



**94TH GENERAL ASSEMBLY**  
**State of Illinois**  
**2005 and 2006**  
**HB0394**

Introduced 1/25/2005, by Rep. Patricia Reid Lindner

**SYNOPSIS AS INTRODUCED:**

750 ILCS 5/607

from Ch. 40, par. 607

Amends provisions of the Illinois Marriage and Dissolution of Marriage Act concerning visitation. Changes references from "illegitimate child" to "child born out of wedlock". Makes various changes in terminology. Deletes certain language, that was in the visitation provisions prior to the amendment of those provisions by Public Act 93-911, concerning the modification of orders granting, denying, or limiting the visitation rights of a grandparent, great-grandparent, or sibling of a child. Effective immediately.

LRB094 05626 LCB 35675 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-3) Nothing in subsection (a-5) of this Section shall  
19 apply to a child in whose interests a petition under Section  
20 2-13 of the Juvenile Court Act of 1987 is pending.

21 (a-5) (1) Except as otherwise provided in this subsection  
22 (a-5), any grandparent, great-grandparent, or sibling of the  
23 child may file a petition for visitation rights to a minor  
24 child if there is an unreasonable denial of visitation by a  
25 parent and at least one of the following conditions exists:

26 (A) one parent of the child is incompetent as a matter  
27 of law or deceased or has been sentenced to a period of  
28 imprisonment for more than 1 year;

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

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

7 (C) the court, other than a Juvenile Court, has  
8 terminated a parent-child relationship and the  
9 grandparent, great-grandparent, or sibling of the child is  
10 the parent, grandparent, or child of the person whose  
11 parental rights have been terminated, except in cases of  
12 adoption. The visitation must not be used to allow the  
13 parent who lost parental rights to unlawfully visit with  
14 the child;

15 (D) the child is born out of wedlock illegitimate, the  
16 parents are not living together, and the petitioner is a  
17 maternal grandparent, great-grandparent, or sibling of the  
18 born out of wedlock illegitimate child; or

19 (E) the child is born out of wedlock illegitimate, the  
20 parents are not living together, the petitioner is a  
21 paternal grandparent, great-grandparent, or sibling, and  
22 the paternity has been established by a court of competent  
23 jurisdiction.

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

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

36 (4) In determining whether to grant visitation, the court

1 shall consider the following:

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

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

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

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

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

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

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

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

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

22 (J) any other fact that establishes that the loss of  
23 the relationship between the petitioner and the child is  
24 likely to harm the child's mental, physical, or emotional  
25 health.

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 possessory  
29 visitation.

30 (a-7) (1) Unless by stipulation of the parties, no motion to  
31 modify a grandparent, great-grandparent, or sibling visitation  
32 order may be made earlier than 2 years after the date the order  
33 was filed, unless the court permits it to be made on the basis  
34 of affidavits that there is reason to believe the child's  
35 present environment may endanger seriously the child's mental,  
36 physical, or emotional health.

1           (2) The court shall not modify a prior grandparent,  
2 great-grandparent, or sibling visitation order unless it finds  
3 by clear and convincing evidence, upon the basis of facts that  
4 have arisen since the prior visitation order or that were  
5 unknown to the court at the time of entry of the prior  
6 visitation, that a change has occurred in the circumstances of  
7 the child or his or her custodian, and that the modification is  
8 necessary to protect the mental, physical, or emotional health  
9 of the child. The court shall state in its decision specific  
10 findings of fact in support of its modification or termination  
11 of the grandparent, great-grandparent, or sibling visitation.

12           (3) Attorney fees and costs shall be assessed against a  
13 party seeking modification of the visitation order if the court  
14 finds that the modification action is vexatious and constitutes  
15 harassment.

16           (4) Notice under this subsection (a-7) shall be given as  
17 provided in subsections (c) and (d) of Section 601.

18           (b) (1) (Blank.)

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

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

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

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

34                   (D) the child wishes to have reasonable visitation with  
35 the stepparent; and

36                   (E) the stepparent was providing for the care, control,

1 and welfare to the child prior to the initiation of the  
2 petition for visitation.

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

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

17 (3) (Blank).

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

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

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

1 non-custodial parent, the visitation privileges of the  
2 grandparent or great-grandparent may be revoked if:

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

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

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

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

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

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

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

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

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

33 (Source: P.A. 93-911, eff. 1-1-05.)

34 Section 99. Effective date. This Act takes effect upon  
35 becoming law.