



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4113

by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

750 ILCS 5/102 from Ch. 40, par. 102
750 ILCS 5/602.5
750 ILCS 5/602.7
750 ILCS 5/602.10
750 ILCS 5/603.10

Amends the Illinois Marriage and Dissolution of Marriage Act. To the list of purposes of the Act, adds recognizing that the involvement of each parent for equal time is presumptively in the children's best interests. Deletes language providing that nothing in the Act requires that each parent be allocated decision-making responsibilities. Provides that it is presumed that it is in the child's best interests to award equal time to each parent. Provides that it is presumed that both parents are fit and the court shall not place any restrictions on parenting time unless it finds by clear and convincing evidence (instead of a preponderance of the evidence) that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health. In specified situations, requires the court to issue a written decision stating its specific findings of fact and conclusions of law in support of its ruling. Provides that the court may restrict or modify parental responsibilities after a showing of clear and convincing evidence (instead of a preponderance of the evidence) that the restriction or modification is warranted.

LRB100 14598 HEP 29395 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 Sections 102, 602.5, 602.7,
6 602.10, and 603.10 as follows:

7 (750 ILCS 5/102) (from Ch. 40, par. 102)

8 Sec. 102. Purposes; Rules of Construction. This Act shall
9 be liberally construed and applied to promote its underlying
10 purposes, which are to:

11 (1) provide adequate procedures for the solemnization
12 and registration of marriage;

13 (2) strengthen and preserve the integrity of marriage
14 and safeguard family relationships;

15 (3) promote the amicable settlement of disputes that
16 have arisen between parties to a marriage;

17 (4) mitigate the potential harm to spouses and their
18 children caused by the process of an action brought under
19 this Act, and protect children from exposure to conflict
20 and violence;

21 (5) ensure predictable decision-making for the care of
22 children and for the allocation of parenting time and other
23 parental responsibilities, and avoid prolonged uncertainty

1 by expeditiously resolving issues involving children;

2 (6) recognize the right of children to a healthy
3 relationship with parents, and the responsibility of
4 parents to ensure such a relationship;

5 (7) acknowledge that the determination of children's
6 best interests, and the allocation of parenting time and
7 significant decision-making responsibilities, are among
8 the paramount responsibilities of our system of justice,
9 and to that end:

10 (A) recognize children's right to a strong and
11 healthy relationship with parents, and parents'
12 concomitant right and responsibility to create and
13 maintain such relationships;

14 (B) recognize that, in the absence of domestic
15 violence or any other factor that the court expressly
16 finds to be relevant, proximity to, and frequent
17 contact with, both parents promotes healthy
18 development of children;

19 (C) facilitate parental planning and agreement
20 about the children's upbringing and allocation of
21 parenting time and other parental responsibilities;

22 (D) continue existing parent-child relationships,
23 and secure the maximum involvement and cooperation of
24 parents regarding the physical, mental, moral, and
25 emotional well-being of the children during and after
26 the litigation; ~~and~~

1 (E) promote or order parents to participate in
2 programs designed to educate parents to:

3 (i) minimize or eliminate rancor and the
4 detrimental effect of litigation in any proceeding
5 involving children; and

6 (ii) facilitate the maximum cooperation of
7 parents in raising their children; and

8 (F) recognize that, in order to maximize the
9 opportunity for children to maintain and strengthen
10 the children's relationship with each parent, the
11 involvement of both parents for equal time is
12 presumptively in the best interests of the children;

13 (8) make reasonable provision for support during and
14 after an underlying dissolution of marriage, legal
15 separation, parentage, or parental responsibility
16 allocation action, including provision for timely advances
17 of interim fees and costs to all attorneys, experts, and
18 opinion witnesses including guardians ad litem and
19 children's representatives, to achieve substantial parity
20 in parties' access to funds for pre-judgment litigation
21 costs in an action for dissolution of marriage or legal
22 separation;

23 (9) eliminate the consideration of marital misconduct
24 in the adjudication of rights and duties incident to
25 dissolution of marriage, legal separation and declaration
26 of invalidity of marriage; and

1 (10) make provision for the preservation and
2 conservation of marital assets during the litigation.

3 (Source: P.A. 99-90, eff. 1-1-16.)

