, is permissible if it is entered pursuant to a verified petition for entry of consent judgment, supported by an affidavit of the counsel of record that incorporates an itemization of the billing or billings to the client, detailing hourly costs, time spent, and tasks performed, and by an affidavit of the client acknowledging receipt of that documentation, awareness of the right to a hearing, the right to be represented by counsel (other than counsel to whom the consent judgment is in favor), and the right to be present at the time of presentation of the petition, and agreement to the terms of the judgment. The petition may be filed at any time during which it is permissible for counsel of record to file a petition (or a praecipe) for a final fee hearing, except that no such petition for entry of consent judgment may be filed before adjudication (or waiver) of the client's right to contribution under subsection (j) of Section 503 or filed after the filing of a petition (or a praecipe) by counsel of record for a fee hearing under subsection (c) if the petition (or praecipe) remains pending. No consent security arrangement between a client and a counsel of record, pursuant to which assets of a client are collateralized to secure payment of legal fees or costs, is permissible unless approved in advance by the court as being reasonable under the circumstances.

(e) Counsel may pursue an award and judgment against a former client for legal fees and costs in an independent proceeding in the following circumstances:

(1) While a case under this Act still pends, a former counsel may pursue such an award and judgment at any time subsequent to 90 days after the entry of an order granting counsel leave to withdraw; and

(2) After the close of the period during which a petition (or praecipe) may be filed under subdivision (c)(5), if no such petition (or praecipe) for the counsel remains pending, any counsel or former counsel may pursue such an award and judgment, provided the complaint in the independent proceeding is filed within one year after the close of the foregoing period.

In an independent proceeding, the prior applicability of this Section shall in no way be deemed to have diminished any other right of any counsel (or former counsel) to pursue an award and judgment for legal fees and costs on the basis of remedies that may otherwise exist under applicable law. In an independent proceeding under subdivision (e)(1) in which the former counsel had represented a former client in a dissolution case that still pends, the former client may bring in his or her spouse as a third-party defendant, provided on or before the final date for filing a petition (or praecipe) under subsection (c), the party files an appropriate third-party complaint under Section 2-406 of the Code of Civil Procedure. In any such case, any judgment later obtained by the former counsel shall be against both spouses or ex-spouses, jointly and severally (except that, if a hearing under subsection (j) of Section 503 has already been concluded and the court hearing the contribution issue has imposed a percentage allocation between the parties as to fees and costs otherwise being adjudicated in the independent proceeding, the allocation shall be applied without deviation by the court in the independent proceeding and a separate judgment shall be entered against each spouse for the appropriate amount). After the period for the commencement of a proceeding under subsection (c), the provisions of this Section (other than the standard set forth in subdivision (c)(3) and the terms respecting consent security arrangements in subsection (d) of this Section 508) shall be inapplicable.

(f) Unless the Supreme Court by rule addresses the matters set out in this subsection (f), a written engagement agreement within the scope of subdivision (c)(2) shall have appended to it verbatim the following Statement:

"STATEMENT OF CLIENT'S RIGHTS AND RESPONSIBILITIES

(1) WRITTEN ENGAGEMENT AGREEMENT. The written engagement agreement, prepared by the counsel, shall clearly address the objectives of representation and detail the fee arrangement, including all material terms. If fees are to be based on criteria apart from, or in addition to, hourly rates, such criteria (e.g., unique time demands and/or utilization of unique expertise) shall be delineated. The client shall receive a copy of the written engagement agreement and any additional clarification requested and is advised not to sign any such agreement which the client finds to be unsatisfactory or does not understand.

(2) REPRESENTATION. Representation will commence upon the signing of the written engagement agreement. The counsel will provide competent representation, which requires legal knowledge, skill, thoroughness and preparation to handle those matters set forth in the written engagement agreement. Once employed, the counsel will act with reasonable diligence and promptness, as well as use his best efforts on behalf of the client, but he cannot guarantee results. The counsel will abide by the client's decision concerning the objectives of representation, including whether or not to accept an offer of settlement, and will endeavor to explain any matter to the extent reasonably necessary to permit the client to make informed decisions regarding representation. During the course of representation and afterwards, the counsel may not use or reveal a client's confidence or secrets, except as required or permitted by law.

(3) COMMUNICATION. The counsel will keep the client reasonably informed about the status of representation and will promptly respond to reasonable requests for information, including any reasonable request for an estimate respecting future costs of the representation or an appropriate portion of it. The client shall be truthful in all discussions with the counsel and provide all information or documentation required to enable the counsel to provide competent representation. During representation, the client is entitled to receive all pleadings and substantive documents prepared on behalf of the client and every document received from any other counsel of record. At the end of the representation and on written request from the client, the counsel will return to the client all original documents and exhibits. In the event that the counsel withdraws from representation, or is discharged by the client, the counsel will turn over to the substituting counsel (or, if no substitutions, to the client) all original documents and exhibits together with complete copies of all pleadings and discovery within thirty (30) days of the counsel's withdrawal or discharge.

(4) ETHICAL CONDUCT. The counsel cannot be required to engage in conduct which is illegal, unethical, or fraudulent. In matters involving minor children, the counsel may refuse to engage in conduct which, in the counsel's professional judgment, would be contrary to the best interest of the client's minor child or children. A counsel who cannot ethically abide by his client's directions shall be allowed to withdraw from representation.

(5) FEES. The counsel's fee for services may not be contingent upon the securing of a dissolution of marriage, upon obtaining custody, or be based upon the amount of maintenance, child support, or property settlement received, except as specifically permitted under Supreme Court rules. The counsel may not require a non refundable retainer fee, but must remit back any overpayment at the end of the representation. The counsel may enter into a consensual security arrangement with the client whereby assets of the client are pledged to secure payment of legal fees or costs, but only if the counsel first obtains approval of the Court. The counsel will prepare and provide the client with an itemized billing statement detailing hourly rates (and/or other criteria), time spent, tasks performed, and costs incurred on a regular basis, at least quarterly. The client should review each billing statement promptly and address any objection or error in a timely manner. The client will not be billed for time spent to explain or correct a billing statement. If an appropriately detailed written estimate is submitted to a client as to future costs for a counsel's representation or a portion of the contemplated services (i.e., relative to specific steps recommended by the counsel in the estimate) and, without objection from the client, the counsel then performs the contemplated services, all such services are presumptively reasonable and necessary, as well as to be deemed pursuant to the client's direction. In an appropriate case, the client may pursue contribution to his or her fees and costs from the other party.

(6) DISPUTES. The counsel-client relationship is regulated by the Illinois Rules of Professional Conduct (Article VIII of the Illinois Supreme Court Rules), and any dispute shall be reviewed under the terms of such Rules."

(g) The changes to this Section 508 made by this amendatory Act of 1996 apply to cases pending on or after June 1, 1997, except as follows:

(1) Subdivisions (c)(1) and (c)(2) of this Section

508, as well as provisions of subdivision (c)(3) of this Section 508 pertaining to written engagement agreements, apply only to cases filed on or after June 1, 1997.

(2) The following do not apply in the case of a hearing under this Section that began before June 1, 1997:

(A) Subsection (c-1) of Section 501.

(B) Subsection (j) of Section 503.

(C) The changes to this Section 508 made by this amendatory Act of 1996 pertaining to the final setting of fees.

**(750 ILCS 5/509)**

**Sec. 509. Independence of Provisions of Judgment or Temporary Order.**

If a party fails to comply with a provision of a judgment, order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

**(750 ILCS 5/510)**

**Sec. 510. Modification and termination of provisions for maintenance, support, educational expenses, and property disposition.**

(a) Except as otherwise provided in paragraph (f) of Section 502 and in subsection (b), clause (3) of Section 505.2, the provisions of any judgment respecting maintenance or support may be modified only as to installments accruing subsequent to due notice by the moving party of the filing of the motion for modification. An order for child support may be modified as follows:

(1) upon a showing of a substantial change in circumstances; and

(2) without the necessity of showing a substantial change in circumstances, as follows:

(A) upon a showing of an inconsistency of at

least 20%, but no less than \$10 per month, between the amount of the existing order and the amount of child support that results from application of the guidelines specified in Section 505 of this Act unless the inconsistency is due to the fact that the amount of the existing order resulted from a deviation from the guideline amount and there has not been a change in the circumstances that resulted in that deviation; or

(B) Upon a showing of a need to provide for the health care needs of the child under the order through health insurance or other means. In no event shall the eligibility for or receipt of medical assistance be considered to meet the need to provide for the child's health care needs.

The provisions of subparagraph (a)(2)(A) shall apply only in cases in which a party is receiving child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, and only when at least 36 months have elapsed since the order for child support was entered or last modified.

(a-5) An order for maintenance may be modified or terminated only upon a showing of a substantial change in circumstances. In all such proceedings, as well as in proceedings in which maintenance is being reviewed, the court shall consider the applicable factors set forth in subsection (a) of Section 504 and the following factors:

(1) any change in the employment status of either party and whether the change has been made in good faith;

(2) the efforts, if any, made by the party receiving maintenance to become self-supporting, and the reasonableness of the efforts where they are appropriate;

(3) any impairment of the present and future earning capacity of either party;

(4) the tax consequences of the maintenance payments upon the respective economic circumstances of the parties;

(5) the duration of the maintenance payments previously paid (and remaining to be paid) relative to the length of the marriage;

(6) the property, including retirement benefits, awarded to each party under the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage and the present status of the property;

(7) the increase or decrease in each party's income since the prior judgment or order from which a review, modification, or termination is being sought;

(8) the property acquired and currently owned by each party after the entry of the judgment of dissolution of marriage, judgment of legal separation, or judgment of declaration of invalidity of marriage; and

(9) any other factor that the court expressly finds to be just and equitable.

(b) The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State.

(c) Unless otherwise agreed by the parties in a written agreement set forth in the judgment or otherwise approved by the court, the obligation to pay future maintenance is terminated upon the death of either party, or the remarriage of the party receiving maintenance, or if the party receiving maintenance cohabits with another person on a resident, continuing conjugal basis.

(d) Unless otherwise provided in this Act, or as agreed in writing or expressly provided in the judgment, provisions for the support of a child are terminated by emancipation of the child, or if the child has attained the age of 18 and is still attending high school, provisions for the support of the child are terminated upon the date that the child graduates from high school or the date the child attains the age of 19, whichever is earlier, but not by the death of a parent obligated to support or educate the child. An existing obligation to pay for support or educational expenses, or both, is not terminated by the death of a parent. When a parent obligated to pay support or educational expenses, or both, dies, the amount of support or educational expenses, or both, may be enforced, modified, revoked or commuted to a lump sum payment, as equity may require, and that determination may be provided for at the time of the dissolution of the marriage or thereafter.

(e) The right to petition for support or educational expenses, or both, under Sections 505 and 513 is not extinguished by the death of a parent. Upon a petition filed before or after a parent's death, the court may award sums of money out of the decedent's estate for the child's support or educational expenses, or both, as equity may require. The time within which a claim may be filed against the estate of a decedent under Sections 505 and 513 and subsection (d) and this subsection shall be governed by the provisions of the Probate Act of 1975, as a barrable, noncontingent claim.

(f) A petition to modify or terminate child support, custody, or visitation shall not delay any child support enforcement litigation or supplementary proceeding on behalf of the obligee, including, but not limited to, a petition for a rule to show cause, for non wage garnishment, or for a restraining order.

**(750 ILCS 5/511)**

**Sec. 511. Procedure.**

A judgment of dissolution or of legal separation or of declaration of invalidity of marriage may be enforced or modified by order of court pursuant to petition.

(a) Any judgment entered within this State may be enforced or modified in the judicial circuit wherein such judgment was entered or last modified by the filing of a petition with notice mailed to the respondent at his last known address, or by the issuance of summons to the respondent. If neither party continues to reside in the county wherein such judgment was entered or last modified, the court on the motion of either party or on its own motion may transfer a post-judgment proceeding, including a proceeding under the Income Withholding for Support Act, to another county or judicial circuit, as appropriate, where either party resides. If the post-judgment proceeding is with respect to maintenance or support, any such transfer shall be to the county or judicial circuit wherein the recipient or proposed recipient of such maintenance or support resides.

