

SB1589



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1589

Introduced 2/8/2023, by Sen. Terri Bryant

SYNOPSIS AS INTRODUCED:

750 ILCS 5/602.9

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that, in addition to the factors the court shall consider when determining whether to grant visitation to certain non-parents, the court shall also consider whether there exist any other facts that establish that the loss of the relationship between the grandparent, great-grandparent, sibling, or step-parent and the child is likely to harm the child.

LRB103 30554 LNS 56988 b

A BILL FOR

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
17 with the child must be filed in the county in which the
18 child resides. Notice of the petition shall be given as
19 provided 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
22 the 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 (c) Visitation by grandparents, great-grandparents,
13 step-parents, and siblings.

14 (1) Grandparents, great-grandparents, step-parents,
15 and siblings of a minor child who is one year old or older
16 may bring a petition for visitation and electronic
17 communication under this Section if there is an
18 unreasonable denial of visitation by a parent that causes
19 undue mental, physical, or emotional harm to the child and
20 if at least one of the following conditions exists:

21 (A) the child's other parent is deceased or has
22 been missing for at least 90 days. For the purposes of
23 this subsection a parent is considered to be missing
24 if the parent's location has not been determined and
25 the parent has been reported as missing to a law
26 enforcement agency; or

1 (B) a parent of the child is incompetent as a
2 matter of law; or

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

6 (D) the child's parents have been granted a
7 dissolution of marriage or have been legally separated
8 from each other or there is pending a dissolution
9 proceeding involving a parent of the child or another
10 court proceeding involving parental responsibilities
11 or visitation of the child (other than an adoption
12 proceeding of an unrelated child, a proceeding under
13 Article II of the Juvenile Court Act of 1987, or an
14 action for an order of protection under the Illinois
15 Domestic Violence Act of 1986 or Article 112A of the
16 Code of Criminal Procedure of 1963) and at least one
17 parent does not object to the grandparent,
18 great-grandparent, step-parent, or sibling having
19 visitation with the child. The visitation of the
20 grandparent, great-grandparent, step-parent, or
21 sibling must not diminish the parenting time of the
22 parent who is not related to the grandparent,
23 great-grandparent, step-parent, or sibling seeking
24 visitation; or

25 (E) (i) the child is born to parents who are not
26 married to each other; (ii) the parents are not living

1 together; (iii) the petitioner is a grandparent,
2 great-grandparent, step-parent, or sibling of the
3 child; and (iv) the parent-child relationship has been
4 legally established. For purposes of this subdivision
5 (E), if the petitioner is a grandparent or
6 great-grandparent, the parent-child relationship need
7 be legally established only with respect to the parent
8 who is related to the grandparent or
9 great-grandparent. For purposes of this subdivision
10 (E), if the petitioner is a step-parent, the
11 parent-child relationship need be legally established
12 only with respect to the parent who is married to the
13 petitioner or was married to the petitioner
14 immediately before the parent's death.

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

18 (A) whether the child resided with the petitioner
19 for at least 6 consecutive months with or without a
20 parent present;

21 (B) whether the child had frequent and regular
22 contact or visitation with the petitioner for at least
23 12 consecutive months; ~~and~~

24 (C) whether the grandparent, great-grandparent,
25 sibling, or step-parent was a primary caretaker of the
26 child for a period of not less than 6 consecutive

1 months within the 24-month period immediately
2 preceding the commencement of the proceeding; and

3 (D) whether there exist any other facts that
4 establish that the loss of the relationship between
5 the grandparent, great-grandparent, sibling, or
6 step-parent and the child is likely to harm the child.

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
9 or 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
18 against a party seeking modification of the visitation
19 order if the court finds that the modification action is
20 vexatious and 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,
25 if 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;
9 100-706, eff. 1-1-19.)