4 (750 ILCS 5/602.5)

5 Sec. 602.5. Allocation of parental responsibilities:
6 decision-making.

7 (a) Generally. The court shall allocate decision-making
8 responsibilities according to the child's best interests.
9 ~~Nothing in this Act requires that each parent be allocated~~
10 ~~decision-making responsibilities.~~

11 (b) Allocation of significant decision-making
12 responsibilities. Unless the parents otherwise agree in
13 writing on an allocation of significant decision-making
14 responsibilities, or the issue of the allocation of parental
15 responsibilities has been reserved under Section 401, the court
16 shall make the determination. The court shall allocate to one
17 or both of the parents the significant decision-making
18 responsibility for each significant issue affecting the child.
19 Those significant issues shall include, without limitation,
20 the following:

21 (1) Education, including the choice of schools and
22 tutors.

23 (2) Health, including all decisions relating to the
24 medical, dental, and psychological needs of the child and
25 to the treatments arising or resulting from those needs.

1 (3) Religion, subject to the following provisions:

2 (A) The court shall allocate decision-making
3 responsibility for the child's religious upbringing in
4 accordance with any express or implied agreement
5 between the parents.

6 (B) The court shall consider evidence of the
7 parents' past conduct as to the child's religious
8 upbringing in allocating decision-making
9 responsibilities consistent with demonstrated past
10 conduct in the absence of an express or implied
11 agreement between the parents.

12 (C) The court shall not allocate any aspect of the
13 child's religious upbringing if it determines that the
14 parents do not or did not have an express or implied
15 agreement for such religious upbringing or that there
16 is insufficient evidence to demonstrate a course of
17 conduct regarding the child's religious upbringing
18 that could serve as a basis for any such order.

19 (4) Extracurricular activities.

20 (c) Determination of child's best interests. In
21 determining the child's best interests for purposes of
22 allocating significant decision-making responsibilities, the
23 court shall consider all relevant factors, including, without
24 limitation, the following:

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

- 1 independent preferences as to decision-making;
- 2 (2) the child's adjustment to his or her home, school,
3 and community;
- 4 (3) the mental and physical health of all individuals
5 involved;
- 6 (4) the ability of the parents to cooperate to make
7 decisions, or the level of conflict between the parties
8 that may affect their ability to share decision-making;
- 9 (5) the level of each parent's participation in past
10 significant decision-making with respect to the child;
- 11 (6) any prior agreement or course of conduct between
12 the parents relating to decision-making with respect to the
13 child;
- 14 (7) the wishes of the parents;
- 15 (8) the child's needs;
- 16 (9) the distance between the parents' residences, the
17 cost and difficulty of transporting the child, each
18 parent's and the child's daily schedules, and the ability
19 of the parents to cooperate in the arrangement;
- 20 (10) whether a restriction on decision-making is
21 appropriate under Section 603.10;
- 22 (11) the willingness and ability of each parent to
23 facilitate and encourage a close and continuing
24 relationship between the other parent and the child;
- 25 (12) the physical violence or threat of physical
26 violence by the child's parent directed against the child;

1 (13) the occurrence of abuse against the child or other
2 member of the child's household;

3 (14) whether one of the parents is a sex offender, and
4 if so, the exact nature of the offense and what, if any,
5 treatment in which the parent has successfully
6 participated; and

7 (15) any other factor that the court expressly finds to
8 be relevant.

9 (d) A parent shall have sole responsibility for making
10 routine decisions with respect to the child and for emergency
11 decisions affecting the child's health and safety during that
12 parent's parenting time.

13 (e) In allocating significant decision-making
14 responsibilities, the court shall not consider conduct of a
15 parent that does not affect that parent's relationship to the
16 child.

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

18 (750 ILCS 5/602.7)

19 Sec. 602.7. Allocation of parental responsibilities:
20 parenting time.

21 (a) Best interests. The court shall allocate parenting time
22 according to the child's best interests. It is presumed that it
23 is in the child's best interests to award equal time to each
24 parent.

25 (b) Allocation of parenting time. Unless the parents

1 present a mutually agreed written parenting plan and that plan
2 is approved by the court, the court shall allocate parenting
3 time. It is presumed both parents are fit and the court shall
4 not place any restrictions on parenting time as defined in
5 Section 600 and described in Section 603.10, unless it finds by
6 clear and convincing ~~a preponderance of the~~ evidence that a
7 parent's exercise of parenting time would seriously endanger
8 the child's physical, mental, moral, or emotional health. If
9 the court deviates from the presumptions contained in this
10 subsection, the court shall issue a written decision stating
11 its specific findings of fact and conclusions of law in support
12 of the deviation from the presumption.