(b) In any post-judgment proceeding to enforce or modify in one judicial circuit the judgment of another judicial circuit of this State, the moving party shall commence the proceeding by filing a petition establishing the judgment and attaching a copy of the judgment as a part of the petition. The parties shall continue to be designated as in the original proceeding. Notice of the filing of the petition shall be mailed to the clerk of the court wherein the judgment was entered and last modified in the same manner as notice is mailed when registering a foreign judgment. Summons shall be served as provided by law.

(c) In any post-judgment proceeding to enforce or modify the judgment of another state, the moving party shall commence the proceeding by filing a petition to enroll that judgment, attaching a copy thereof as a part of the petition and proceed as provided for in paragraph (b) hereof.

(d) In any post-judgment proceeding to enforce a judgment or order for payment of maintenance or support, including a proceeding under the Income Withholding for Support Act, where the terms of such judgment or order provide that payments of such maintenance or support are to be made to the clerk of the court and where neither party continues to reside in the county wherein such judgment or order was entered or last modified, the court on the motion of either party or on its own motion may transfer the collection of the maintenance or support to the clerk of

the court in another county or judicial circuit, as appropriate, wherein the recipient of the maintenance or support payments resides.

**(750 ILCS 5/512)**

**Sec. 512. Post-Judgment Venue.**

After 30 days from the entry of a judgment of dissolution of marriage or the last modification thereof, any further proceedings to enforce or modify the judgment shall be as follows:

(a) If the respondent does not then reside within this State, further proceedings shall be had either in the judicial circuit wherein the moving party resides or where the judgment was entered or last modified.

(b) If one or both of the parties then resides in the judicial circuit wherein the judgment was entered or last modified, further proceedings shall be had in the judicial circuit that last exercised jurisdiction in the matter; provided, however, that the court may in its discretion, transfer matters involving a change in child custody to the judicial circuit where the minor or dependent child resides.

(c) If neither party then resides in the judicial circuit wherein the judgment was entered or last modified, further proceedings shall be had in that circuit or in the judicial circuit wherein either party resides or where the respondent is actively employed; provided, however, that the court may, in its discretion, transfer matters involving a change in child custody to the judicial circuit where the minor or dependent child resides.

(d) Objection to venue is waived if not made within such time as the respondent's answer is due. Counter relief shall be heard and determined by the court hearing any matter already pending.

**(750 ILCS 5/513)**

**Sec. 513. Support for Non-minor Children and Educational Expenses.**

(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 the child or children of the parties who have attained majority in the following instances:

(1) 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.

(2) The court may also make provision for the educational expenses of the child or children of the parties, whether of minor or majority age, and an application for educational expenses may be made before or after the child has attained majority, or after the death of either parent. The authority under this Section to make provision for educational expenses extends not only to periods of college education or professional or other training after graduation from high school, but also to any period during which the child of the parties is still attending high school, even though he or she attained the age of 19. The educational expenses may include, but shall not be limited to, room, board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses including medical insurance, dental expenses, and living expenses during the school year and periods of recess, which sums may be ordered payable to the child, to either parent, or to the educational institution, directly or through a special account or trust created for that purpose, as the court sees fit.

If educational expenses are ordered payable, each parent and the child shall sign any consents necessary for the educational institution to provide the supporting parent with access to the child's academic transcripts, records, and grade reports. The consents shall not apply to any non-academic records. Failure to execute the required consent may be a basis for a modification or termination of any order entered under this Section.

The authority under this Section to make provision for educational expenses, except where the child is mentally or physically disabled and not otherwise emancipated, terminates when the child receives a baccalaureate degree.

(b) In making awards under paragraph (1) or (2) of subsection (a), 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 financial resources of both parents.

(2) The standard of living the child would have enjoyed had the marriage not been dissolved.

- (3) The financial resources of the child.
- (4) The child's academic performance.

**(750 ILCS 5/514)**

**Sec. 514. Partition of Real Estate.**

A court having jurisdiction in an action for dissolution of marriage may, upon petition of one of the parties, hear and decide an action for partition subject to the provisions of Article XVII of the Code of Civil Procedure, as now or hereafter amended, except as otherwise provided in this Act.

**(750 ILCS 5/515)**

**Sec. 515. Partition to be Filed in Counties where Real Estate Located.**

A court hearing an action for partition pursuant to Section 514 of this Act may determine and declare the rights, titles and interests of all parties to that action without regard to the location within this State of the land in question. However, if the land in question is located in a county other than that in which the dissolution of marriage action is commenced, notice of the action for partition and a certified copy of the judgment of dissolution of marriage must be filed, by the party filing the petition for partition, in the office of the recorder or registrar of titles in each county, other than that where the action is brought, where any part of the land in question is located.

**(750 ILCS 5/516)**

**Sec. 516. Public Aid collection fee.**

In all cases instituted by the Illinois Department of Public Aid on behalf of a child or spouse, other than one receiving a grant of financial aid under Article IV of The Illinois Public Aid Code, on whose behalf an application has been made and approved for child support enforcement services as provided by Section 10-1 of that Code, the court shall impose a collection fee on the individual who owes a child or spouse support obligation in an amount equal to 10% of the amount so owed as long as such collection is required by federal law, which fee shall be in addition to the support obligation. The imposition of such fee shall be in accordance with provisions of Title IV, Part D, of the Social Security Act and regulations duly promulgated thereunder. The fee shall be payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid and shall continue until child support enforcement services are terminated by that Department.

**(750 ILCS 5/517)**

**Sec. 517. Notice of child support enforcement services.**

The Illinois Department of Public Aid may provide notice at any time to the parties to an action filed under this Act that child support enforcement services are being provided by the Illinois Department under Article X of the Illinois Public Aid Code. The notice shall be sent by regular mail to the party's last known address on file with the clerk of the court or the State Case Registry established under Section 10-27 of the Illinois Public Aid Code. After notice is provided pursuant to this Section, the Illinois Department shall be entitled, as if it were a party, to notice of any further proceedings brought in the case. The Illinois Department shall provide the clerk of the court with copies of the notices sent to the parties. The clerk shall file the copies in the court file.

**PART VI CUSTODY**

**(750 ILCS 5/601)**

**Sec. 601. Jurisdiction; Commencement of Proceeding.**

(a) A court of this State competent to decide child custody matters has jurisdiction to make a child custody determination in original or modification proceedings as provided in Section 201 of the Uniform Child-Custody Jurisdiction and Enforcement Act as adopted by this State.

(b) A child custody proceeding is commenced in the court:

- (1) by a parent, by filing a petition:
  - (i) for dissolution of marriage or legal separation or declaration of invalidity of marriage; or

- (ii) for custody of the child, in the county in which he is permanently resident or found;
- (2) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents; or
- (3) by a stepparent, by filing a petition, if all of the following circumstances are met:
  - (A) the child is at least 12 years old;
  - (B) the custodial parent and stepparent were married for at least 5 years during which the child resided with the parent and stepparent;
  - (C) the custodial parent is deceased or is disabled and cannot perform the duties of a parent to the child;
  - (D) the stepparent provided for the care, control, and welfare to the child prior to the initiation of custody proceedings;
  - (E) the child wishes to live with the stepparent; and
  - (F) it is alleged to be in the best interests and welfare of the child to live with the stepparent as provided in Section 602 of this Act.
- (4) When one of the parents is deceased, by a grandparent who is a parent or stepparent of a deceased parent, by filing a petition, if one or more of the following existed at the time of the parent's death:
  - (A) the surviving parent had been absent from the marital abode for more than one month without the deceased spouse knowing his or her whereabouts;
  - (B) the surviving parent was in State or federal custody; or
  - (C) the surviving parent had: (i) received supervision for or been convicted of any violation of Article 12 of the Criminal Code of 1961 directed towards the deceased parent or the child; or (ii) received supervision or been convicted of violating an order of protection entered under Section 217, 218, or 219 of the Illinois Domestic Violence Act of 1986 for the protection of the deceased parent or the child.
- (c) Notice of a child custody proceeding, including an action for modification of a previous custody order, shall be given to the child's parents, guardian and custodian, who may appear, be heard, and file a responsive pleading. The court, upon showing of good cause, may permit intervention of other interested parties.
- (d) Proceedings for modification of a previous custody order commenced more than 30 days following the entry of a previous custody order must be initiated by serving a written notice and a copy of the petition for modification upon the child's parent, guardian and custodian at least 30 days prior to hearing on the petition. Nothing in this Section shall preclude a party in custody modification proceedings from moving for a temporary order under Section 603 of this Act.
- (e) (Blank).
- (f) The court shall, at the court's discretion or upon the request of any party entitled to petition for custody of the child, appoint a guardian ad litem to represent the best interest of the child for the duration of the custody proceeding or for any modifications of any custody orders entered. Nothing in this Section shall be construed to prevent the court from appointing the same guardian ad litem for 2 or more children that are siblings or half-siblings.

**(750 ILCS 5/601.5)**  
**Sec. 601.5. Training.**

The chief circuit judge or designated presiding judge may approve 3 hours of training for guardian ad litem appointed under Section 601 of this Act, professional personnel appointed under Section 604 of this Act, evaluators appointed under Section 604.5 of this Act, and investigators appointed under Section 605 of this Act. This training shall include a component on the dynamics of domestic violence and its effect on parents and children.

**(750 ILCS 5/602)**  
**Sec. 602. Best Interest of Child.**

(a) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

- (1) the wishes of the child's parent or parents as to his custody;
- (2) the wishes of the child as to his custodian;
- (3) the interaction and interrelationship of the child with his parent or parents, his siblings and any other person who may significantly affect the child's best interest;
- (4) the child's adjustment to his home, school and community;
- (5) the mental and physical health of all individuals involved;
- (6) the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or directed against another person;
- (7) the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, whether directed against the child or directed against another person; and
- (8) the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

In the case of a custody proceeding in which a stepparent has standing under Section 601, it is presumed to be in the best interest of the minor child that the natural parent have the custody of the minor child unless the presumption is rebutted by the stepparent.

(b) The court shall not consider conduct of a present or proposed custodian that does not affect his relationship to the child.

(c) Unless the court finds the occurrence of ongoing abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986, the court shall presume that the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child. There shall be no presumption in favor of or against joint custody.

**(750 ILCS 5/602.1)**

**Sec. 602.1.**

(a) The dissolution of marriage, the declaration of invalidity of marriage, the legal separation of the parents, or the parents living separate and apart shall not diminish parental powers, rights, and responsibilities except as the court for good reason may determine under the standards of Section 602.

(b) Upon the application of either or both parents, or upon its own motion, the court shall consider an award of joint custody. Joint custody means custody determined pursuant to a Joint Parenting Agreement or a Joint Parenting Order. In such cases, the court shall initially request the parents to produce a Joint Parenting Agreement. Such Agreement shall specify each parent's powers, rights and responsibilities for the personal care of the child and for major decisions such as education, health care, and religious training. The Agreement shall further specify a procedure by which proposed changes, disputes and alleged breaches may be mediated or otherwise resolved and shall provide for a periodic review of its terms by the parents. In producing a Joint Parenting Agreement, the parents shall be flexible in arriving at resolutions which further the policy of this State as expressed in Sections 102 and 602. For the purpose of assisting the court in making a determination whether an award of joint custody is appropriate, the court may order mediation and may direct that an investigation be conducted pursuant to the provisions of Section 605. If there is a danger to the health or safety of a partner, joint mediation shall not be required by the court. In the event the parents fail to produce a Joint Parenting Agreement, the court may enter an appropriate Joint Parenting Order under the standards of Section 602 which shall specify and contain the same elements as a Joint Parenting Agreement, or it may award sole custody under the standards of Sections 602, 607, and 608.

(c) The court may enter an order of joint custody if it determines that joint custody would be in the best interests of the child, taking into account the following:

- (1) the ability of the parents to cooperate

effectively and consistently in matters that directly affect the joint parenting of the child. "Ability of the parents to cooperate" means the parents' capacity to substantially comply with a Joint Parenting Order. The court shall not consider the inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;

- (2) The residential circumstances of each parent; and
- (3) all other factors which may be relevant to the

best interest of the child.

(d) Nothing within this section shall imply or presume that joint custody shall necessarily mean equal parenting time. The physical residence of the child in joint custodial situations shall be determined by:

- (1) express agreement of the parties; or
- (2) order of the court under the standards of this

Section.

(e) Notwithstanding any other provision of law, access to records and information pertaining to a child, including but not limited to medical, dental, child care and school records, shall not be denied to a parent for the reason that such parent is not the child's custodial parent; however, no parent shall have access to the school records of a child if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Illinois Domestic Violence Act of 1986, as now or hereafter amended.

