



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4357

Introduced 1/3/2006, by Rep. Patricia Reid Lindner

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607

from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that grandparents, great-grandparents, and siblings of a minor child may petition the court for visitation, provided that the petition must be filed in the county in which the child resides. Provides that a petition may be filed when the custodial parent denies visitation and the other parent is dead, missing for 3 months or more, incompetent, or incarcerated for 3 months preceding the filing of a petition. Provides that any visitation granted under this Section ends by operation of law if the child is adopted however, if one natural parent is dead and the surviving spouse remarries, a subsequent adoption will not terminate visitation granted by a court to parents of the deceased parent. Provides that a petitioner who seeks to overcome the presumption that a parent's actions regarding visitation by the grandparent, great-grandparent, or sibling are not harmful to the child's health may do so by proof that the child had a significant relationship with the petitioner that, once lost, will cause harm to the child or the petitioner was the primary caregiver of the child. Describes significant existing relationship with a grandchild. A grandparent is not required to present expert testimony to prove the existence of a significant existing relationship between the child and the grandparent. The court may apply a reasonable person standard to determine whether there is a significant relationship between the child and the grandparent, or that the loss of the relationship between the child and the grandparent is likely to cause severe emotional harm to the child. Provides that a child's parent may always file a petition to modify visitation upon changed circumstances. Deletes provision that grandparent visitation subsection does not apply to a child who is the subject of a pending juvenile court case. Deletes provision that bars any petition for visitation after adoption.

LRB094 15974 AJ0 51205 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 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) Grandparents, great-grandparents, and siblings of a
19 minor child have standing to bring an action in circuit court
20 by petition, requesting visitation in accordance with this
21 Section. Grandparents, great-grandparents, and siblings of a
22 minor child also have standing to file a petition for
23 visitation rights in a pending dissolution proceeding or any
24 other proceeding that involves custody and visitation issues,
25 requesting visitation in accordance with this Section. A
26 petition for visitation with a child by a person other than a
27 parent must be filed in the county in which the child resides
28 ~~Nothing in subsection (a-5) of this Section shall apply to a~~
29 ~~child in whose interests a petition under Section 2-13 of the~~
30 ~~Juvenile Court Act of 1987 is pending.~~

31 (a-5) (1) Except as otherwise provided in this subsection
32 (a-5), any grandparent, great-grandparent, or sibling of a

1 minor child may file a petition for visitation rights to a
2 minor child if there is an unreasonable denial of visitation by
3 a parent and at least one of the following conditions exists:

4 (A) (Blank); ~~one parent of the child is incompetent as~~
5 ~~a matter of law or deceased or has been sentenced to a~~
6 ~~period of imprisonment for more than 1 year;~~

7 (A-5) the child's other parent is deceased or has been
8 missing for at least 3 months. For the purposes of this
9 Section a parent is considered to be missing if the
10 parent's location has not been determined and the parent
11 has been reported as missing to a law enforcement agency;

12 (A-10) a parent of the child is incompetent as a matter
13 of law; or

14 (A-15) a parent has been incarcerated in jail or prison
15 during the 3 month period preceding the filing of the
16 petition.

17 (B) the child's mother and father are divorced or have
18 been legally separated from each other during the 3 month
19 period prior to the filing of the petition and at least one
20 parent does not object to the grandparent,
21 great-grandparent, or sibling having visitation with the
22 child. The visitation of the grandparent,
23 great-grandparent, or sibling must not diminish the
24 visitation of the parent who is not related to the
25 grandparent, great-grandparent, or sibling seeking
26 visitation;

27 (C) the court, ~~other than a Juvenile Court,~~ has
28 terminated a parent-child relationship and the
29 grandparent, great-grandparent, or sibling of the minor
30 child is the parent of the person whose parental rights
31 have been terminated, except in cases of adoption. The
32 visitation must not be used to allow the parent who lost
33 parental rights to unlawfully visit with the child;

34 (D) the child is born out of wedlock, the parents are
35 not living together, and the petitioner is a maternal
36 grandparent, great-grandparent, or sibling of the child

1 born out of wedlock; or

2 (E) the child is born out of wedlock, the parents are
3 not living together, the petitioner is a paternal
4 grandparent, great-grandparent, or sibling, and the
5 paternity has been established by a court of competent
6 jurisdiction.