13 In determining the child's best interests for purposes of
14 allocating parenting time, the court shall consider all
15 relevant factors, including, without limitation, the
16 following:

17 (1) the wishes of each parent seeking parenting time;

18 (2) the wishes of the child, taking into account the
19 child's maturity and ability to express reasoned and
20 independent preferences as to parenting time;

21 (3) the amount of time each parent spent performing
22 caretaking functions with respect to the child in the 24
23 months preceding the filing of any petition for allocation
24 of parental responsibilities or, if the child is under 2
25 years of age, since the child's birth;

26 (4) any prior agreement or course of conduct between

1 the parents relating to caretaking functions with respect
2 to the child;

3 (5) the interaction and interrelationship of the child
4 with his or her parents and siblings and with any other
5 person who may significantly affect the child's best
6 interests;

7 (6) the child's adjustment to his or her home, school,
8 and community;

9 (7) the mental and physical health of all individuals
10 involved;

11 (8) the child's needs;

12 (9) the distance between the parents' residences, the
13 cost and difficulty of transporting the child, each
14 parent's and the child's daily schedules, and the ability
15 of the parents to cooperate in the arrangement;

16 (10) whether a restriction on parenting time is
17 appropriate;

18 (11) the physical violence or threat of physical
19 violence by the child's parent directed against the child
20 or other member of the child's household;

21 (12) the willingness and ability of each parent to
22 place the needs of the child ahead of his or her own needs;

23 (13) the willingness and ability of each parent to
24 facilitate and encourage a close and continuing
25 relationship between the other parent and the child;

26 (14) the occurrence of abuse against the child or other

1 member of the child's household;

2 (15) whether one of the parents is a convicted sex
3 offender or lives with a convicted sex offender and, if so,
4 the exact nature of the offense and what if any treatment
5 the offender has successfully participated in; the parties
6 are entitled to a hearing on the issues raised in this
7 paragraph (15);

8 (16) the terms of a parent's military family-care plan
9 that a parent must complete before deployment if a parent
10 is a member of the United States Armed Forces who is being
11 deployed; and

12 (17) any other factor that the court expressly finds to
13 be relevant.

14 (c) In allocating parenting time, the court shall not
15 consider conduct of a parent that does not affect that parent's
16 relationship to the child.

17 (d) Upon motion, the court may allow a parent who is
18 deployed or who has orders to be deployed as a member of the
19 United States Armed Forces to designate a person known to the
20 child to exercise reasonable substitute visitation on behalf of
21 the deployed parent, if the court determines that substitute
22 visitation is in the best interests of the child. In
23 determining whether substitute visitation is in the best
24 interests of the child, the court shall consider all of the
25 relevant factors listed in subsection (b) of this Section and
26 apply those factors to the person designated as a substitute

1 for the deployed parent for visitation purposes. Visitation
2 orders entered under this subsection are subject to subsections
3 (e) and (f) of Section 602.9 and subsections (c) and (d) of
4 Section 603.10.

5 (e) If the street address of a parent is not identified
6 pursuant to Section 708 of this Act, the court shall require
7 the parties to identify reasonable alternative arrangements
8 for parenting time by the other parent including, but not
9 limited to, parenting time of the minor child at the residence
10 of another person or at a local public or private facility.
11 (Source: P.A. 99-90, eff. 1-1-16.)

12 (750 ILCS 5/602.10)

13 Sec. 602.10. Parenting plan.

14 (a) Filing of parenting plan. All parents, within 120 days
15 after service or filing of any petition for allocation of
16 parental responsibilities, must file with the court, either
17 jointly or separately, a proposed parenting plan. The time
18 period for filing a parenting plan may be extended by the court
19 for good cause shown. If no appearance has been filed by the
20 respondent, no parenting plan is required unless ordered by the
21 court.

22 (b) No parenting plan filed. In the absence of filing of
23 one or more parenting plans, the court must conduct an
24 evidentiary hearing to allocate parental responsibilities.

25 (c) Mediation. The court shall order mediation to assist

1 the parents in formulating or modifying a parenting plan or in
2 implementing a parenting plan unless the court determines that
3 impediments to mediation exist. Costs under this subsection
4 shall be allocated between the parties pursuant to the
5 applicable statute or Supreme Court Rule.

6 (d) Parents' agreement on parenting plan. The parenting
7 plan must be in writing and signed by both parents. The parents
8 must submit the parenting plan to the court for approval within
9 120 days after service of a petition for allocation of parental
10 responsibilities or the filing of an appearance, except for
11 good cause shown. Notwithstanding the provisions above, the
12 parents may agree upon and submit a parenting plan at any time
13 after the commencement of a proceeding until prior to the entry
14 of a judgment of dissolution of marriage. The agreement is
15 binding upon the court unless it finds, after considering the
16 circumstances of the parties and any other relevant evidence
17 produced by the parties, that the agreement is not in the best
18 interests of the child. If the court does not approve the
19 parenting plan, the court shall make express findings of the
20 reason or reasons for its refusal to approve the plan. The
21 court, on its own motion, may conduct an evidentiary hearing to
22 determine whether the parenting plan is in the child's best
23 interests.