#### **(750 ILCS 5/603)**

##### **Sec. 603. Temporary Orders.**

(a) A party to a custody proceeding, including a proceeding to modify custody, may move for a temporary custody order. The court may award temporary custody under the standards of Section 602 and the standards and procedures of Section 602.1, after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(b) If a proceeding for dissolution of marriage or legal separation or declaration of invalidity of marriage is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody judgment be issued.

(c) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation, under either subparagraph (ii) of paragraph (1), or paragraph (2), of subsection (d) of Section 601, is dismissed, any temporary custody order is vacated.

#### **(750 ILCS 5/604)**

##### **Sec. 604. Interviews.**

(a) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. Counsel shall be present at the interview unless otherwise agreed upon by the parties. The court shall cause a court reporter to be present who shall make a complete record of the interview instantaneously to be part of the record in the case.

(b) The court may seek the advice of professional personnel, 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 personnel consulted by the court, designated as a court's witness.

#### **(750 ILCS 5/604.5)**

##### **Sec. 604.5. Evaluation of child's best interest.**

(a) In a proceeding for custody, visitation, or removal of a child from Illinois, upon notice and motion made within a reasonable time before trial, the court may order an evaluation concerning the best interest of the child as it relates to custody, visitation, or removal. The motion may be made by a party, a parent, the child's custodian, the attorney for the child, the child's guardian ad litem, or the child's representative. The requested evaluation may be in place of or in addition to an evaluation conducted under subsection (b) of Section 604.

The motion shall state the identity of the proposed evaluator and set forth the evaluator's specialty or discipline. The court may refuse to order an evaluation by the proposed evaluator, but in that event, the court may permit the party seeking the evaluation to propose one or more other evaluators.

(b) An order for an evaluation shall fix the time, place, conditions, and scope of the evaluation and shall designate the evaluator. A party or person shall not be required to travel an unreasonable distance for the evaluation.

(c) The person requesting an evaluator shall pay the fee for the evaluation unless otherwise ordered by the court.

(d) Within 21 days after the completion of the evaluation, if the moving party or person intends to call the evaluator as a witness, the evaluator shall prepare and mail or deliver to the attorneys of record duplicate originals of the written evaluation. The evaluation shall set forth the evaluator's findings, the results of all tests administered, and the evaluator's conclusions and recommendations. If the written evaluation is not delivered or mailed to the attorneys within 21 days or within any extensions or modifications granted by the court, the written evaluation and the evaluator's testimony, conclusions, and recommendations may not be received into evidence.

(e) The person calling an evaluator to testify at trial shall disclose the evaluator as an opinion witness in accordance with the Supreme Court Rules.

(f) Subject to compliance with the Supreme Court Rules, nothing in this Section bars a person who did not request the evaluation from calling the evaluator as a witness. In that case, however, that person shall pay the evaluator's fee for testifying unless otherwise ordered by the court.

#### **(750 ILCS 5/605)**

#### **Sec. 605. Investigations and Reports.**

(a) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by a child welfare agency approved by the Department of Children and Family Services, but shall not be made by that Department unless the court determines either that there is no child welfare agency available or that the parent or the child's custodian is financially unable to pay for the investigation or report.

(b) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Under order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past, without obtaining the consent of the parent or the child's custodian. The child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent.

(c) The investigator shall mail the report to counsel, and to any party not represented by counsel, at least 10 days prior to the hearing. The court may examine and consider the investigator's report in determining custody. The investigator shall make available to counsel, and to any party not represented by counsel, the investigator's file of underlying data, reports, and the complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this Section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator, or any person whom he has consulted, as a court's witness, for cross examination. A party may not waive his right of cross examination prior to the hearing.

#### **(750 ILCS 5/606)**

#### **Sec. 606. Hearings.**

(a) Custody proceedings shall receive priority in being set for hearing.

(b) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(c) The court, without a jury, shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(d) If the court finds it necessary, in order to protect the child's welfare, that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

(e) Previous statements made by the child relating to any allegations that the child is an abused or neglected child within the meaning of the Abused and Neglected Child Reporting Act, or an

abused or neglected minor within the meaning of the Juvenile Court Act of 1987, shall be admissible in evidence in a hearing concerning custody of or visitation with the child. No such statement, however, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect.

**(750 ILCS 5/607)**

**Sec. 607. Visitation.**

(a) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral or emotional health. If the custodian's street address is not identified, pursuant to Section 708, the court shall require the parties to identify reasonable alternative arrangements for visitation by a non custodial parent, including but not limited to visitation of the minor child at the residence of another person or at a local public or private facility.

(a-3) Nothing in subsection (a-5) of this Section shall apply to a child in whose interests a petition under Section 2-13 of the Juvenile Court Act of 1987 is pending.

(a-5)(1) Except as otherwise provided in this subsection (a-5), any grandparent, great-grandparent, or sibling may file a petition for visitation rights to a minor child if there is an unreasonable denial of visitation by a parent and at least one of the following conditions exists:

(A) one parent of the child is incompetent as a matter of law or deceased or has been sentenced to a period of imprisonment for more than 1 year;

(B) the child's mother and father are divorced or have been legally separated from each other during the 3 month period prior to the filing of the petition and at least one parent does not object to the grandparent, great-grandparent, or sibling having visitation with the child. The visitation of the grandparent, great-grandparent, or sibling must not diminish the visitation of the parent who is not related to the grandparent, great-grandparent, or sibling seeking visitation;

(C) the court, other than a Juvenile Court, has terminated a parent-child relationship and the grandparent, great-grandparent, or sibling is the parent of the person whose parental rights have been terminated, except in cases of adoption. The visitation must not be used to allow the parent who lost parental rights to unlawfully visit with the child;

(D) the child is born out of wedlock, the parents are not living together, and the petitioner is a maternal grandparent, great grandparent, or sibling of the child born out of wedlock; or

(E) the child is born out of wedlock, the parents are not living together, the petitioner is a paternal grandparent, great grandparent, or sibling, and the paternity has been established by a court of competent jurisdiction.

(2) The grandparent, great-grandparent, or sibling of a parent whose parental rights have been terminated through an adoption proceeding may not petition for visitation rights.

(3) In making a determination under this subsection (a-5), there is a rebuttable presumption that a fit parent's actions and decisions regarding grandparent, great-grandparent, or sibling 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 times are harmful to the child's mental, physical, or emotional health.

(4) In determining whether to grant visitation, the court shall consider the following:

(A) the preference of the child if the child is determined to be of sufficient maturity to express a preference;

(B) the mental and physical health of the child;

(C) the mental and physical health of the grandparent, great-grandparent, or sibling;

(D) the length and quality of the prior relationship between the child and the grandparent, great-grandparent, or sibling;

(E) the good faith of the party in filing the petition;

(F) the good faith of the person denying visitation;

(G) the quantity of the visitation time requested and the potential adverse impact that visitation would have on the child's customary activities;

(H) whether the child resided with the petitioner for at least 6 consecutive months with or without the current custodian present;

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

(J) any other fact that establishes that the loss of the relationship between the petitioner and the child is likely to harm the child's mental, physical, or emotional health.

(5) The court may order visitation rights for the grandparent, great-grandparent, or sibling that include reasonable access without requiring overnight or possessory visitation.

(a-7)(1) Unless by stipulation of the parties, no motion to modify a grandparent, great-grandparent, or sibling 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 a prior grandparent, great-grandparent, or sibling visitation order 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, that a change has occurred in the circumstances of the child or his or her custodian, 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, or sibling visitation.

(3) Attorney 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.

(4) Notice under this subsection (a-7) shall be given as provided in subsections (c) and (d) of Section 601.

(b) (1) (Blank.)

(1.5) The Court may grant reasonable visitation privileges to a stepparent upon petition to the court by the stepparent, with notice to the parties required to be notified under Section 601 of this Act, if the court determines that it is in the best interests and welfare of the child, and may issue any necessary orders to enforce those visitation privileges. A petition for visitation privileges may be filed under this paragraph (1.5) whether or not a petition pursuant to this Act has been previously filed or is currently pending if the following circumstances are met:

(A) the child is at least 12 years old;

(B) the child resided continuously with the parent and stepparent for at least 5 years;

(C) the parent is deceased or is disabled and is unable to care for the child;

(D) the child wishes to have reasonable visitation with the stepparent; and

(E) the stepparent was providing for the care, control, and welfare to the child prior to the initiation of the petition for visitation.

(2)(A) A petition for visitation privileges shall not be filed pursuant to this subsection (b) by the parents or grandparents of a putative father if the paternity of the putative father has not been legally established.

(B) A petition for visitation privileges may not be filed under this subsection (b) if the child who is the subject of the grandparents' or great-grandparents' petition has been voluntarily surrendered by the parent or parents, except for a surrender to the Illinois Department of Children and Family Services or a foster care facility, or has been previously adopted by an individual or individuals who are not related to the biological parents of the child or is the subject of a pending adoption petition by an individual or individuals who are not related to the biological parents of the child.

(3) (Blank.)

(c) The court may modify an order granting or denying visitation rights of a parent whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral or emotional health. The court may modify an order granting, denying, or limiting

visitation rights of a grandparent, great-grandparent, or sibling of any minor child whenever a change of circumstances has occurred based on facts occurring subsequent to the judgment and the court finds by clear and convincing evidence that the modification is in the best interest of the minor child.

(d) If any court has entered an order prohibiting a non-custodial parent of a child from any contact with a child or restricting the non-custodial parent's contact with the child, the following provisions shall apply:

(1) If an order has been entered granting visitation privileges with the child to a grandparent or great-grandparent who is related to the child through the non-custodial parent, the visitation privileges of the grandparent or great-grandparent may be revoked if:

(i) a court has entered an order prohibiting the non-custodial parent from any contact with the child, and the grandparent or great-grandparent is found to have used his or her visitation privileges to facilitate contact between the child and the non-custodial parent; or

(ii) a court has entered an order restricting the non-custodial parent's contact with the child, and the grandparent or great-grandparent is found to have used his or her visitation privileges to facilitate contact between the child and the non-custodial parent in a manner that violates the terms of the order restricting the non-custodial parent's contact with the child.

Nothing in this subdivision (1) limits the authority of the court to enforce its orders in any manner permitted by law.

(2) Any order granting visitation privileges with the child to a grandparent or great-grandparent who is related to the child through the non-custodial parent shall contain the following provision:

"If the (grandparent or great-grandparent, whichever is applicable) who has been granted visitation privileges under this order uses the visitation privileges to facilitate contact between the child and the child's non-custodial parent, the visitation privileges granted under this order shall be permanently revoked."

(e) No parent, not granted custody of the child, or grandparent, or great-grandparent, or stepparent, or sibling of any minor child, convicted of any offense involving an illegal sex act perpetrated upon a victim less than 18 years of age including but not limited to offenses for violations of Article 12 of the Criminal Code of 1961, is entitled to visitation rights while incarcerated or while on parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for that offense, and upon discharge from incarceration for a misdemeanor offense or upon discharge from parole, probation, conditional discharge, periodic imprisonment, or mandatory supervised release for a felony offense, visitation shall be denied until the person successfully completes a treatment program approved by the court.

(f) Unless the court determines, after considering all relevant factors, including but not limited to those set forth in Section 602(a), that it would be in the best interests of the child to allow visitation, the court shall not enter an order providing visitation rights and pursuant to a motion to modify visitation shall revoke visitation rights previously granted to any person who would otherwise be entitled to petition for visitation rights under this Section who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the child who is the subject of the order. Until an order is entered pursuant to this subsection, no person shall visit, with the child present, a person who has been convicted of first degree murder of the parent, grandparent, great-grandparent, or sibling of the child without the consent of the child's parent, other than a parent convicted of first degree murder as set forth herein, or legal guardian.

(g) If an order has been entered limiting, for cause, a minor child's contact or visitation with a grandparent, great-grandparent, or sibling on the grounds that it was in the best interest of the child to do so, that order may be modified only upon a showing of a substantial change in circumstances occurring subsequent to the entry of the order with proof by clear and convincing evidence that modification is in the best interest of the minor child.

