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09400HB4357ham001

LRB094 15974 AJ0 55533 a

1 AMENDMENT TO HOUSE BILL 4357

2 AMENDMENT NO. _____. Amend House Bill 4357 by replacing
3 everything after the enacting clause with the following:

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. The term "sibling" in this Section means a brother,
22 sister, stepbrother, or stepsister of the minor child.
23 Grandparents, great-grandparents, and siblings also have
24 standing to file a petition for visitation rights in a pending

1 dissolution proceeding or any other proceeding that involves
2 custody or visitation issues, requesting visitation in
3 accordance with this Section. A petition for visitation with a
4 child by a person other than a parent must be filed in the
5 county in which the child resides. Nothing in subsection (a-5)
6 of this Section shall apply to a child in whose interests a
7 petition under Section 2-13 of the Juvenile Court Act of 1987
8 is pending.

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

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

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

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

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

27 (B) the child's mother and father are divorced or have
28 been legally separated from each other or there is pending
29 a dissolution proceeding involving a parent of the child or
30 another court proceeding involving custody or visitation
31 of the child ~~during the 3 month period prior to the filing~~
32 ~~of the petition~~ and at least one parent does not object to
33 the grandparent, great-grandparent, or sibling having
34 visitation with the child. The visitation of the

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

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

12 (D) the child is born out of wedlock, the parents are
13 not living together, and the petitioner is a maternal
14 grandparent, great-grandparent, or sibling of the child
15 born out of wedlock; or

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

21 (2) If a person other than a blood relative or stepparent
22 of the child adopts the child, any visitation rights granted
23 pursuant to this Section before the adoption of the child shall
24 automatically end by operation of law upon the adoption of the
25 child. If a blood relative adopts the child or if one natural
26 parent is deceased and the surviving natural parent remarries,
27 any subsequent adoption proceedings may not terminate any
28 visitation rights belonging to the parents of the deceased
29 natural parent, unless the termination of visitation rights is
30 ordered by the court having jurisdiction over the adoption
31 after an opportunity to be heard, and the court determines it
32 to be in the best interest of the child to terminate or modify
33 such visitation. ~~The grandparent, great-grandparent, or~~
34 ~~sibling of a parent whose parental rights have been terminated~~

1 ~~through an adoption proceeding may not petition for visitation~~
2 ~~rights.~~

3 (3) In making a determination under this subsection (a-5),
4 there is a rebuttable presumption that a fit parent's actions
5 and decisions regarding grandparent, great-grandparent, or
6 sibling visitation are not harmful to the child's mental,
7 physical, or emotional health. The burden is on the party
8 filing a petition under this Section to prove that the parent's
9 actions and decisions regarding visitation times are harmful to
10 the child's mental, physical, or emotional health. A finding of
11 harm may be based upon cessation of the relationship between a
12 minor child and the child's grandparent, great-grandparent, or
13 sibling if the court determines, upon proper proof, that:

14 (A) the child had such a significant existing
15 relationship with the grandparent, great-grandparent, or
16 sibling that loss of the relationship is likely to occasion
17 emotional harm to the child; or

18 (B) the grandparent, great-grandparent, or sibling
19 functioned as a primary caregiver such that cessation of
20 the relationship would interrupt provision of the daily
21 needs of the child and thus occasion physical or emotional
22 harm.

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

34 (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 or visitation with the child for at least 12
21 consecutive months; ~~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; ~~and.~~

26 (K) whether the grandparent, great-grandparent, or
27 sibling was a full-time caretaker of the child for a period
28 of not less than 6 consecutive months.

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

33 (a-7) (1) Unless by stipulation of the parties, no motion to
34 modify a grandparent, great-grandparent, or sibling visitation

1 order may be made earlier than 2 years after the date the order
2 was filed, unless the court permits it to be made on the basis
3 of affidavits that there is reason to believe the child's
4 present environment may endanger seriously the child's mental,
5 physical, or emotional health.

6 (2) The court shall not modify ~~an a prior grandparent,~~
7 ~~great grandparent, or sibling visitation~~ order that grants
8 visitation to a grandparent, great-grandparent, or sibling
9 unless it finds by clear and convincing evidence, upon the
10 basis of facts that have arisen since the prior visitation
11 order or that were unknown to the court at the time of entry of
12 the prior visitation, that a change has occurred in the
13 circumstances of the child or his or her custodian, and that
14 the modification is necessary to protect the mental, physical,
15 or emotional health of the child. The court shall state in its
16 decision specific findings of fact in support of its
17 modification or termination of the grandparent,
18 great-grandparent, or sibling visitation. A child's parent may
19 always petition to modify visitation upon changed
20 circumstances when necessary to promote the child's best
21 interest.

22 (3) Attorney fees and costs shall be assessed against a
23 party seeking modification of the visitation order if the court
24 finds that the modification action is vexatious and constitutes
25 harassment.

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

28 (b) (1) (Blank.)

29 (1.5) The Court may grant reasonable visitation privileges
30 to a stepparent upon petition to the court by the stepparent,
31 with notice to the parties required to be notified under
32 Section 601 of this Act, if the court determines that it is in
33 the best interests and welfare of the child, and may issue any
34 necessary orders to enforce those visitation privileges. A

1 petition for visitation privileges may be filed under this
2 paragraph (1.5) whether or not a petition pursuant to this Act
3 has been previously filed or is currently pending if the
4 following circumstances are met:

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

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

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

10 (D) the child wishes to have reasonable visitation with
11 the stepparent; and

12 (E) the stepparent was providing for the care, control,
13 and welfare to the child prior to the initiation of the
14 petition for visitation.

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

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

29 (3) (Blank).

30 (c) The court may modify an order granting or denying
31 visitation rights of a parent whenever modification would serve
32 the best interest of the child; but the court shall not
33 restrict a parent's visitation rights unless it finds that the
34 visitation would endanger seriously the child's physical,

1 mental, moral or emotional health. ~~The court may modify an~~
2 ~~order granting, denying, or limiting visitation rights of a~~
3 ~~grandparent, great-grandparent, or sibling of any minor child~~
4 ~~whenever a change of circumstances has occurred based on facts~~
5 ~~occurring subsequent to the judgment and the court finds by~~
6 ~~clear and convincing evidence that the modification is in the~~
7 ~~best interest of the minor child.~~

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

12 (1) If an order has been entered granting visitation
13 privileges with the child to a grandparent or
14 great-grandparent who is related to the child through the
15 non-custodial parent, the visitation privileges of the
16 grandparent or great-grandparent may be revoked if:

17 (i) a court has entered an order prohibiting the
18 non-custodial parent from any contact with the child,
19 and the grandparent or great-grandparent is found to
20 have used his or her visitation privileges to
21 facilitate contact between the child and the
22 non-custodial parent; or

23 (ii) a court has entered an order restricting the
24 non-custodial parent's contact with the child, and the
25 grandparent or great-grandparent is found to have used
26 his or her visitation privileges to facilitate contact
27 between the child and the non-custodial parent in a
28 manner that violates the terms of the order restricting
29 the non-custodial parent's contact with the child.

30 Nothing in this subdivision (1) limits the authority of
31 the court to enforce its orders in any manner permitted by
32 law.

33 (2) Any order granting visitation privileges with the
34 child to a grandparent or great-grandparent who is related

1 to the child through the non-custodial parent shall contain
2 the following provision:

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

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

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

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

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

15 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06.)".