24 (e) Parents cannot agree on parenting plan. When parents
25 fail to submit an agreed parenting plan, each parent must file
26 and submit a written, signed parenting plan to the court within

1 120 days after the filing of an appearance, except for good
2 cause shown. The court's determination of parenting time should
3 be based on the child's best interests, and it is presumed that
4 it is in the child's best interests to award equal time to each
5 parent. The filing of the plan may be excused by the court if:

6 (1) the parties have commenced mediation for the
7 purpose of formulating a parenting plan; or

8 (2) the parents have agreed in writing to extend the
9 time for filing a proposed plan and the court has approved
10 such an extension; or

11 (3) the court orders otherwise for good cause shown.

12 (f) Parenting plan contents. At a minimum, a parenting plan
13 must set forth the following:

14 (1) an allocation of significant decision-making
15 responsibilities;

16 (2) provisions for the child's living arrangements and
17 for each parent's parenting time, including either:

18 (A) a schedule that designates in which parent's
19 home the minor child will reside on given days; or

20 (B) a formula or method for determining such a
21 schedule in sufficient detail to be enforced in a
22 subsequent proceeding;

23 (3) a mediation provision addressing any proposed
24 reallocation of parenting time or regarding the terms of
25 allocation of parental responsibilities, except that this
26 provision is not required if one parent is allocated all

1 significant decision-making responsibilities;

2 (4) each parent's right of access to medical, dental,
3 and psychological records (subject to the Mental Health and
4 Developmental Disabilities Confidentiality Act), child
5 care records, and school and extracurricular records,
6 reports, and schedules, unless expressly denied by a court
7 order or denied under Section 602.11;

8 (5) a designation of the parent who will be denominated
9 as the parent with the majority of parenting time for
10 purposes of Section 606.10;

11 (6) the child's residential address for school
12 enrollment purposes only;

13 (7) each parent's residence address and phone number,
14 and each parent's place of employment and employment
15 address and phone number;

16 (8) a requirement that a parent changing his or her
17 residence provide at least 60 days prior written notice of
18 the change to any other parent under the parenting plan or
19 allocation judgment, unless such notice is impracticable
20 or unless otherwise ordered by the court. If such notice is
21 impracticable, written notice shall be given at the
22 earliest date practicable. At a minimum, the notice shall
23 set forth the following:

24 (A) the intended date of the change of residence;

25 and

26 (B) the address of the new residence;

1 (9) provisions requiring each parent to notify the
2 other of emergencies, health care, travel plans, or other
3 significant child-related issues;

4 (10) transportation arrangements between the parents;

5 (11) provisions for communications, including
6 electronic communications, with the child during the other
7 parent's parenting time;

8 (12) provisions for resolving issues arising from a
9 parent's future relocation, if applicable;

10 (13) provisions for future modifications of the
11 parenting plan, if specified events occur;

12 (14) provisions for the exercise of the right of first
13 refusal, if so desired, that are consistent with the best
14 interests of the minor child; provisions in the plan for
15 the exercise of the right of first refusal must include:

16 (i) the length and kind of child-care requirements
17 invoking the right of first refusal;

18 (ii) notification to the other parent and for his
19 or her response;

20 (iii) transportation requirements; and

21 (iv) any other provision related to the exercise of
22 the right of first refusal necessary to protect and
23 promote the best interests of the minor child; and

24 (15) any other provision that addresses the child's
25 best interests or that will otherwise facilitate
26 cooperation between the parents.

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

6 (g) The court shall conduct a trial or hearing to determine
7 a plan which maximizes the child's relationship and access to
8 both parents and shall ensure that the access and the overall
9 plan are in the best interests of the child. The court shall
10 take the parenting plans into consideration when determining
11 parenting time and responsibilities at trial or hearing.

12 (h) The court may consider, consistent with the best
13 interests of the child as defined in Section 602.7 of this Act,
14 whether to award to one or both of the parties the right of
15 first refusal in accordance with Section 602.3 of this Act.