**(750 ILCS 5/607.1)**

**Sec. 607.1. Enforcement of visitation orders; visitation abuse.**

(a) The circuit court shall provide an expedited procedure for enforcement of court ordered visitation in cases of visitation abuse. Visitation abuse occurs when a party has willfully and without

justification: (1) denied another party visitation as set forth by the court; or (2) exercised his or her visitation rights in a manner that is harmful to the child or child's custodian.

(b) An Action may be commenced by filing a petition setting forth: (i) the petitioner's name, residence address or mailing address, and telephone number; (ii) respondent's name and place of residence, place of employment, or mailing address; (iii) the nature of the visitation abuse, giving dates and other relevant information; (iv) that a reasonable attempt was made to resolve the dispute; and (v) the relief sought.

Notice of the filing of the petitions shall be given as provided in Section 511.

(c) After hearing all of the evidence, the court may order one or more of the following:

(1) Modification of the visitation order to

specifically outline periods of visitation or restrict visitation as provided by law.

(2) Supervised visitation with a third party or public agency.

(3) Make up visitation of the same time period, such as weekend for weekend, holiday for holiday.

(4) Counseling or mediation, except in cases where there is evidence of domestic violence, as defined in Section 1 of the Domestic Violence Shelters Act, occurring between the parties.

(5) Other appropriate relief deemed equitable.

(d) Nothing contained in this Section shall be construed to limit the court's contempt power, except as provided in subsection (g) of this Section.

(e) When the court issues an order holding a party in contempt of court for violation of a visitation order, the clerk shall transmit a copy of the contempt order to the sheriff of the county. The sheriff shall furnish a copy of each contempt order to the Department of State Police on a daily basis in the form and manner required by the Department. The Department shall maintain a complete record and index of the contempt orders and make this data available to all local law enforcement agencies.

(f) Attorney fees and costs shall be assessed against a party if the court finds that the enforcement action is vexatious and constitutes harassment.

(g) A person convicted of unlawful visitation interference under Section 10 5.5 of the Criminal Code of 1961 shall not be subject to the provisions of this Section and the court may not enter a contempt order for visitation abuse against any person for the same conduct for which the person was convicted of unlawful visitation interference or subject that person to the sanctions provided for in this Section.

#### **(750 ILCS 5/608)**

##### **Sec. 608. Judicial Supervision.**

(a) Except as otherwise agreed by the parties in writing at the time of the custody judgment or as otherwise ordered by the court, the custodian may determine the child's upbringing, including but not limited to, his education, health care and religious training, unless the court, after hearing, finds, upon motion by the noncustodial parent, that the absence of a specific limitation of the custodian's authority would clearly be contrary to the best interests of the child.

(b) If both parents or all contestants agree to the order, or if the court finds that in the absence of agreement the child's physical health would be endangered or his emotional development significantly impaired, the court may order the Department of Children and Family Services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the judgment are carried out. Supervision shall be carried out under the provisions of Section 5 of the Children and Family Services Act.

#### **(750 ILCS 5/609)**

##### **Sec. 609. Leave to Remove Children.**

(a) The court may grant leave, before or after judgment, to any party having custody of any minor child or children to remove such child or children from Illinois whenever such approval is in the best interests of such child or children. The burden of proving that such removal is in the best interests of such child or children is on the party seeking the removal. When such removal is permitted, the court may require the party removing such child or children from Illinois to give reasonable security guaranteeing the return of such children.

(b) Before a minor child is temporarily removed from Illinois, the parent responsible for the removal shall inform the other parent, or the other parent's attorney, of the address and telephone number where the child may be reached during the period of temporary removal, and the date on which the child shall return to Illinois.

The State of Illinois retains jurisdiction when the minor child is absent from the State pursuant to this subsection.

**(750 ILCS 5/610)**

**Sec. 610. Modification.**

(a) Unless by stipulation of the parties, no motion to modify a custody judgment 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 physical, mental, moral or emotional health.

(b) The court shall not modify a prior custody judgment unless it finds by clear and convincing evidence, upon the basis of facts that have arisen since the prior judgment or that were unknown to the court at the time of entry of the prior judgment, that a change has occurred in the circumstances of the child or his custodian, or in the case of a joint custody arrangement that a change has occurred in the circumstances of the child or either or both parties having custody, and that the modification is necessary to serve the best interest of the child. In the case of joint custody, if the parties agree to a termination of a joint custody arrangement, the court shall so terminate the joint custody and make any modification which is in the child's best interest. The court shall state in its decision specific findings of fact in support of its modification or termination of joint custody if either parent opposes the modification or termination.

(c) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(d) Notice under this Section shall be given as provided in subsections (c) and (d) of Section 601.

**(750 ILCS 5/611)**

**Sec. 611. Enforcement of custody order or order prohibiting removal of child from the jurisdiction of the court.**

(a) The court may enter a judgment to enforce a custody order or a court order prohibiting removal of the child from the jurisdiction of the court if it finds that the respondent has violated the terms of the court order by having improperly removed the child from the physical custody of the petitioner or another person entitled to custody or by having improperly retained the child after a visit or other temporary relinquishment of physical custody.

If the general whereabouts of the child are known, the judgment shall direct any sheriff or law enforcement officer to provide assistance to the petitioner in apprehending the child and shall further authorize any child care personnel, babysitter, teacher or any person having physical custody of the child to surrender the child to such sheriff or law enforcement officer.

(b) The court may enter a judgment pursuant to subsection (a) of this Section without prior notice to the respondent if the court finds that prior notice would be likely to cause the respondent's flight from the jurisdiction or cause further removal or concealment of the child. If an ex parte order is entered pursuant to this subsection, the respondent may, upon 2 days notice to the petitioner or upon such shorter notice as the court may prescribe, appear and move for the dissolution or modification of the judgment and in that event the court shall proceed to hear and determine such motion as expeditiously as possible.

(c) Nothing contained in this Section shall be construed to limit the court's contempt power.

**PART VII MISCELLANEOUS**

**(750 ILCS 5/701)**

**Sec. 701. Marital Residence - Order Granting Possession to Spouse.**

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 their 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 of injunction, mandatory or restraining, 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. No such order shall in any manner affect any estate in homestead property of either party.

**(750 ILCS 5/702)**

**Sec. 702. Maintenance in Case of Bigamy.**

When a dissolution of marriage is granted to a person who shall, in good faith, have intermarried with a person having at the time of such marriage, another spouse or spouses living, the court may, nevertheless, allow the petitioner maintenance in the same manner as in other cases of dissolution of marriage; but no such allowance shall be made as will be inconsistent with the rights of such other spouse or spouses, which shall first be ascertained by the court before the granting of such maintenance.

**(750 ILCS 5/703)**

**Sec. 703. Lien of judgment - Sales.**

Whenever, in any case of dissolution of marriage, a judgment orders that maintenance be made, a lien on any real estate to arise to secure the payment of any money to become due by installments, and a sale of such real estate to be made if necessary to satisfy any of such installments, the property shall be sold subject to the lien of the installments not then due, unless the court shall at the same time direct otherwise, and subsequent sales may, from time to time, be made to enforce such lien as the installments may become due, until all installments are paid.

**(750 ILCS 5/704)**

**Sec. 704. Public Aid Provisions.**

Except as provided in Sections 709 through 712, if maintenance, child support or both, is awarded to persons who are recipients of aid under "The Illinois Public Aid Code", the court shall direct the husband or wife, as the case may be, to make the payments to (1) the Illinois Department of Public Aid if the persons are recipients under Articles III, IV or V of the Code, or (2) the local governmental unit responsible for their support if they are recipients under Article VI or VII of the Code. The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to direct that subsequent payments be made directly to the former spouse, the children, or both, or to some person or agency in their behalf, upon removal of the former spouse or children from the public aid rolls; and upon such direction and removal of the recipients from the public aid rolls, the Illinois Department or local governmental unit, as the case requires, shall give written notice of such action to the court.

**(750 ILCS 5/705)**

**Sec. 705. Support payments; receiving and disbursing agents.**

(1) The provisions of this Section shall apply, except as provided in Sections 709 through 712.

(2) In a dissolution of marriage action filed in a county of less than 3 million population in which an order or judgment for child support is entered, and in supplementary proceedings in any such county to enforce or vary the terms of such order or judgment arising out of an action for dissolution of marriage filed in such county, the court, except as it otherwise orders, under subsection (4) of this Section, may direct that child support payments be made to the clerk of the court.

(3) In a dissolution of marriage action filed in any county of 3 million or more population in which an order or judgment for child support is entered, and in supplementary proceedings in any such county to enforce or vary the terms of such order or judgment arising out of an action for dissolution of marriage filed in such county, the court, except as it otherwise orders under subsection (4) of this Section, may direct that child support payments be made either to the clerk of the court or to the Court Service Division of the County Department of Public Aid. After the effective date of this Act, the court, except as it otherwise orders under subsection (4) of this Section, may direct that child support payments be made either to the clerk of the court or to the Illinois Department of Public Aid.

(4) In a dissolution of marriage action or supplementary proceedings involving maintenance or child support payments, or both, to persons who are recipients of aid under the Illinois Public Aid Code, the court shall direct that such payments be made to (a) the Illinois Department of Public Aid if the persons are recipients under Articles III, IV, or V of the Code, or (b) the local governmental unit responsible for their support if they are recipients under Articles VI or VII of the Code. In accordance with federal law and regulations, the Illinois Department of Public Aid may continue to collect current maintenance payments or child support payments, or both, after those persons cease to receive public assistance and until termination of services under Article X of the Illinois Public Aid Code. The Illinois Department of Public Aid shall pay the net amount collected to those persons after deducting any costs incurred in making the collection or any collection fee from the amount of any recovery made. The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to direct that payments be made directly to the former spouse, the children, or both, or to some person or agency in their behalf, upon removal of the former spouse or children from the public aid rolls or upon termination of services under Article X of the Illinois Public Aid Code; and upon such direction, the Illinois Department or local governmental unit, as the case requires, shall give notice of such action to the court in writing or by electronic transmission.

(5) All clerks of the court and the Court Service Division of a County Department of Public Aid and, after the effective date of this Act, all clerks of the court and the Illinois Department of Public Aid, receiving child support payments under subsections (2) and (3) of this Section shall disburse the payments to the person or persons entitled thereto under the terms of the order or judgment. They shall establish and maintain current records of all moneys received and disbursed and of defaults and delinquencies in required payments. The court, by order or rule, shall make provision for the carrying out of these duties.

Payments under this Section to the Illinois Department of Public Aid pursuant to the Child Support Enforcement Program established by Title IV-D of the Social Security Act shall be paid into the Child Support Enforcement Trust Fund. All payments under this Section to the Illinois Department of Human Services shall be deposited in the DHS Recoveries Trust Fund. Disbursements from these funds shall be as provided in the Illinois Public Aid Code. Payments received by a local governmental unit shall be deposited in that unit's General Assistance Fund. Any order of court directing payment of child support to a clerk of court or the Court Service Division of a County Department of Public Aid, which order has been entered on or after August 14, 1961, and prior to the effective date of this Act, may be amended by the court in line with this Act; and orders involving payments of maintenance or child support to recipients of public aid may in like manner be amended to conform to this Act.

(6) No filing fee or costs will be required in any action brought at the request of the Illinois Department of Public Aid in any proceeding under this Act. However, any such fees or costs may be assessed by the court against the respondent in the court's order of support or any modification thereof in a proceeding under this Act.

(7) For those cases in which child support is payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid by order of court or upon notification by the Illinois Department of Public Aid, the clerk shall transmit all such payments, within 4 working days of receipt, to insure that funds are available for immediate distribution by the Department to the person or entity entitled thereto in accordance with standards of the Child Support Enforcement Program established under Title IV D of the Social Security Act. The clerk shall notify the Department of the date of receipt and amount thereof at the time of transmittal. Where the clerk has entered into an agreement of cooperation with the Department to record the terms of child support orders and payments made thereunder directly into the Department's automated data processing system, the clerk shall account for, transmit and otherwise distribute child support payments in accordance with such agreement in lieu of the requirements contained herein.

In any action filed in a county with a population of 1,000,000 or less, the court shall assess against the respondent in any order of maintenance or child support any sum up to \$36 annually authorized by ordinance of the county board to be collected by the clerk of the court as costs for administering the collection and disbursement of maintenance and child support payments. Such sum shall be in addition to and separate from amounts ordered to be paid as maintenance or child support.

(8) To the extent the provisions of this Section are inconsistent with the requirements pertaining to the State Disbursement Unit under Section 507.1 of this Act and Section 10-26 of the Illinois Public Aid Code, the requirements pertaining to the State Disbursement Unit shall apply.

