



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB3959

Introduced 12/10/2003, by William B. Black, Roger L. Eddy, Jim Watson, Eileen Lyons, Chapin Rose, et al.

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607

from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides for grandparent, great-grandparent, and sibling visitation. Establishes who may file a petition for visitation. Creates a rebuttable presumption that a fit parent's actions and decisions regarding grandparent, great-grandparent, or sibling visitation are in the child's best interests. Provides that, after the court overcomes the rebuttable presumption, the court shall then determine whether visitation would be in the best interest of the child. Lists factors that may be considered in determining the best interests of the child. Effective immediately.

LRB093 13407 LCB 40427 b

1 AN ACT concerning visitation.

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 607 as follows:

6 (750 ILCS 5/607) (from Ch. 40, par. 607)

7 Sec. 607. Visitation.

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

18 (a-5) (1) Except as otherwise provided in this subsection
19 (a-5) or in subsection (b) of this Section, any grandparent,
20 great-grandparent, or sibling may file a petition for
21 visitation rights to a minor child and a hearing shall be held
22 if at least one of the following conditions exist:

23 (A) the mother or father of the child is deceased;

24 (B) the child's mother and father are divorced or
25 legally separated from each other or were never married
26 to each other;

27 (C) the child's mother or father has been missing
28 for not less than 6 months;

29 (D) the court of another state has ordered
30 grandparent, great-grandparent, or sibling visitation;

31 or

32 (E) the child resided in the home of the

1 grandparent, great-grandparent, or sibling for a
2 period of 12 months or more and was subsequently
3 removed from the home by the parent or parents.

4 (2) In making a determination under this subsection
5 (a-5), there is a rebuttable presumption that a fit
6 parent's actions and decisions regarding grandparent,
7 great-grandparent, or sibling visitation are in the
8 child's best interests. The burden is on the party filing a
9 complaint or motion under this Section to prove that the
10 parent's actions and decisions regarding visitation times
11 are not in the child's best interest.

12 (3) In considering whether a petition for grandparent,
13 great-grandparent, or sibling visitation overcomes the
14 rebuttable presumption, the court shall consider the
15 following factors:

16 (A) Whether the child had such a significant
17 existing relationship with the grandparent,
18 great-grandparent, or sibling that loss of the
19 relationship is likely to cause severe emotional harm
20 to the child;

21 (B) Whether the grandparent, great-grandparent, or
22 sibling functioned as a primary caregiver such that
23 cessation of the relationship could interrupt
24 provision of the daily needs of the child and cause
25 physical or emotional harm; or

26 (C) Whether the child had a significant existing
27 relationship with the grandparent, great-grandparent,
28 or sibling and loss of that relationship presents the
29 danger of other direct and substantial harm to the
30 child.

31 (4) If the court determines that the rebuttable
32 presumption has been overcome, the court shall then
33 determine whether visitation would be in the best interest
34 of the child. The court may consider:

35 (A) the length and quality of the prior
36 relationship;

1 (B) the existing emotional ties of the child to the
2 grandparent, great-grandparent, or sibling;

3 (C) the preference of the child if the child is
4 determined to be of sufficient maturity to express a
5 preference;

6 (D) the good faith of the party in filing the
7 petition;

8 (E) if the parents are divorced or separated, the
9 time-sharing arrangement that exists between the
10 parents with respect to the child;

11 (F) if one parent is deceased or missing, the fact
12 that the parties requesting visitation are the parents
13 of the deceased or missing person; and

14 (G) any other factor that the court deems relevant.

15 (b) (1) (Blank.) ~~The court may grant reasonable visitation~~
16 ~~privileges to a grandparent, great grandparent, or sibling of~~
17 ~~any minor child upon petition to the court by the grandparents~~
18 ~~or great grandparents or on behalf of the sibling, with notice~~
19 ~~to the parties required to be notified under Section 601 of~~
20 ~~this Act, if the court determines that it is in the best~~
21 ~~interests and welfare of the child, and may issue any necessary~~
22 ~~orders to enforce such visitation privileges. Except as~~
23 ~~provided in paragraph (2) of this subsection (b), a petition~~
24 ~~for visitation privileges may be filed under this paragraph (1)~~
25 ~~whether or not a petition pursuant to this Act has been~~
26 ~~previously filed or is currently pending if one or more of the~~
27 ~~following circumstances exist:~~

28 ~~(A) the parents are not currently cohabiting on a~~
29 ~~permanent or an indefinite basis;~~

30 ~~(B) one of the parents has been absent from the~~
31 ~~marital abode for more than one month without the spouse~~
32 ~~knowing his or her whereabouts;~~

33 ~~(C) one of the parents is deceased;~~

34 ~~(D) one of the parents joins in the petition with the~~
35 ~~grandparents, great grandparents, or sibling; or~~

36 ~~(E) a sibling is in State custody.~~

1 (1.5) The Court may grant reasonable visitation privileges
2 to a stepparent upon petition to the court by the stepparent,
3 with notice to the parties required to be notified under
4 Section 601 of this Act, if the court determines that it is in
5 the best interests and welfare of the child, and may issue any
6 necessary orders to enforce those visitation privileges. A
7 petition for visitation privileges may be filed under this
8 paragraph (1.5) whether or not a petition pursuant to this Act
9 has been previously filed or is currently pending if the
10 following circumstances are met:

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

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

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

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

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

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

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

35 (3) (Blank). ~~When one parent is deceased, the surviving~~
36 ~~parent shall not interfere with the visitation rights of the~~

1 ~~grandparents.~~

2 (c) The court may modify an order granting or denying
3 visitation rights of a parent whenever modification would serve
4 the best interest of the child; but the court shall not
5 restrict a parent's visitation rights unless it finds that the
6 visitation would endanger seriously the child's physical,
7 mental, moral or emotional health. The court may modify an
8 order granting, denying, or limiting visitation rights of a
9 grandparent, great-grandparent, or sibling of any minor child
10 whenever a change of circumstances has occurred based on facts
11 occurring subsequent to the judgment and the court finds by
12 clear and convincing evidence that the modification is in the
13 best interest of the minor child.

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

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

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

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

36 Nothing in this subdivision (1) limits the authority of

1 the court to enforce its orders in any manner permitted by
2 law.

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

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

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

28 (f) Unless the court determines, after considering all
29 relevant factors, including but not limited to those set forth
30 in Section 602(a), that it would be in the best interests of
31 the child to allow visitation, the court shall not enter an
32 order providing visitation rights and pursuant to a motion to
33 modify visitation shall revoke visitation rights previously
34 granted to any person who would otherwise be entitled to
35 petition for visitation rights under this Section who has been
36 convicted of first degree murder of the parent, grandparent,

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

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

17 (Source: P.A. 90-782, eff. 8-14-98; 90-801, eff. 6-1-99;
18 91-357, eff. 7-29-99; 91-610, eff. 8-19-99.)

19 Section 99. Effective date. This Act takes effect upon
20 becoming law.