



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4255

by Rep. Avery Bourne

SYNOPSIS AS INTRODUCED:

750 ILCS 5/602.9

Amends the Illinois Marriage and Dissolution of Marriage Act. Requires that proceedings concerning a petition for visitation brought by a grandparent or great-grandparent be given priority in being set for a hearing, and that a decision be rendered within 6 months of the petition for visitation being filed, unless the parties agree otherwise. Requires the court to set the first hearing date for a petition for visitation within 45 days of filing the petition. Requires that further hearing dates be set in court within 45 days of the prior hearing. Allows the court to impose penalties and sanctions on any party that intentionally or recklessly causes an undue delay in proceedings regarding a visitation petition brought by a grandparent or great-grandparent.

LRB100 16136 HEP 31255 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 602.9 as follows:

6 (750 ILCS 5/602.9)

7 Sec. 602.9. Visitation by certain non-parents.

8 (a) As used in this Section:

9 (1) "electronic communication" means time that a
10 grandparent, great-grandparent, sibling, or step-parent
11 spends with a child during which the child is not in the
12 person's actual physical custody, but which is facilitated
13 by the use of communication tools such as the telephone,
14 electronic mail, instant messaging, video conferencing or
15 other wired or wireless technologies via the Internet, or
16 another medium of communication;

17 (2) "sibling" means a brother or sister either of the
18 whole blood or the half blood, stepbrother, or stepsister
19 of the minor child;

20 (3) "step-parent" means a person married to a child's
21 parent, including a person married to the child's parent
22 immediately prior to the parent's death; and

23 (4) "visitation" means in-person time spent between a

1 child and the child's grandparent, great-grandparent,
2 sibling, step-parent, or any person designated under
3 subsection (d) of Section 602.7. In appropriate
4 circumstances, visitation may include electronic
5 communication under conditions and at times determined by
6 the court.

7 (b) General provisions.

8 (1) An appropriate person, as identified in subsection
9 (c) of this Section, may bring an action in circuit court
10 by petition, or by filing a petition in a pending
11 dissolution proceeding or any other proceeding that
12 involves parental responsibilities or visitation issues
13 regarding the child, requesting visitation with the child
14 pursuant to this Section. If there is not a pending
15 proceeding involving parental responsibilities or
16 visitation with the child, the petition for visitation with
17 the child must be filed in the county in which the child
18 resides. Notice of the petition shall be given as provided
19 in subsection (c) of Section 601.2 of this Act.

20 (2) This Section does not apply to a child:

21 (A) in whose interests a petition is pending under
22 Section 2-13 of the Juvenile Court Act of 1987; or

23 (B) in whose interests a petition to adopt by an
24 unrelated person is pending under the Adoption Act; or

25 (C) who has been voluntarily surrendered by the
26 parent or parents, except for a surrender to the

1 Department of Children and Family Services or a foster
2 care facility; or

3 (D) who has been previously adopted by an
4 individual or individuals who are not related to the
5 biological parents of the child or who is the subject
6 of a pending adoption petition by an individual or
7 individuals who are not related to the biological
8 parents of the child; or

9 (E) who has been relinquished pursuant to the
10 Abandoned Newborn Infant Protection Act.

11 (3) A petition for visitation may be filed under this
12 Section only if there has been an unreasonable denial of
13 visitation by a parent and the denial has caused the child
14 undue mental, physical, or emotional harm.

15 (4) There is a rebuttable presumption that a fit
16 parent's actions and decisions regarding grandparent,
17 great-grandparent, sibling, or step-parent visitation are
18 not harmful to the child's mental, physical, or emotional
19 health. The burden is on the party filing a petition under
20 this Section to prove that the parent's actions and
21 decisions regarding visitation will cause undue harm to the
22 child's mental, physical, or emotional health.

23 (5) In determining whether to grant visitation, the
24 court shall consider the following:

25 (A) the wishes of the child, taking into account
26 the child's maturity and ability to express reasoned

1 and independent preferences as to visitation;

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

3 (C) the mental and physical health of the
4 grandparent, great-grandparent, sibling, or
5 step-parent;

6 (D) the length and quality of the prior
7 relationship between the child and the grandparent,
8 great-grandparent, sibling, or step-parent;

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

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

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

16 (H) any other fact that establishes that the loss
17 of the relationship between the petitioner and the
18 child is likely to unduly harm the child's mental,
19 physical, or emotional health; and

20 (I) whether visitation can be structured in a way
21 to minimize the child's exposure to conflicts between
22 the adults.

23 (6) Any visitation rights granted under this Section
24 before the filing of a petition for adoption of the child
25 shall automatically terminate by operation of law upon the
26 entry of an order terminating parental rights or granting

1 the adoption of the child, whichever is earlier. If the
2 person or persons who adopted the child are related to the
3 child, as defined by Section 1 of the Adoption Act, any
4 person who was related to the child as grandparent,
5 great-grandparent, or sibling prior to the adoption shall
6 have standing to bring an action under this Section
7 requesting visitation with the child.

8 (7) The court may order visitation rights for the
9 grandparent, great-grandparent, sibling, or step-parent
10 that include reasonable access without requiring overnight
11 or possessory visitation.

12 (8) Proceedings concerning a petition brought under
13 this Section by a grandparent or great-grandparent shall
14 receive priority in being set for a hearing. The court
15 shall render a decision not later than 6 months after the
16 petition has been filed, unless the parties agree
17 otherwise. At the time of filing a petition under this
18 Section by a grandparent or great-grandparent, the court
19 shall set the first hearing within 45 days of the petition
20 being filed, and each subsequent hearing shall be scheduled
21 within 45 days of the immediately preceding hearing. If a
22 party intentionally or recklessly causes undue delay of the
23 proceedings on a petition for visitation rights brought by
24 a grandparent or great-grandparent, the court shall impose
25 penalties and sanctions, including, but not limited to,
26 costs and attorney's fees.