**(750 ILCS 5/706.1)**

**Sec. 706.1. Withholding of Income to Secure Payment of Support.**

Orders for support entered under this Act are subject to the Income Withholding for Support Act.

**(750 ILCS 5/706.2)**

**Sec. 706.2. Posting Security, Bond or Guarantee to Secure Payment.**

The court may require a parent to post security, bond or give some other guarantee of a character and amount sufficient to assure payment of any amount of support due.

**(750 ILCS 5/706.3)**

**Sec. 706.3. Information concerning obligors.**

(a) In this Section:

"Arrearage", "delinquency", "obligor", and "order for support" have the meanings attributed to those terms in the Income Withholding for Support Act.

"Consumer reporting agency" has the meaning attributed to that term in Section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(f).

(b) Whenever a court of competent jurisdiction finds that an obligor either owes an arrearage of more than \$10,000, is delinquent in payment of an amount equal to at least 3 months' support obligation pursuant to an order for support, or fails to pay the child support annual fee for a period of 3 years, the court shall direct the clerk of the court to make information concerning the obligor available to consumer reporting agencies.

(c) Whenever a court of competent jurisdiction finds that an obligor either owes an arrearage of more than \$10,000 or is delinquent in payment of an amount equal to at least 3 months' support obligation pursuant to an order for support, the court shall direct the clerk of the court to cause the obligor's name and address to be published in a newspaper of general circulation in the area in which the obligor resides. The clerk shall cause the obligor's name and address to be published only after sending to the obligor at the obligor's last known address, by certified mail, return receipt requested, a notice of intent to publish the information. This subsection (c) applies only if the obligor resides in the county in which the clerk of the court holds office.

**(750 ILCS 5/707) Sec. 707. Certificate of Dissolution or Invalidity of Marriage - Filing with Department of Public Health.**

A certificate of each dissolution of marriage or declaration of invalidity of marriage ordered in this State shall be filed with the Illinois Department of Public Health on a form furnished by such Department. The form shall contain the social security numbers of the parties whose marriage has been dissolved or declared invalid. This form shall be prepared by the person filing the petition for dissolution of marriage or declaration of invalidity of marriage and shall be presented to the judge of the court for his inspection prior to the entry of the final order. Failure to comply with this Act shall not invalidate any judgment of dissolution of marriage or declaration of invalidity of marriage. Immediately after the judgment is granted, the clerk of the court shall complete the remaining entries on the certificate. Within 45 days after the close of the month in which the judgment is rendered, the clerk shall forward the certificate to the Illinois Department of Public Health.

**(750 ILCS 5/708)**

**Sec. 708.**

In any proceeding brought under this Act, the identification of a party's street address shall not be required for any purpose if the court finds that the physical, mental or emotional health of a party or that of a minor child, or both, would be seriously endangered by disclosure of the party's address.

**(750 ILCS 5/709)**

**Sec. 709. Mandatory child support payments to clerk.**

(a) As of January 1, 1982, child support orders entered in any county covered by this subsection shall be made pursuant to the provisions of Sections 709 through 712 of this Act. For purposes of

these Sections, the term "child support payment" or "payment" shall include any payment ordered to be made solely for the purpose of the support of a child or children or any payment ordered for general support which includes any amount for support of any child or children.

The provisions of Sections 709 through 712 shall be applicable to any county with a population of 2 million or more and to any other county which notifies the Supreme Court of its desire to be included within the coverage of these Sections and is certified pursuant to Supreme Court Rules.

The effective date of inclusion, however, shall be subject to approval of the application for reimbursement of the costs of the support program by the Department of Public Aid as provided in Section 712.

(b) In any proceeding for a dissolution of marriage, legal separation, or declaration of invalidity of marriage, or in any supplementary proceedings in which a judgment or modification thereof for the payment of child support is entered on or after January 1, 1982, in any county covered by Sections 709 through 712, and the person entitled to payment is receiving a grant of financial aid under Article IV of the Illinois Public Aid Code or has applied and qualified for child support enforcement services under Section 10-1 of that Code, the court shall direct: (1) that such payments be made to the clerk of the court and (2) that the parties affected shall each thereafter notify the clerk of any change of address or change in other conditions that may affect the administration of the order, including the fact that a party who was previously not on public aid has become a recipient of public aid, within 10 days of such change. All notices sent to the obligor's last known address on file with the clerk shall be deemed sufficient to proceed with enforcement pursuant to the provisions of Sections 709 through 712.

In all other cases, the court may direct that payments be made to the clerk of the court.

(c) Except as provided in subsection (d) of this Section, the clerk shall disburse the payments to the person or persons entitled thereto under the terms of the order or judgment.

(d) The court shall determine, prior to the entry of the support order, if the party who is to receive the support is presently receiving public aid or has a current application for public aid pending and shall enter the finding on the record.

If the person entitled to payment is a recipient of aid under the Illinois Public Aid Code, the clerk, upon being informed of this fact by finding of the court, by notification by the party entitled to payment, by the Illinois Department of Public Aid or by the local governmental unit, shall make all payments to: (1) the Illinois Department of Public Aid if the person is a recipient under Article III, IV, or V of the Code or (2) the local governmental unit responsible for his or her support if the person is a recipient under Article VI or VII of the Code. In accordance with federal law and regulations, the Illinois Department of Public Aid may continue to collect current maintenance payments or child support payments, or both, after those persons cease to receive public assistance and until termination of services under Article X of the Illinois Public Aid Code. The Illinois Department of Public Aid shall pay the net amount collected to those persons after deducting any costs incurred in making the collection or any collection fee from the amount of any recovery made. Upon termination of public aid payments to such a recipient or termination of services under Article X of the Illinois Public Aid Code, the Illinois Department of Public Aid or the appropriate local governmental unit shall notify the clerk in writing or by electronic transmission that all subsequent payments are to be sent directly to the person entitled thereto.

Payments under this Section to the Illinois Department of Public Aid pursuant to the Child Support Enforcement Program established by Title IV-D of the Social Security Act shall be paid into the Child Support Enforcement Trust Fund. All payments under this Section to the Illinois Department of Human Services shall be deposited in the DHS Recoveries Trust Fund. Disbursements from these funds shall be as provided in the Illinois Public Aid Code. Payments received by a local governmental unit shall be deposited in that unit's General Assistance Fund.

(e) Any order or judgment may be amended by the court, upon its own motion or upon the motion of either party, to conform with the provisions of Sections 709 through 712, either as to the requirement of making payments to the clerk or, where payments are already being made to the clerk, as to the statutory fees provided for under Section 711.

(f) The clerk may invest in any interest bearing account or in any securities, monies collected for the benefit of a payee, where such payee cannot be found; however, the investment may be only for the period until the clerk is able to locate and present the payee with such monies. The clerk may invest in any interest bearing account, or in any securities, monies collected for the benefit of any other payee; however, this does not alter the clerk's obligation to make payments to the payee in a timely manner. Any interest or capital gains accrued shall be for the benefit of the county and shall be paid into the special fund established in subsection (b) of Section 711.

(g) The clerk shall establish and maintain a payment record of all monies received and disbursed and such record shall constitute prima facie evidence of such payment and non-payment, as the case may be.

(h) For those cases in which child support is payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid by order of court or upon notification by the Illinois Department of Public Aid, the clerk shall transmit all such payments, within 4 working days of receipt, to insure that funds are available for immediate distribution by the Department to the person or entity entitled thereto in accordance with standards of the Child Support Enforcement Program established under Title IV-D of the Social Security Act. The clerk shall notify the Department of the date of receipt and amount thereof at the time of transmittal. Where the clerk has entered into an agreement of cooperation with the Department to record the terms of child support orders and payments made thereunder directly into the Department's automated data processing system, the clerk shall account for, transmit and otherwise distribute child support payments in accordance with such agreement in lieu of the requirements contained herein.

(i) To the extent the provisions of this Section are inconsistent with the requirements pertaining to the State Disbursement Unit under Section 507.1 of this Act and Section 10-26 of the Illinois Public Aid Code, the requirements pertaining to the State Disbursement Unit shall apply.

**(750 ILCS 5/710)**

**Sec. 710. Enforcement; Penalties.**

(a) In counties certified as included under the provisions of Sections 709 through 712 and whose application for reimbursement is approved, there shall be instituted a child support enforcement program to be conducted by the clerk of the circuit court and the state's attorney of the county. The program is to be limited to enforcement of child support orders entered pursuant to this Act.

The child support enforcement program is to be conducted only on behalf of dependent children included in a grant of financial aid under Article IV of The Illinois Public Aid Code and parties who apply and qualify for child support enforcement services pursuant to Section 10-1 of such Code.

Nothing in this Section shall be construed to prohibit the establishment of a child support enforcement program by the clerk of the circuit court in cooperation with the State's Attorney of the county.

(b) In the event of a delinquency in payment, as determined from the record maintained by the clerk in a county covered by the child support enforcement program, such clerk shall notify both the party obligated to make the payment, hereinafter called the payor, and the recipient of such payment, hereinafter called the payee, of such delinquency and that if the amount then due and owing is not remitted in the time period required by circuit court rules, the matter will be referred to the state's attorney for enforcement proceedings. Upon failure of the payor to remit as required, the clerk shall refer the matter to the state's attorney, except as provided by rule of the circuit court.

(c) Upon referral from the clerk, the state's attorney shall promptly initiate enforcement proceedings against the payor. Legal representation by the state's attorney shall be limited to child support and shall not extend to visitation, custody, property or other matters; however, if the payor properly files pleadings raising such matters during the course of the child support hearing and the court finds that it has jurisdiction of such matters, the payee shall be granted the opportunity to obtain a continuance in order to secure representation for those other matters, and the court shall not delay entry of an appropriate support order pending the disposition of such other matters.

If the state's attorney does not commence enforcement proceedings within 30 days, the clerk shall inform the court which, upon its own motion, shall appoint counsel for purposes of enforcement. The fees and expenses of such counsel shall be paid by the payor and shall not be paid by the State.

Nothing in this Section shall be construed to prevent a payee from instituting independent enforcement proceedings or limit the remedies available to payee in such proceedings. However, absent the exercise under this provision of a private right of enforcement, enforcement shall be as otherwise provided in this Section.

(d) At the time any support order is entered, the payee shall be informed of the procedure used for enforcement and shall be given the address and telephone number both of the clerk and of the Child and Spouse Support Unit as provided in Section 712.

The payee shall be informed that, if no action is taken within 2 months of any complaint to the clerk, payee may contact the Unit to seek assistance in obtaining enforcement.

(e) Upon a finding that payor is in default and that such non payment is for a period of two months and that such non-payment is without good cause, the court shall order the payor to pay a sum equal to 2% of the arrearage as a penalty along with his payment.

The court may further assess against the payor any fees and expenses incurred in the enforcement of any order or the reasonable value thereof and may impose any penalty otherwise available to it in a case of contempt.

All penalties, fees and expenses assessed against the payor pursuant to this subsection are to cover the expenses of enforcement, are to be paid to the clerk and are to be placed by him in the special fund provided for in Section 711.

(f) Any person not covered by the child support enforcement program may institute private and independent proceedings to enforce payment of support.

**(750 ILCS 5/711)**

**Sec. 711. Fees.**

(a) To reimburse any covered county for the cost of maintaining the child support enforcement program pursuant to Section 710, the court shall order any payor making payments directly to the clerk to pay the clerk a fee at the rate of \$3.00 per month for every month the order is in effect. However, any fee collected for any case not included in such program as provided in subsection (a) of Section 710 may be used by the county for any purpose.

The fee shall be payable semi annually, being due with the support payment due on or next immediately following January 1 and July 1. The fee shall be payable in advance as herein provided, except for the initial payment which shall be paid at the time of the initial child support payment to the clerk. The amount of the fee due for the initial period shall be computed from the date the support order first takes effect to the next January 1 or July 1, whichever occurs first.

Unless paid in cash, the payment of the fee shall be by a separate instrument from the support payment and shall be made to the order of the clerk.

(b) All monies collected in fees by the clerk and all monies received by him upon assessment under Section 710 for reimbursement for the costs of enforcement shall be held in a special fund, the contents of which the clerk shall pay over to the county treasury every month or at such other period as the treasurer shall determine.