7 (2) If a person other than a blood relative of the child or
8 a stepparent adopts a child, any visitation rights granted
9 pursuant to this Section before the adoption of the child shall
10 automatically end by operation of law upon the adoption of the
11 child. If one natural parent is deceased and the surviving
12 natural parent remarries, any subsequent adoption proceedings
13 may not terminate any court-granted grandparental rights
14 belonging to the parents of the deceased natural parent, unless
15 the termination of visitation rights is ordered by the court
16 having jurisdiction over the adoption after an opportunity to
17 be heard, and the court determines it to be in the best
18 interest of the child to terminate or modify such visitation
19 ~~The grandparent, great grandparent, or sibling of a parent~~
20 ~~whose parental rights have been terminated through an adoption~~
21 ~~proceeding may not petition for visitation rights.~~

22 (3) In making a determination under this subsection (a-5),
23 there is a rebuttable presumption that a fit parent's actions
24 and decisions regarding grandparent, great-grandparent, or
25 sibling visitation are not harmful to the child's mental,
26 physical, or emotional health. The burden is on the party
27 filing a petition under this Section to prove that the parent's
28 actions and decisions regarding visitation times are harmful to
29 the child's mental, physical, or emotional health. A finding of
30 substantial harm may be based upon cessation of the
31 relationship between a minor child and the child's grandparent,
32 great-grandparent, or the child's sibling if the court
33 determines, upon proper proof, that:

34 (A) The child had such a significant existing
35 relationship with the grandparent, great-grandparent or
36 the child's sibling that loss of the relationship is likely

1 to occasion severe emotional harm to the child;

2 (B) The grandparent, great-grandparent or the child's
3 sibling functioned as a primary caregiver such that
4 cessation of the relationship could interrupt provision of
5 the daily needs of the child and thus occasion physical or
6 emotional harm; or

7 (C) The child had a significant existing relationship
8 with the grandparent, great-grandparent or the child's
9 sibling and loss of the relationship presents the danger of
10 other direct and substantial harm to the child.

11 (3a) For purposes of this Section, a grandparent,
12 great-grandparent or the child's sibling shall be deemed to
13 have a significant existing relationship with a grandchild if:

14 (A) The child resided with the grandparent or
15 great-grandparent for at least 6 consecutive months;

16 (B) The grandparent or great-grandparent was a
17 full-time caretaker of the child for a period of not less
18 than 6 consecutive months; or

19 (C) The grandparent, great-grandparent or sibling of
20 the child had frequent visitation with the child who is the
21 subject of the suit for a period of not less than one year.

22 (3b) A grandparent is not required to present the testimony
23 or affidavit of an expert witness in order to establish a
24 significant existing relationship with a grandchild or that the
25 loss of the relationship is likely to occasion severe emotional
26 harm to the child. Instead, the court shall consider whether
27 the facts of the particular case would lead a reasonable person
28 to believe that there is a significant existing relationship
29 between the grandparent and grandchild or that the loss of the
30 relationship is likely to occasion severe emotional harm to the
31 child.

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

34 (A) the preference of the child if the child is
35 determined to be of sufficient maturity to express a
36 preference;

- 1 (B) the mental and physical health of the child;
- 2 (C) the mental and physical health of the grandparent,
3 great-grandparent, or sibling;
- 4 (D) the length and quality of the prior relationship
5 between the child and the grandparent, great-grandparent,
6 or sibling;
- 7 (E) the good faith of the party in filing the petition;
- 8 (F) the good faith of the person denying visitation;
- 9 (G) the quantity of the visitation time requested and
10 the potential adverse impact that visitation would have on
11 the child's customary activities;
- 12 (H) whether the child resided with the petitioner for
13 at least 6 consecutive months with or without the current
14 custodian present;
- 15 (I) whether the petitioner had frequent or regular
16 contact with the child for at least 12 consecutive months;
17 and
- 18 (J) any other fact that establishes that the loss of
19 the relationship between the petitioner and the child is
20 likely to harm the child's mental, physical, or emotional
21 health.
- 22 (5) The court may order visitation rights for the
23 grandparent, great-grandparent, or sibling that include
24 reasonable access without requiring overnight or possessory
25 visitation.
- 26 (a-7) (1) Unless by stipulation of the parties, no motion to
27 modify a grandparent, great-grandparent, or sibling visitation
28 order may be made earlier than 2 years after the date the order
29 was filed, unless the court permits it to be made on the basis
30 of affidavits that there is reason to believe the child's
31 present environment may endanger seriously the child's mental,
32 physical, or emotional health.
- 33 (2) The court shall not modify a prior grandparent,
34 great-grandparent, or sibling visitation order unless it finds
35 by clear and convincing evidence, upon the basis of facts that
36 have arisen since the prior visitation order or that were

1 unknown to the court at the time of entry of the prior
2 visitation, that a change has occurred in the circumstances of
3 the child or his or her custodian, and that the modification is
4 necessary to protect the mental, physical, or emotional health
5 of the child. The court shall state in its decision specific
6 findings of fact in support of its modification or termination
7 of the grandparent, great-grandparent, or sibling visitation.
8 A child's parent may always petition to modify visitation upon
9 changed circumstances when necessary to promote the child's
10 best interests.

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

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

17 (b) (1) (Blank.)

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

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

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

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

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

35 (E) the stepparent was providing for the care, control,
36 and welfare to the child prior to the initiation of the

1 petition for visitation.

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

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

16 (3) (Blank).

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. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06.)