1 (c) Visitation by grandparents, great-grandparents,
2 step-parents, and siblings.

3 (1) Grandparents, great-grandparents, step-parents,
4 and siblings of a minor child who is one year old or older
5 may bring a petition for visitation and electronic
6 communication under this Section if there is an
7 unreasonable denial of visitation by a parent that causes
8 undue mental, physical, or emotional harm to the child and
9 if at least one of the following conditions exists:

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

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

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

21 (D) the child's parents have been granted a
22 dissolution of marriage or have been legally separated
23 from each other or there is pending a dissolution
24 proceeding involving a parent of the child or another
25 court proceeding involving parental responsibilities
26 or visitation of the child (other than an adoption

1 proceeding of an unrelated child, a proceeding under
2 Article II of the Juvenile Court Act of 1987, or an
3 action for an order of protection under the Illinois
4 Domestic Violence Act of 1986 or Article 112A of the
5 Code of Criminal Procedure of 1963) and at least one
6 parent does not object to the grandparent,
7 great-grandparent, step-parent, or sibling having
8 visitation with the child. The visitation of the
9 grandparent, great-grandparent, step-parent, or
10 sibling must not diminish the parenting time of the
11 parent who is not related to the grandparent,
12 great-grandparent, step-parent, or sibling seeking
13 visitation; or

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

20 (2) In addition to the factors set forth in subdivision
21 (b) (5) of this Section, the court should consider:

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

25 (B) whether the child had frequent and regular
26 contact or visitation with the petitioner for at least

1 12 consecutive months; and

2 (C) whether the grandparent, great-grandparent,
3 sibling, or step-parent was a primary caretaker of the
4 child for a period of not less than 6 consecutive
5 months within the 24-month period immediately
6 preceding the commencement of the proceeding.

7 (3) An order granting visitation privileges under this
8 Section is subject to subsections (c) and (d) of Section
9 603.10.

10 (4) A petition for visitation privileges may not be
11 filed pursuant to this subsection (c) by the parents or
12 grandparents of a parent of the child if parentage between
13 the child and the related parent has not been legally
14 established.

15 (d) Modification of visitation orders.

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

24 (2) The court shall not modify an order that grants
25 visitation to a grandparent, great-grandparent, sibling,
26 or step-parent unless it finds by clear and convincing

1 evidence, upon the basis of facts that have arisen since
2 the prior visitation order or that were unknown to the
3 court at the time of entry of the prior visitation order,
4 that a change has occurred in the circumstances of the
5 child or his or her parent, and that the modification is
6 necessary to protect the mental, physical, or emotional
7 health of the child. The court shall state in its decision
8 specific findings of fact in support of its modification or
9 termination of the grandparent, great-grandparent,
10 sibling, or step-parent visitation. A child's parent may
11 always petition to modify visitation upon changed
12 circumstances when necessary to promote the child's best
13 interests.

14 (3) Notice of a motion requesting modification of a
15 visitation order shall be provided as set forth in
16 subsection (c) of Section 601.2 of this Act.

17 (4) Attorney's fees and costs shall be assessed against
18 a party seeking modification of the visitation order if the
19 court finds that the modification action is vexatious and
20 constitutes harassment.

21 (e) No child's grandparent, great-grandparent, sibling, or
22 step-parent, or any person to whom the court is considering
23 granting visitation privileges pursuant to subsection (d) of
24 Section 602.7, who was convicted of any offense involving an
25 illegal sex act perpetrated upon a victim less than 18 years of
26 age including, but not limited to, offenses for violations of

1 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70,
2 or Article 12 of the Criminal Code of 1961 or the Criminal Code
3 of 2012, is entitled to visitation while incarcerated or while
4 on parole, probation, conditional discharge, periodic
5 imprisonment, or mandatory supervised release for that
6 offense, and upon discharge from incarceration for a
7 misdemeanor offense or upon discharge from parole, probation,
8 conditional discharge, periodic imprisonment, or mandatory
9 supervised release for a felony offense. Visitation shall be
10 denied until the person successfully completes a treatment
11 program approved by the court. Upon completion of treatment,
12 the court may deny visitation based on the factors listed in
13 subdivision (b) (5) of this Section.

14 (f) No child's grandparent, great-grandparent, sibling, or
15 step-parent, or any person to whom the court is considering
16 granting visitation privileges pursuant to subsection (d) of
17 Section 602.7, may be granted visitation if he or she has been
18 convicted of first degree murder of a parent, grandparent,
19 great-grandparent, or sibling of the child who is the subject
20 of the visitation request. Pursuant to a motion to modify
21 visitation, the court shall revoke visitation rights
22 previously granted to any person who would otherwise be
23 entitled to petition for visitation rights under this Section
24 or granted visitation under subsection (d) of Section 602.7, if
25 the person has been convicted of first degree murder of a
26 parent, grandparent, great-grandparent, or sibling of the

1 child who is the subject of the visitation order. Until an
2 order is entered pursuant to this subsection, no person may
3 visit, with the child present, a person who has been convicted
4 of first degree murder of the parent, grandparent,
5 great-grandparent, or sibling of the child without the consent
6 of the child's parent, other than a parent convicted of first
7 degree murder as set forth herein, or legal guardian.

8 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17.)