**(750 ILCS 5/712)**

**Sec. 712.**

(a) The Supreme Court may make Rules concerning the certification of counties for inclusion in the child support enforcement program and the application of the procedures created by Sections 709 through 712 in the various counties.

The Supreme Court shall inform each circuit court and clerk of the court of the availability of the program to reimburse counties desiring to participate in the program of enforcement of child support payments.

The Supreme Court shall also distribute to each circuit court and clerk of the court any materials prepared by the Child and Spouse Support Unit comparing child support enforcement in counties included and not included in this program.

(b) The Illinois Department of Public Aid, through the Child and Spouse Support Unit provided for by Section 10-3.1 of The Illinois Public Aid Code, shall have general supervision of the child support programs created by Sections 709 through 712 and shall have the powers and duties provided in this Section, including the following:

(1) to make advance payments to any county included in the program for expenses in preparing programs to enforce payment of child support to the clerk from appropriations made for such purposes by the General Assembly;

(2) to make payments to each covered county to pay for its reasonable expenses actually necessary to maintain a continuing program not paid for by fees, penalties, or other monies; provided that, with respect to that portion of the program on behalf of dependent children included in a grant of financial aid under Article IV of The Illinois Public Aid Code the Unit shall pay only such expenses as is its current practice or as it may deem appropriate; provided further that the Unit shall only pay expenses of the entire program subject to the availability of federal monies to pay the majority of expenses of the entire child support enforcement program; provided further that the Unit or Department may set standards relating to enforcement which have to be met by any county seeking to enter a contract with the Department for reimbursement of expenses of the

entire enforcement program prior to an application for reimbursement being approved and the contract granted; and provided further that such standards may relate to, but are not limited to the following factors: maintenance of the payment record, the definition of delinquency; the period of time in which a delinquency must be determined, the payor notified, the remittance received, the referral to the state's attorney made, and the payment remitted by the clerk to the payee or other party entitled to the payment; the conditions under which referral will not be made to the state's attorney; and the definitions and procedures for other matters necessary for the conduct and operation of the program;

(3) to monitor the various local programs for enforcement of child support payments to the clerk;

(4) to act to encourage enforcement whenever local enforcement procedures are inadequate;

(5) to receive monies from any source for assistance in enforcement of child support; and

(6) to assist any county desirous of assistance in establishing and maintaining a child support enforcement program.

(c) Any county may apply for financial assistance to the Unit to initiate or maintain a program of child support enforcement. Every county which desires such assistance shall apply according to procedures established by the Unit. In its application, it shall state the following: financial needs, personnel requirements, anticipated caseloads, any amounts collected or anticipated in fees or penalties, and any other information required by the Unit.

(d) In the case that any advance money is given to any county under this Section to initiate an enforcement system, the county shall reimburse the state within 2 years from the date such monies are given to it. The Unit may establish an appropriate schedule of reimbursement for any county.

(e) In the event of the unavailability of federal monies to pay for the greater part of the costs to a county of the child support enforcement program under Sections 709 through 712 and the resulting cessation of state participation, the operation of the child support enforcement program under Sections 709 through 712 shall terminate. The date and the method of termination shall be determined by Supreme Court Rule.

### **(750 ILCS 5/713)**

#### **Sec. 713. Attachment of the Body.**

As used in this Section, "obligor" has the same meaning ascribed to such term in the Income Withholding for Support Act.

(a) In any proceeding to enforce an order for support, where the obligor has failed to appear in court pursuant to order of court and after due notice thereof, the court may enter an order for the attachment of the body of the obligor. Notices under this Section shall be served upon the obligor by any means authorized under subsection (a-5) of Section 505. The attachment order shall fix an amount of escrow which is equal to a minimum of 20% of the total child support arrearage alleged by the obligee in sworn testimony to be due and owing. The attachment order shall direct the Sheriff of any county in Illinois to take the obligor into custody and shall set the number of days following release from custody for a hearing to be held at which the obligor must appear, if he is released under subsection (b) of this Section.

(b) If the obligor is taken into custody, the Sheriff shall take the obligor before the court which entered the attachment order. However, the Sheriff may release the person after he or she has deposited the amount of escrow ordered by the court pursuant to local procedures for the posting of bond. The Sheriff shall advise the obligor of the hearing date at which the obligor is required to appear.

(c) Any escrow deposited pursuant to this Section shall be transmitted to the Clerk of the Circuit Court for the county in which the order for attachment of the body of the obligor was entered. Any Clerk who receives money deposited into escrow pursuant to this Section shall notify the obligee, public office or legal counsel whose name appears on the attachment order of the court date at which the obligor is required to appear and the amount deposited into escrow. The Clerk shall disburse such money to the obligee only under an order from the court that entered the attachment order pursuant to this Section.

(d) Whenever an obligor is taken before the court by the Sheriff, or appears in court after the court has ordered the attachment of his body, the court shall:

(1) hold a hearing on the complaint or petition that

gave rise to the attachment order. For purposes of determining arrearages that are due and owing by the obligor, the court shall accept the previous sworn testimony of the obligee as true

and the appearance of the obligee shall not be required. The court shall require sworn testimony of the obligor as to his or her Social Security number, income, employment, bank accounts, property and any other assets. If there is a dispute as to the total amount of arrearages, the court shall proceed as in any other case as to the undisputed amounts; and

(2) order the Clerk of the Circuit Court to disburse

to the obligee or public office money held in escrow pursuant to this Section if the court finds that the amount of arrearages exceeds the amount of the escrow. Amounts received by the obligee or public office shall be deducted from the amount of the arrearages.

(e) If the obligor fails to appear in court after being notified of the court date by the Sheriff upon release from custody, the court shall order any monies deposited into escrow to be immediately released to the obligee or public office and shall proceed under subsection (a) of this Section by entering another order for the attachment of the body of the obligor.

(f) This Section shall apply to any order for support issued under the "Illinois Marriage and Dissolution of Marriage Act", approved September 22, 1977, as amended; the "Illinois Parentage Act of 1984", effective July 1, 1985, as amended; the "Revised Uniform Reciprocal Enforcement of Support Act", approved August 28, 1969, as amended; "The Illinois Public Aid Code", approved April 11, 1967, as amended; the Non Support Punishment Act; and the "Non-support of Spouse and Children Act", approved June 8, 1953, as amended.

(g) Any escrow established pursuant to this Section for the purpose of providing support shall not be subject to fees collected by the Clerk of the Circuit Court for any other escrow.

**(750 ILCS 5/714)**

**Sec. 714. Information to locate putative fathers and noncustodial parents.**

(a) Upon request by a public office, employers, labor unions, and telephone companies shall provide location information concerning putative fathers and noncustodial parents for the purpose of establishing a child's paternity or establishing, enforcing, or modifying a child support obligation. The term "public office" is defined as set forth in the Income Withholding for Support Act. In this Section, "location information" means information about (i) the physical whereabouts of a putative father or noncustodial parent, (ii) the employer of the putative father or noncustodial parent, or (iii) the salary, wages, and other compensation paid and the health insurance coverage provided to the putative father or noncustodial parent by the employer of the putative father or noncustodial parent or by a labor union of which the putative father or noncustodial parent is a member. An employer, labor union, or telephone company shall respond to the request of the public office within 15 days after receiving the request. Any employer, labor union, or telephone company that willfully fails to fully respond within the 15-day period shall be subject to a penalty of \$100 for each day that the response is not provided to the public office after the 15-day period has expired. The penalty may be collected in a civil action, which may be brought against the employer, labor union, or telephone company in favor of the public office.

(b) Upon being served with a subpoena (including an administrative subpoena as authorized by law), a utility company or cable television company must provide location information to a public office for the purpose of establishing a child's paternity or establishing, enforcing, or modifying a child support obligation.

(c) Notwithstanding the provisions of any other State or local law to the contrary, an employer, labor union, telephone company, utility company, or cable television company shall not be liable to any person for disclosure of location information under the requirements of this Section, except for willful and wanton misconduct.

**PART VIII APPLICATION AND SEVERABILITY**

**(750 ILCS 5/801) Sec. 801. Application.**

(a) This Act applies to all proceedings commenced on or after its effective date.

(b) This Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Evidence adduced after the effective date of this Act shall be in compliance with this Act.

(c) This Act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act. Alimony in gross or settlements

in lieu of alimony provided for in judgments entered prior to October 1, 1977 shall not be modifiable or terminable as maintenance thereafter.

(d) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this Act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

**(750 ILCS 5/802)**

**Sec. 802. Court Rules.**

The Supreme Court and, subject to the Rules of the Supreme Court, the respective circuit courts, may adopt such rules as they deem necessary and expedient to carry out the provisions of this Act.

**(750 ILCS 10/) Illinois Uniform Premarital Agreement Act.**

**(750 ILCS 10/1)**

**Sec. 1.**

This Article shall be known and may be cited as the Illinois Uniform Premarital Agreement Act.

**(750 ILCS 10/2)**

**Sec. 2. Definitions.**

As used in this Article:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

**(750 ILCS 10/3)**

**Sec. 3. Formalities.**

A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

**(750 ILCS 10/4)**

**Sec. 4. Content.**

(a) Parties to a premarital agreement may contract with respect to:

(1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(4) the modification or elimination of spousal support;

(5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(6) the ownership rights in and disposition of the death benefit from a life insurance policy;

(7) the choice of law governing the construction of the agreement; and

(8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(b) The right of a child to support may not be adversely affected by a premarital agreement.

**(750 ILCS 10/5)**

**Sec. 5. Effect of marriage.**

A premarital agreement becomes effective upon marriage.

**(750 ILCS 10/6)**

**Sec. 6. Amendment, revocation.**

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

**(750 ILCS 10/7)**

**Sec. 7. Enforcement.**

(a) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(1) that party did not execute the agreement voluntarily; or

(2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement undue hardship in light of circumstances not reasonably foreseeable at the time of the execution of the agreement, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid such hardship.

(c) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

**(750 ILCS 10/8)**

**Sec. 8. Enforcement: void marriage.**

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

**(750 ILCS 10/9)**

**Sec. 9. Limitation of actions.**

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

**(750 ILCS 10/10)**

**Sec. 10. Application and construction.**

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

**(750 ILCS 10/11)**

**Sec. 11. Time of taking effect.**

This Article applies to any premarital agreement executed on or after January 1, 1990.

**(750 ILCS 16/) Non-Support Punishment Act.**

**(750 ILCS 16/1)**

**Sec. 1. Short title.**

This Act may be cited as the Non Support Punishment Act.

**(750 ILCS 16/5)**

## **Sec. 5. Prosecutions by State's Attorneys.**

A proceeding for enforcement of this Act may be instituted and prosecuted by the several State's Attorneys only upon the filing of a verified complaint by the person or persons receiving child or spousal support.

### **(750 ILCS 16/7)**

## **Sec. 7. Prosecutions by Attorney General.**

In addition to enforcement proceedings by the several State's Attorneys, a proceeding for the enforcement of this Act may be instituted and prosecuted by the Attorney General in cases referred by the Illinois Department of Public Aid involving persons receiving child support enforcement services under Article X of the Illinois Public Aid Code. Before referring a case to the Attorney General for enforcement under this Act, the Department of Public Aid shall notify the person receiving child support enforcement services under Article X of the Illinois Public Aid Code of the Department's intent to refer the case to the Attorney General under this Section for prosecution.

### **(750 ILCS 16/10)**

## **Sec. 10. Proceedings.**

Proceedings under this Act may be by indictment or information. No proceeding may be brought under Section 15 against a person whose court or administrative order for support was entered by default, unless the indictment or information specifically alleges that the person has knowledge of the existence of the order for support and that the person has the ability to pay the support.

### **(750 ILCS 16/15)**

## **Sec. 15. Failure to support.**

(a) A person commits the offense of failure to support when he or she:

(1) willfully, without any lawful excuse, refuses to

provide for the support or maintenance of his or her spouse, with the knowledge that the spouse is in need of such support or maintenance, or, without lawful excuse, deserts or willfully refuses to provide for the support or maintenance of his or her child or children in need of support or maintenance and the person has the ability to provide the support; or

(2) willfully fails to pay a support obligation

required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than \$5,000, and the person has the ability to provide the support; or

(3) leaves the State with the intent to evade a

support obligation required under a court or administrative order for support, if the obligation, regardless of when it accrued, has remained unpaid for a period longer than 6 months, or is in arrears in an amount greater than \$10,000; or

(4) willfully fails to pay a support obligation

required under a court or administrative order for support, if the obligation has remained unpaid for a period longer than one year, or is in arrears in an amount greater than \$20,000, and the person has the ability to provide the support.