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

17 (750 ILCS 5/603.10)

18 Sec. 603.10. Restriction of parental responsibilities.

19 (a) After a hearing, if the court finds by clear and
20 convincing ~~a preponderance of the~~ evidence that a parent
21 engaged in any conduct that seriously endangered the child's
22 mental, moral, or physical health or that significantly
23 impaired the child's emotional development, the court shall
24 enter orders as necessary to protect the child. The court shall
25 issue a written decision stating its specific findings of fact

1 and conclusions of law in support of its ruling. Such orders
2 may include, but are not limited to, orders for one or more of
3 the following:

4 (1) a reduction, elimination, or other adjustment of
5 the parent's decision-making responsibilities or parenting
6 time, or both decision-making responsibilities and
7 parenting time;

8 (2) supervision, including ordering the Department of
9 Children and Family Services to exercise continuing
10 supervision under Section 5 of the Children and Family
11 Services Act;

12 (3) requiring the exchange of the child between the
13 parents through an intermediary or in a protected setting;

14 (4) restraining a parent's communication with or
15 proximity to the other parent or the child;

16 (5) requiring a parent to abstain from possessing or
17 consuming alcohol or non-prescribed drugs while exercising
18 parenting time with the child and within a specified period
19 immediately preceding the exercise of parenting time;

20 (6) restricting the presence of specific persons while
21 a parent is exercising parenting time with the child;

22 (7) requiring a parent to post a bond to secure the
23 return of the child following the parent's exercise of
24 parenting time or to secure other performance required by
25 the court;

26 (8) requiring a parent to complete a treatment program

1 for perpetrators of abuse, for drug or alcohol abuse, or
2 for other behavior that is the basis for restricting
3 parental responsibilities under this Section; and

4 (9) any other constraints or conditions that the court
5 deems necessary to provide for the child's safety or
6 welfare.

7 (b) The court may modify an order restricting parental
8 responsibilities if, after a hearing, the court finds by clear
9 and convincing ~~a preponderance of the~~ evidence that a
10 modification is in the child's best interests based on (i) a
11 change of circumstances that occurred after the entry of an
12 order restricting parental responsibilities; or (ii) conduct
13 of which the court was previously unaware that seriously
14 endangers the child. In determining whether to modify an order
15 under this subsection, the court must consider factors that
16 include, but need not be limited to, the following:

17 (1) abuse, neglect, or abandonment of the child;

18 (2) abusing or allowing abuse of another person that
19 had an impact upon the child;

20 (3) use of drugs, alcohol, or any other substance in a
21 way that interferes with the parent's ability to perform
22 caretaking functions with respect to the child; and

23 (4) persistent continuing interference with the other
24 parent's access to the child, except for actions taken with
25 a reasonable, good-faith belief that they are necessary to
26 protect the child's safety pending adjudication of the

1 facts underlying that belief, provided that the
2 interfering parent initiates a proceeding to determine
3 those facts as soon as practicable.

4 (c) An order granting parenting time to a parent or
5 visitation to another person may be revoked by the court if
6 that parent or other person is found to have knowingly used his
7 or her parenting time or visitation to facilitate contact
8 between the child and a parent who has been barred from contact
9 with the child or to have knowingly used his or her parenting
10 time or visitation to facilitate contact with the child that
11 violates any restrictions imposed on a parent's parenting time
12 by a court of competent jurisdiction. Nothing in this
13 subsection limits a court's authority to enforce its orders in
14 any other manner authorized by law.

15 (d) If parenting time of a parent is restricted, an order
16 granting visitation to a non-parent with a child or an order
17 granting parenting time to the other parent shall contain the
18 following language:

19 "If a person granted parenting time or visitation under
20 this order uses that time to facilitate contact between the
21 child and a parent whose parenting time is restricted, or
22 if such a person violates any restrictions placed on
23 parenting time or visitation by the court, the parenting
24 time or visitation granted under this order shall be
25 revoked until further order of court."

26 (e) A parent who, after a hearing, is determined by the

1 court to have been convicted of any offense involving an
2 illegal sex act perpetrated upon a victim less than 18 years of
3 age, including but not limited to an offense under Article 11
4 of the Criminal Code of 2012, is not entitled to parenting time
5 while incarcerated or while on parole, probation, conditional
6 discharge, periodic imprisonment, or mandatory supervised
7 release for a felony offense, until the parent complies with
8 such terms and conditions as the court determines are in the
9 child's best interests, taking into account the exact nature of
10 the offense and what, if any, treatment in which the parent
11 successfully participated.

12 (f) A parent may not, while the child is present, visit any
13 person granted visitation or parenting time who has been
14 convicted of first degree murder, unless the court finds, after
15 considering all relevant factors, including those set forth in
16 subsection (b) of Section 602.7, that it would be in the
17 child's best interests to allow the child to be present during
18 such a visit.

19 (Source: P.A. 99-90, eff. 1-1-16.)