



Sen. John J. Cullerton

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09400HB4357sam002

LRB094 15974 AJ0 57841 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, who is one year old or older, have standing to
20 bring an action in circuit court by petition, requesting
21 visitation in accordance with this Section. The term "sibling"
22 in this Section means a brother, sister, stepbrother, or
23 stepsister of the minor child. Grandparents,
24 great-grandparents, and siblings also have standing to file a

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

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

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

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

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

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

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

1 great-grandparent, or sibling having visitation with the
2 child. The visitation of the grandparent,
3 great-grandparent, or sibling must not diminish the
4 visitation of the parent who is not related to the
5 grandparent, great-grandparent, or sibling seeking
6 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~~ is the parent
10 of the person whose parental rights have been terminated,
11 ~~except in cases of adoption.~~ The visitation must not be
12 used to allow the parent who lost parental rights to
13 unlawfully visit with the child;

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

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

23 (2) The parent, grandparent, great-grandparent, child, or
24 sibling of a parent whose parental rights have been terminated
25 through an adoption proceeding may not petition for visitation
26 rights. Any visitation rights granted pursuant to this Section
27 before the filing of a petition for adoption of the child shall
28 automatically terminate by operation of law upon the entry of
29 an order terminating parental rights or granting the adoption
30 of the child, whichever is earlier. ~~The grandparent,~~
31 ~~great-grandparent, or sibling of a parent whose parental rights~~
32 ~~have been terminated through an adoption proceeding may not~~
33 ~~petition for visitation rights.~~

34 (3) In making a determination under this subsection (a-5),

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

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

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

20 (3a) A grandparent, great-grandparent, or sibling is not
21 required to present the testimony or affidavit of an expert
22 witness in order to establish a significant existing
23 relationship with the child or that the loss of the
24 relationship is likely to occasion severe emotional harm to the
25 child. Instead, the court shall consider whether the facts of
26 the particular case would lead a reasonable person to believe
27 that there is a significant existing relationship between the
28 grandparent, great-grandparent, or sibling and the child or
29 that the loss of the relationship is likely to occasion severe
30 emotional harm to the child.

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

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

1 preference;

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

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

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

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

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

10 (G) the quantity of the visitation time requested and
11 the potential adverse impact that visitation would have on
12 the child's customary activities;

13 (H) whether the child resided with the petitioner for
14 at least 6 consecutive months with or without the current
15 custodian present;

16 (I) whether the petitioner had frequent or regular
17 contact or visitation with the child for at least 12
18 consecutive months; ~~and~~

19 (J) any other fact that establishes that the loss of
20 the relationship between the petitioner and the child is
21 likely to harm the child's mental, physical, or emotional
22 health; ~~and~~.

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

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

1 present environment may endanger seriously the child's mental,
2 physical, or emotional health.

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

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

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

25 (b) (1) (Blank.)

26 (1.5) The Court may grant reasonable visitation privileges
27 to a stepparent upon petition to the court by the stepparent,
28 with notice to the parties required to be notified under
29 Section 601 of this Act, if the court determines that it is in
30 the best interests and welfare of the child, and may issue any
31 necessary orders to enforce those visitation privileges. A
32 petition for visitation privileges may be filed under this
33 paragraph (1.5) whether or not a petition pursuant to this Act
34 has been previously filed or is currently pending if the

1 following circumstances are met:

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

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

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

7 (D) the child wishes to have reasonable visitation with
8 the stepparent; and

9 (E) the stepparent was providing for the care, control,
10 and welfare to the child prior to the initiation of the
11 petition for visitation.

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

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

26 (3) (Blank).

27 (c) The court may modify an order granting or denying
28 visitation rights of a parent whenever modification would serve
29 the best interest of the child; but the court shall not
30 restrict a parent's visitation rights unless it finds that the
31 visitation would endanger seriously the child's physical,
32 mental, moral or emotional health. ~~The court may modify an~~
33 ~~order granting, denying, or limiting visitation rights of a~~
34 ~~grandparent, great-grandparent, or sibling of any minor child~~

1 ~~whenever a change of circumstances has occurred based on facts~~
2 ~~occurring subsequent to the judgment and the court finds by~~
3 ~~clear and convincing evidence that the modification is in the~~
4 ~~best interest of the minor child.~~

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

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

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

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

27 Nothing in this subdivision (1) limits the authority of
28 the court to enforce its orders in any manner permitted by
29 law.

30 (2) Any order granting visitation privileges with the
31 child to a grandparent or great-grandparent who is related
32 to the child through the non-custodial parent shall contain
33 the following provision:

34 "If the (grandparent or great-grandparent, whichever

1 is applicable) who has been granted visitation privileges
2 under this order uses the visitation privileges to
3 facilitate contact between the child and the child's
4 non-custodial parent, the visitation privileges granted
5 under this order shall be permanently revoked."

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

21 (f) Unless the court determines, after considering all
22 relevant factors, including but not limited to those set forth
23 in Section 602(a), that it would be in the best interests of
24 the child to allow visitation, the court shall not enter an
25 order providing visitation rights and pursuant to a motion to
26 modify visitation shall revoke visitation rights previously
27 granted to any person who would otherwise be entitled to
28 petition for visitation rights under this Section who has been
29 convicted of first degree murder of the parent, grandparent,
30 great-grandparent, or sibling of the child who is the subject
31 of the order. Until an order is entered pursuant to this
32 subsection, no person shall visit, with the child present, a
33 person who has been convicted of first degree murder of the
34 parent, grandparent, great-grandparent, or sibling of the

1 child without the consent of the child's parent, other than a
2 parent convicted of first degree murder as set forth herein, or
3 legal guardian.

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

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