(a-5) Presumption of ability to pay support. The existence of a court or administrative order of support that was not based on a default judgment and was in effect for the time period charged in the indictment or information creates a rebuttable presumption that the obligor has the ability to pay the support obligation for that time period.

(b) Sentence. A person convicted of a first offense under subdivision (a)(1) or (a)(2) is guilty of a Class A misdemeanor. A person convicted of an offense under subdivision (a)(3) or (a)(4) or a second or subsequent offense under subdivision (a)(1) or (a)(2) is guilty of a Class 4 felony.

(c) Expungement. A person convicted of a first offense under subdivision (a)(1) or (a)(2) who is eligible for the Earnfare program, shall, in lieu of the sentence prescribed in subsection (b), be referred to the Earnfare program. Upon certification of completion of the Earnfare program, the conviction shall be expunged. If the person fails to successfully complete the Earnfare program, he or she shall be sentenced in accordance with subsection (b).

(d) Fine. Sentences of imprisonment and fines for offenses committed under this Act shall be as provided under Articles 8 and 9 of Chapter V of the Unified Code of Corrections, except that the

court shall order restitution of all unpaid support payments and may impose the following fines, alone, or in addition to a sentence of imprisonment under the following circumstances:

(1) from \$1,000 to \$5,000 if the support obligation has remained unpaid for a period longer than 2 years, or is in arrears in an amount greater than \$1,000 and not exceeding \$10,000;

(2) from \$5,000 to \$10,000 if the support obligation has remained unpaid for a period longer than 5 years, or is in arrears in an amount greater than \$10,000 and not exceeding \$20,000; or

(3) from \$10,000 to \$25,000 if the support obligation has remained unpaid for a period longer than 8 years, or is in arrears in an amount greater than \$20,000.

(e) Restitution shall be ordered in an amount equal to the total unpaid support obligation as it existed at the time of sentencing. Any amounts paid by the obligor shall be allocated first to current support and then to restitution ordered and then to fines imposed under this Section.

(f) For purposes of this Act, the term "child" shall have the meaning ascribed to it in Section 505 of the Illinois Marriage and Dissolution of Marriage Act.

### **(750 ILCS 16/20)**

#### **Sec. 20. Entry of order for support; income withholding.**

(a) In a case in which no court or administrative order for support is in effect against the defendant:

(1) at any time before the trial, upon motion of the

State's Attorney, or of the Attorney General if the action has been instituted by his office, and upon notice to the defendant, or at the time of arraignment or as a condition of postponement of arraignment, the court may enter such temporary order for support as may seem just, providing for the support or maintenance of the spouse or child or children of the defendant, or both, pendente lite; or

(2) before trial with the consent of the defendant,

or at the trial on entry of a plea of guilty, or after conviction, instead of imposing the penalty provided in this Act, or in addition thereto, the court may enter an order for support, subject to modification by the court from time to time as circumstances may require, directing the defendant to pay a certain sum for maintenance of the spouse, or for support of the child or children, or both.

(b) The court shall determine the amount of child support by using the guidelines and standards set forth in subsection (a) of Section 505 and in Section 505.2 of the Illinois Marriage and Dissolution of Marriage Act.

If (i) the non-custodial parent was properly served with a request for discovery of financial information relating to the non-custodial parent's ability to provide child support, (ii) the non-custodial parent failed to comply with the request, despite having been ordered to do so by the court, and (iii) the non-custodial parent is not present at the hearing to determine support despite having received proper notice, then any relevant financial information concerning the non-custodial parent's ability to provide support that was obtained pursuant to subpoena and proper notice shall be admitted into evidence without the need to establish any further foundation for its admission.

(c) The court shall determine the amount of maintenance using the standards set forth in Section 504 of the Illinois Marriage and Dissolution of Marriage Act.

(d) The court may, for violation of any order under this Section, punish the offender as for a contempt of court, but no pendente lite order shall remain in effect longer than 4 months, or after the discharge of any panel of jurors summoned for service thereafter in such court, whichever is sooner.

(e) Any order for support entered by the court under this Section shall be deemed to be a series of judgments against the person obligated to pay support under the judgments, each such judgment to be in the amount of each payment or installment of support and each judgment to be deemed entered as of the date the corresponding payment or installment becomes due under the terms of the support order. Each judgment shall have the full force, effect, and attributes of any other judgment of this State, including the ability to be enforced. Each judgment is subject to modification or termination only in accordance with Section 510 of the Illinois Marriage and Dissolution of Marriage Act. A lien arises by operation of law against the real and personal property of the noncustodial parent for each installment of overdue support owed by the noncustodial parent.

(f) An order for support entered under this Section shall include a provision requiring the obligor to report to the obligee and to the clerk of the court within 10 days each time the obligor obtains new employment, and each time the obligor's employment is terminated for any reason. The report shall be in writing and shall, in the case of new employment, include the name and address of the new employer.

Failure to report new employment or the termination of current employment, if coupled with nonpayment of support for a period in excess of 60 days, is indirect criminal contempt. For any obligor 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.

An order for support entered under this Section shall also include a provision requiring the obligor and obligee parents to advise each other of a change in residence within 5 days of the change except when the court finds that the physical, mental, or emotional health of a party or of a minor child, or both, would be seriously endangered by disclosure of the party's address.

(g) An order for support entered or modified in a case in which a party is receiving child support enforcement services under Article X of the Illinois Public Aid Code shall include a provision requiring the noncustodial parent to notify the Illinois Department of Public Aid, within 7 days, of the name and address of any new employer of the noncustodial parent, whether the noncustodial parent has access to health insurance coverage through the employer or other group coverage and, if so, the policy name and number and the names of persons covered under the policy.

(h) In any subsequent action to enforce an order for support entered under this Act, upon sufficient showing that diligent effort has been made to ascertain the location of the noncustodial parent, service of process or provision of notice necessary in that action may be made at the last known address of the noncustodial parent, in any manner expressly provided by the Code of Civil Procedure or in this Act, which service shall be sufficient for purposes of due process.

(i) An order for support shall include a date on which the current support obligation terminates. The termination date shall be no earlier than the date on which the child covered by the order will attain the age of 18. However, if the child will not graduate from high school until after attaining the age of 18, then the termination date shall be no earlier than the earlier of the date on which the child's high school graduation will occur or the date on which the child will attain the age of 19. The order for support shall state that the termination date does not apply to any arrearage that may remain unpaid on that date. Nothing in this subsection shall be construed to prevent the court from modifying the order or terminating the order in the event the child is otherwise emancipated.

(i-5) If there is an unpaid arrearage or delinquency (as those terms are defined in the Income Withholding for Support Act) equal to at least one month's support obligation on the termination date stated in the order for support or, if there is no termination date stated in the order, on the date the child attains the age of majority or is otherwise emancipated, the periodic amount required to be paid for current support of that child immediately prior to that date shall automatically continue to be an obligation, not as current support but as periodic payment toward satisfaction of the unpaid arrearage or delinquency. That periodic payment shall be in addition to any periodic payment previously required for satisfaction of the arrearage or delinquency. The total periodic amount to be paid toward satisfaction of the arrearage or delinquency may be enforced and collected by any method provided by law for enforcement and collection of child support, including but not limited to income withholding under the Income Withholding for Support Act. Each order for support entered or modified on or after the effective date of this amendatory Act of the 93rd General Assembly must contain a statement notifying the parties of the requirements of this subsection. Failure to include the statement in the order for support does not affect the validity of the order or the operation of the provisions of this subsection with regard to the order. This subsection shall not be construed to prevent or affect the establishment or modification of an order for support of a minor child or the establishment or modification of an order for support of a non-minor child or educational expenses under Section 513 of the Illinois Marriage and Dissolution of Marriage Act.

(j) A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of Civil Procedure. An order for support entered or modified on or after January 1, 2006 shall contain a statement that a support obligation required under the order, or any portion of a support obligation required under the order, that becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue simple interest as set forth in Section 12-109 of the Code of

Civil Procedure. Failure to include the statement in the order for support does not affect the validity of the order or the accrual of interest as provided in this Section.

**(750 ILCS 16/22)**

**Sec. 22. Withholding of income to secure payment of support.**

An order for support entered or modified under this Act is subject to the Income Withholding for Support Act.

**(750 ILCS 16/23)**

**Sec. 23. Interest on support obligations.**

A support obligation, or any portion of a support obligation, which becomes due and remains unpaid as of the end of each month, excluding the child support that was due for that month to the extent that it was not paid in that month, shall accrue interest as set forth in Section 12-109 of the Code of Civil Procedure.

**(750 ILCS 16/25)**

**Sec. 25. Payment of support to State Disbursement Unit; clerk of the court.**

(a) As used in this Section, "order for support", "obligor", "obligee", and "payor" mean those terms as defined in the Income Withholding for Support Act.

(b) Each order for support entered or modified under Section 20 of this Act shall require that support payments be made to the State Disbursement Unit established under the Illinois Public Aid Code, under the following circumstances:

(1) when a party to the order is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(2) when no party to the order is receiving child support enforcement services, but the support payments are made through income withholding.

(c) When no party to the order is receiving child support enforcement services, and payments are not being made through income withholding, the court shall order the obligor to make support payments to the clerk of the court.

(d) At any time, and notwithstanding the existence of an order directing payments to be made elsewhere, the Department of Public Aid may provide notice to the obligor and, where applicable, to the obligor's payor:

(1) to make support payments to the State Disbursement Unit if:

(A) a party to the order for support is receiving child support enforcement services under Article X of the Illinois Public Aid Code; or

(B) no party to the order for support is receiving child support enforcement services under Article X of the Illinois Public Aid Code, but the support payments are made through income withholding; or

(2) to make support payments to the State

Disbursement Unit of another state upon request of another state's Title IV-D child support enforcement agency, in accordance with the requirements of Title IV, Part D of the Social Security Act and regulations promulgated under that Part D.

The Department of Public Aid shall provide a copy of the notice to the obligee and to the clerk of the circuit court.

(e) If a State Disbursement Unit as specified by federal law has not been created in Illinois upon the effective date of this Act, then, until the creation of a State Disbursement Unit as specified by federal law, the following provisions regarding payment and disbursement of support payments shall control and the provisions in subsections (a), (b), (c), and (d) shall be inoperative. Upon the creation of a State Disbursement Unit as specified by federal law, the payment and disbursement provisions of subsections (a), (b), (c), and (d) shall control, and this subsection (e) shall be inoperative to the extent that it conflicts with those subsections.

(1) In cases in which an order for support is

entered under Section 20 of this Act, the court shall order that maintenance and support payments be made to the clerk of the court for remittance to the person or agency entitled to receive the payments. However, the court in its discretion may direct otherwise where exceptional circumstances so warrant.

(2) The court shall direct that support payments be sent by the clerk to (i) the Illinois Department of Public Aid if the person in whose behalf payments are made is receiving aid under Articles III, IV, or V of the Illinois Public Aid Code, or child support enforcement services under Article X of the Code, or (ii) to the local governmental unit responsible for the support of the person if he or she is a recipient under Article VI of the Code. In accordance with federal law and regulations, the Illinois Department of Public Aid may continue to collect current maintenance payments or child support payments, or both, after those persons cease to receive public assistance and until termination of services under Article X of the Illinois Public Aid Code. The Illinois Department shall pay the net amount collected to those persons after deducting any costs incurred in making the collection or any collection fee from the amount of any recovery made. The order shall permit the Illinois Department of Public Aid or the local governmental unit, as the case may be, to direct that support payments be made directly to the spouse, children, or both, or to some person or agency in their behalf, upon removal of the spouse or children from the public aid rolls or upon termination of services under Article X of the Illinois Public Aid Code; and upon such direction, the Illinois Department or the local governmental unit, as the case requires, shall give notice of such action to the court in writing or by electronic transmission.

(3) The clerk of the court shall establish and maintain current records of all moneys received and disbursed and of delinquencies and defaults in required payments. The court, by order or rule, shall make provision for the carrying out of these duties.

(4) (Blank).

