



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4318

Introduced 02/02/04, by Patricia Reid Lindner, William B.
Black

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 not harmful to the child's mental, physical, or emotional health. Provides that a higher standard of proof shall be required to rebut the presumption concerning a fit parent's actions and decisions if both of the parents of the child agree that the grandparent, great-grandparent, or sibling should not be granted visitation rights. Provides that 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. Lists factors that may be considered in determining whether to grant visitation.

LRB093 20401 LCB 46179 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), any grandparent, great-grandparent, or sibling may file
20 a petition for visitation rights to a minor child if there is
21 an unreasonable denial of visitation and at least one of the
22 following conditions exists:

23 (A) one parent has been continually incarcerated
24 during the 3 month period prior to the filing of the
25 petition;

26 (B) one parent of the child is incompetent as a
27 matter of law or deceased;

28 (C) the child's mother and father are divorced or
29 have been legally separated from each other during the
30 3 month period prior to the filing of the petition and
31 at least one parent does not object to the grandparent,
32 great-grandparent, or sibling having visitation with

1 the child. The grandparent, great-grandparent, or
2 sibling must not diminish the visitation of the parent
3 who is not related to the grandparent,
4 great-grandparent, or sibling seeking visitation;

5 (D) the court has terminated a parent-child
6 relationship and the grandparent, great-grandparent,
7 or sibling is the parent of the person whose rights
8 have been terminated, except in cases of adoption;

9 (E) the child resided in the home of the
10 grandparent, great-grandparent, or sibling for a
11 period of 6 consecutive months or more and the
12 grandparent, great-grandparent, or sibling was the
13 primary caregiver for the child within the 2 years
14 prior to the filing of the petition;

15 (F) the child is illegitimate and the petitioner is
16 a maternal grandparent, great-grandparent, or sibling
17 of the illegitimate child; or

18 (G) the child is illegitimate, the petitioner is a
19 paternal grandparent, great-grandparent, or sibling,
20 and the paternity has been established by a court of
21 competent jurisdiction.

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

26 (3) In making a determination under this subsection
27 (a-5), there is a rebuttable presumption that a fit
28 parent's actions and decisions regarding grandparent,
29 great-grandparent, or sibling visitation are not harmful
30 to the child's mental, physical, or emotional health. The
31 burden is on the party filing a petition under this Section
32 to prove that the parent's actions and decisions regarding
33 visitation times are harmful to the child's mental,
34 physical, or emotional health.

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

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

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

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

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

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

12 (F) the motivation of the person denying
13 visitation;

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

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

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

23 (J) any other fact that establishes that the loss
24 of the relationship between the petitioner and the
25 child is likely to harm the child.

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

30 (b) (1) (Blank.) ~~The court may grant reasonable visitation~~
31 ~~privileges to a grandparent, great-grandparent, or sibling of~~
32 ~~any minor child upon petition to the court by the grandparents~~
33 ~~or great-grandparents or on behalf of the sibling, with notice~~
34 ~~to the parties required to be notified under Section 601 of~~
35 ~~this Act, if the court determines that it is in the best~~
36 ~~interests and welfare of the child, and may issue any necessary~~

1 ~~orders to enforce such visitation privileges. Except as~~
2 ~~provided in paragraph (2) of this subsection (b), a petition~~
3 ~~for visitation privileges may be filed under this paragraph (1)~~
4 ~~whether or not a petition pursuant to this Act has been~~
5 ~~previously filed or is currently pending if one or more of the~~
6 ~~following circumstances exist:~~

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

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

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

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

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

16 (1.5) The Court may grant reasonable visitation privileges
17 to a stepparent upon petition to the court by the stepparent,
18 with notice to the parties required to be notified under
19 Section 601 of this Act, if the court determines that it is in
20 the best interests and welfare of the child, and may issue any
21 necessary orders to enforce those visitation privileges. A
22 petition for visitation privileges may be filed under this
23 paragraph (1.5) whether or not a petition pursuant to this Act
24 has been previously filed or is currently pending if the
25 following circumstances are met:

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

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

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

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

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

36 (2) (A) A petition for visitation privileges shall not be

1 filed pursuant to this subsection (b) by the parents or
2 grandparents of a putative father if the paternity of the
3 putative father has not been legally established.

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

14 (3) (Blank). ~~When one parent is deceased, the surviving~~
15 ~~parent shall not interfere with the visitation rights of the~~
16 ~~grandparents.~~

17 (c) The court may modify an order granting or denying
18 visitation rights of a parent whenever modification would serve
19 the best interest of the child; but the court shall not
20 restrict a parent's visitation rights unless it finds that the
21 visitation would endanger seriously the child's physical,
22 mental, moral or emotional health. The court may modify an
23 order granting, denying, or limiting visitation rights of a
24 grandparent, great-grandparent, or sibling of any minor child
25 whenever a change of circumstances has occurred based on facts
26 occurring subsequent to the judgment and the court finds by
27 clear and convincing evidence that the modification is in the
28 best interest of the minor child.

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

33 (1) If an order has been entered granting visitation
34 privileges with the child to a grandparent or
35 great-grandparent who is related to the child through the
36 non-custodial parent, the visitation privileges of the

1 grandparent or great-grandparent may be revoked if:

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

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

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

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

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

28 (e) No parent, not granted custody of the child, or
29 grandparent, or great-grandparent, or stepparent, or sibling
30 of any minor child, convicted of any offense involving an
31 illegal sex act perpetrated upon a victim less than 18 years of
32 age including but not limited to offenses for violations of
33 Article 12 of the Criminal Code of 1961, is entitled to
34 visitation rights while incarcerated or while on parole,
35 probation, conditional discharge, periodic imprisonment, or
36 mandatory supervised release for that offense, and upon

1 discharge from incarceration for a misdemeanor offense or upon
2 discharge from parole, probation, conditional discharge,
3 periodic imprisonment, or mandatory supervised release for a
4 felony offense, visitation shall be denied until the person
5 successfully completes a treatment program approved by the
6 court.

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

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

32 (Source: P.A. 90-782, eff. 8-14-98; 90-801, eff. 6-1-99;
33 91-357, eff. 7-29-99; 91-610, eff. 8-19-99.)