(5) Payments under this Section to the Illinois Department of Public Aid pursuant to the Child Support Enforcement Program established by Title IV-D of the Social Security Act shall be paid into the Child Support Enforcement Trust Fund. All other payments under this Section to the Illinois Department of Public Aid shall be deposited in the Public Assistance Recoveries Trust Fund. Disbursements from these funds shall be as provided in the Illinois Public Aid Code. Payments received by a local governmental unit shall be deposited in that unit's General Assistance Fund.

(6) For those cases in which child support is payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid by order of court or upon notification by the Illinois Department of Public Aid, the clerk shall transmit all such payments, within 4 working days of receipt, to insure that funds are available for immediate distribution by the Department to the person or entity entitled thereto in accordance with standards of the Child Support Enforcement Program established under Title IV-D of the Social Security Act. The clerk shall notify the Department of the date of receipt and amount thereof at the time of transmittal. Where the clerk has entered into an agreement of cooperation with the Department to record the terms of child support orders and payments made thereunder directly into the Department's automated data processing system, the clerk shall account for, transmit and otherwise distribute child support payments in accordance with such agreement in lieu of the requirements contained herein.

### **(750 ILCS 16/30)**

#### **Sec. 30. Information to State Case Registry.**

(a) In this Section:  
"Order for support", "obligor", "obligee", and "business day" are defined as set forth in the Income Withholding for Support Act.

"State Case Registry" means the State Case Registry established under Section 10-27 of the Illinois Public Aid Code.

(b) Each order for support entered or modified by the circuit court under this Act shall require that the obligor and obligee (i) file with the clerk of the circuit court the information required by this Section (and any other information required under Title IV, Part D of the Social Security Act or by the federal Department of Health and Human Services) at the time of entry or modification of the order for support and (ii) file updated information with the clerk within 5 business days of any change. Failure of the obligor or obligee to file or update the required information shall be punishable as in cases of contempt. The failure shall not prevent the court from entering or modifying the order for support, however.

(c) The obligor shall file the following information: the obligor's name, date of birth, social security number, and mailing address.

If either the obligor or the obligee receives child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, the obligor shall also file the following information: the obligor's telephone number, driver's license number, and residential address (if different from the obligor's mailing address), and the name, address, and telephone number of the obligor's employer or employers.

(d) The obligee shall file the following information:

- (1) The names of the obligee and the child or children covered by the order for support.
- (2) The dates of birth of the obligee and the child or children covered by the order for support.
- (3) The social security numbers of the obligee and the child or children covered by the order for support.
- (4) The obligee's mailing address.

(e) In cases in which the obligee receives child support enforcement services from the Illinois Department of Public Aid under Article X of the Illinois Public Aid Code, the order for support shall (i) require that the obligee file the information required under subsection (d) with the Illinois Department of Public Aid for inclusion in the State Case Registry, rather than file the information with the clerk, and (ii) require that the obligee include the following additional information:

- (1) The obligee's telephone and driver's license numbers.
- (2) The obligee's residential address, if different from the obligee's mailing address.
- (3) The name, address, and telephone number of the obligee's employer or employers.

The order for support shall also require that the obligee update the information filed with the Illinois Department of Public Aid within 5 business days of any change.

(f) The clerk shall provide the information filed under this Section, together with the court docket number and county in which the order for support was entered, to the State Case Registry within 5 business days after receipt of the information.

(g) In a case in which a party is receiving child support enforcement services under Article X of the Illinois Public Aid Code, the clerk shall provide the following additional information to the State Case Registry within 5 business days after entry or modification of an order for support or request from the Illinois Department of Public Aid:

- (1) The amount of monthly or other periodic support owed under the order for support and other amounts, including arrearage, interest, or late payment penalties and fees, due or overdue under the order.
- (2) Any such amounts that have been received by the clerk, and the distribution of those amounts by the clerk.

(h) Information filed by the obligor and obligee under this Section that is not specifically required to be included in the body of an order for support under other laws is not a public record and shall be treated as confidential and subject to disclosure only in accordance with the provisions of this Section, Section 10-27 of the Illinois Public Aid Code, and Title IV, Part D of the Social Security Act.

### **(750 ILCS 16/33)**

#### **Sec. 33. Information to locate putative fathers and noncustodial parents.**

(a) Upon request by a public office, employers, labor unions, and telephone companies shall provide location information concerning putative fathers and noncustodial parents for the purpose of establishing a child's paternity or establishing, enforcing, or modifying a child support obligation. The term "public office" is defined as set forth in the Income Withholding for Support Act. In this Section, "location information" means information about (i) the physical whereabouts of a putative father or noncustodial parent, (ii) the employer of the putative father or noncustodial parent, or (iii) the salary, wages, and other compensation paid and the health insurance coverage provided to the putative father or noncustodial parent by the employer of the putative father or noncustodial parent or by a labor union of which the putative father or noncustodial parent is a member. An employer, labor union, or telephone company shall respond to the request of the public office within 15 days after receiving the request. Any employer, labor union, or telephone company that willfully fails to fully respond within the 15-day period shall be subject to a penalty of \$100 for each day that the response is not provided to the public office after the 15-day period has expired. The

penalty may be collected in a civil action, which may be brought against the employer, labor union, or telephone company in favor of the public office.

(b) Upon being served with a subpoena (including an administrative subpoena as authorized by law), a utility company or cable television company must provide location information to a public office for the purpose of establishing a child's paternity or establishing, enforcing, or modifying a child support obligation.

(c) Notwithstanding the provisions of any other State or local law to the contrary, an employer, labor union, telephone company, utility company, or cable television company shall not be liable to any person for disclosure of location information under the requirements of this Section, except for willful and wanton misconduct.

**(750 ILCS 16/35)**

**Sec. 35. Fine; release of defendant on probation; violation of order for support; forfeiture of recognizance.**

(a) Whenever a fine is imposed it may be directed by the court to be paid, in whole or in part, to the spouse, ex-spouse, or if the support of a child or children is involved, to the custodial parent, to the clerk, probation officer, or to the Illinois Department of Public Aid if a recipient of child support enforcement services under Article X of the Illinois Public Aid Code is involved as the case requires, to be disbursed by such officers or agency under the terms of the order.

(b) The court may also relieve the defendant from custody on probation for the period fixed in the order or judgment upon his or her entering into a recognizance, with or without surety, in the sum as the court orders and approves. The condition of the recognizance shall be such that if the defendant makes his or her personal appearance in court whenever ordered to do so by the court, during such period as may be so fixed, and further complies with the terms of the order for support, or any subsequent modification of the order, then the recognizance shall be void; otherwise it will remain in full force and effect.

(c) If the court is satisfied by testimony in open court, that at any time during the period of one year the defendant has violated the terms of the order for support, it may proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of recognizance, and enforcement of recognizance by execution, the sum so recovered may, in the discretion of the court, be paid, in whole or in part, to the spouse, ex-spouse, or if the support of a child or children is involved, to the custodial parent, to the clerk, or to the Illinois Department of Public Aid if a recipient of child support enforcement services under Article X of the Illinois Public Aid Code is involved as the case requires, to be disbursed by the clerk or the Department under the terms of the order.

**(750 ILCS 16/40)**

**Sec. 40. Evidence.**

No other or greater evidence shall be required to prove the marriage of a husband and wife, or that the defendant is the father or mother of the child or children than is or shall be required to prove that fact in a civil action.

**(750 ILCS 16/45)**

**Sec. 45. Husband or wife as competent witness.**

In no prosecution under this Act shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply. And both husband and wife shall be competent witnesses to testify to any and all relevant matters, including the fact of such marriage and of the parentage of such child or children, provided that neither shall be compelled to give evidence incriminating himself or herself.

**(750 ILCS 16/50)**

**Sec. 50. Community service; work alternative program.**

(a) In addition to any other penalties imposed against an offender under this Act, the court may order the offender to perform community service for not less than 30 and not more than 120 hours per month, if community service is available in the jurisdiction and is funded and approved by the

county board of the county where the offense was committed. In addition, whenever any person is placed on supervision for committing an offense under this Act, the supervision shall be conditioned on the performance of the community service.

(b) In addition to any other penalties imposed against an offender under this Act, the court may sentence the offender to service in a work alternative program administered by the sheriff. The conditions of the program are that the offender obtain or retain employment and participate in a work alternative program administered by the sheriff during non-working hours. A person may not be required to participate in a work alternative program under this subsection if the person is currently participating in a work program pursuant to another provision of this Act, Section 10-11.1 of the Illinois Public Aid Code, Section 505.1 of the Illinois Marriage and Dissolution of Marriage Act, or Section 15.1 of the Illinois Parentage Act of 1984.

(c) In addition to any other penalties imposed against an offender under this Act, the court may order, in cases where the offender has been in violation of this Act for 90 days or more, that the offender's Illinois driving privileges be suspended until the court determines that the offender is in compliance with this Act.

The court may determine that the offender is in compliance with this Act if the offender has agreed (i) to pay all required amounts of support and maintenance as determined by the court or (ii) to the garnishment of his or her income for the purpose of paying those amounts.

The court may also order that the offender be issued a family financial responsibility driving permit that would allow limited driving privileges for employment and medical purposes in accordance with Section 7-702.1 of the Illinois Vehicle Code. The clerk of the circuit court shall certify the order suspending the driving privileges of the offender or granting the issuance of a family financial responsibility driving permit to the Secretary of State on forms prescribed by the Secretary. Upon receipt of the authenticated documents, the Secretary of State shall suspend the offender's driving privileges until further order of the court and shall, if ordered by the court, subject to the provisions of Section 7-702.1 of the Illinois Vehicle Code, issue a family financial responsibility driving permit to the offender.

(d) If the court determines that the offender has been in violation of this Act for more than 60 days, the court may determine whether the offender has applied for or been issued a professional license by the Department of Professional Regulation or another licensing agency. If the court determines that the offender has applied for or been issued such a license, the court may certify to the Department of Professional Regulation or other licensing agency that the offender has been in violation of this Act for more than 60 days so that the Department or other agency may take appropriate steps with respect to the license or application as provided in Section 10-65 of the Illinois Administrative Procedure Act and Section 2105-15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois. The court may take the actions required under this subsection in addition to imposing any other penalty authorized under this Act.

**(750 ILCS 16/55)**

**Sec. 55. Offenses; how construed.**

It is hereby expressly declared that the offenses set forth in this Act shall be construed to be continuing offenses.

**(750 ILCS 16/60)**

**Sec. 60. Unemployed persons owing duty of support.**

(a) Whenever it is determined in a proceeding to establish or enforce a child support or maintenance obligation that the person owing a duty of support is unemployed, the court may order the person to seek employment and report periodically to the court with a diary, listing or other memorandum of his or her efforts in accordance with such order. Additionally, the court may order the unemployed person to report to the Department of Employment Security for job search services or to make application with the local Job Training Partnership Act provider for participation in job search, training, or work programs and where the duty of support is owed to a child receiving child support enforcement services under Article X of the Illinois Public Aid Code the court may order the unemployed person to report to the Illinois Department of Public Aid for participation in job search, training, or work programs established under Section 9-6 and Article IXA of that Code.

(b) Whenever it is determined that a person owes past due support for a child or for a child and the parent with whom the child is living, and the child is receiving assistance under the Illinois Public Aid Code, the court shall order at the request of the Illinois Department of Public Aid:

(1) that the person pay the past-due support in accordance with a plan approved by the court; or

(2) if the person owing past-due support is unemployed, is subject to such a plan, and is not incapacitated, that the person participate in such job search, training, or work programs established under Section 9-6 and Article IXA of the Illinois Public Aid Code as the court deems appropriate.

**(750 ILCS 16/65)**

**Sec. 65. Order of protection; status.**

Whenever relief sought under this Act is based on allegations of domestic violence, as defined in the Illinois Domestic Violence Act of 1986, the court, before granting relief, shall determine whether any order of protection has previously been entered in the instant proceeding or any other proceeding in which any party, or a child of any party, or both, if relevant, has been designated as either a respondent or a protected person.

**(750 ILCS 16/70)**

**Sec. 70. Severability.**

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.

**(750 ILCS 16/995)**

**Sec. 995. Certain actions to be determined under prior law.**

An action that was commenced under the Non-Support of Spouse and Children Act and is pending on the effective date of this Act shall be decided in accordance with the Non-Support of Spouse and Children Act as it existed immediately before its repeal by this Act.

**(750 ILCS 16/999)**

**Sec. 999. Effective date.**

This Act takes effect on October 1, 1999, except that Section 945 takes effect July 1, 2000.