



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1087

Introduced 2/8/2007, by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

750 ILCS 5/601
750 ILCS 5/607

from Ch. 40, par. 601
from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides for stepparent custody when the circumstances warrant custody; the circumstances to consider include: the parent's physical and mental health, abilities, and location; the child's living and care arrangements; the stepparent's role concerning care, control, and provision for the child's welfare; the child's age; the length of the marriage between the parent and the stepparent; the child's wishes; and the child's best interests. Provides for stepparent visitation when the circumstances warrant visitation; the circumstances to consider include: the parent's physical and mental condition, abilities, and location; the child's previous residency with the stepparent; the child's wishes; the child's age; the stepparent's role concerning care, control, and provision for the child's welfare; and the best interests of the child.

LRB095 06564 AJ0 26667 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 Sections 601 and 607 as
6 follows:

7 (750 ILCS 5/601) (from Ch. 40, par. 601)

8 Sec. 601. Jurisdiction; Commencement of Proceeding.

9 (a) A court of this State competent to decide child custody
10 matters has jurisdiction to make a child custody determination
11 in original or modification proceedings as provided in Section
12 201 of the Uniform Child-Custody Jurisdiction and Enforcement
13 Act as adopted by this State.

14 (b) A child custody proceeding is commenced in the court:

15 (1) by a parent, by filing a petition:

16 (i) for dissolution of marriage or legal
17 separation or declaration of invalidity of marriage;
18 or

19 (ii) for custody of the child, in the county in
20 which he is permanently resident or found;

21 (2) by a person other than a parent, by filing a
22 petition for custody of the child in the county in which he
23 is permanently resident or found, but only if he is not in

1 the physical custody of one of his parents; or

2 (3) by a stepparent, by filing a petition, if all of
3 the following circumstances are met:

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

5 (B) the custodial parent and stepparent were
6 married for at least 5 years during which the child
7 resided with the parent and stepparent;

8 (C) the custodial parent is deceased or is disabled
9 and cannot perform the duties of a parent to the child;

10 (D) the stepparent provided for the care, control,
11 and welfare to the child prior to the initiation of
12 custody proceedings;

13 (E) the child wishes to live with the stepparent;
14 and

15 (F) it is alleged to be in the best interests and
16 welfare of the child to live with the stepparent as
17 provided in Section 602 of this Act.

18 (3.5) by a stepparent, by filing a petition,
19 notwithstanding that one or more of the circumstances
20 described in subparagraphs (A) through (F) in paragraph (3)
21 are not met, if all of the following circumstances are met:

22 (A) the child's age is consistent with an order of
23 stepparent custody;

24 (B) the length of the marriage of the custodial
25 parent and the stepparent and the nature and length of
26 the child's previous residency arrangements with the

1 parent and stepparent are consistent with an order of
2 stepparent custody;

3 (C) the parent's physical and mental condition as
4 it relates to the parent's ability to care for the
5 child is consistent with an order of stepparent
6 custody; the parent's lack of competence,
7 incarceration, absence (with his or her whereabouts
8 unknown), or the parent being otherwise unable or
9 unavailable to care for the child is consistent with an
10 order of stepparent custody; or the parent is deceased;

11 (D) the child's wishes concerning stepparent
12 custody are consistent with an order of stepparent
13 custody;

14 (E) the stepparent's care, control, and provision
15 for the welfare of the child prior to the initiation of
16 the petition for custody are consistent with an order
17 of stepparent custody;

18 (F) other conditions exist that are consistent
19 with an order of stepparent custody; and

20 (G) it is in the best interests and welfare of the
21 child, as provided in Section 602 of this Act, to live
22 with the stepparent.

23 (4) When one of the parents is deceased, by a
24 grandparent who is a parent or stepparent of a deceased
25 parent, by filing a petition, if one or more of the
26 following existed at the time of the parent's death:

1 (A) the surviving parent had been absent from the
2 marital abode for more than one month without the
3 deceased spouse knowing his or her whereabouts;

4 (B) the surviving parent was in State or federal
5 custody; or

6 (C) the surviving parent had: (i) received
7 supervision for or been convicted of any violation of
8 Article 12 of the Criminal Code of 1961 directed
9 towards the deceased parent or the child; or (ii)
10 received supervision or been convicted of violating an
11 order of protection entered under Section 217, 218, or
12 219 of the Illinois Domestic Violence Act of 1986 for
13 the protection of the deceased parent or the child.

14 (c) Notice of a child custody proceeding, including an
15 action for modification of a previous custody order, shall be
16 given to the child's parents, guardian and custodian, who may
17 appear, be heard, and file a responsive pleading. The court,
18 upon showing of good cause, may permit intervention of other
19 interested parties.

20 (d) Proceedings for modification of a previous custody
21 order commenced more than 30 days following the entry of a
22 previous custody order must be initiated by serving a written
23 notice and a copy of the petition for modification upon the
24 child's parent, guardian and custodian at least 30 days prior
25 to hearing on the petition. Nothing in this Section shall
26 preclude a party in custody modification proceedings from

1 moving for a temporary order under Section 603 of this Act.

2 (e) (Blank).

3 (f) The court shall, at the court's discretion or upon the
4 request of any party entitled to petition for custody of the
5 child, appoint a guardian ad litem to represent the best
6 interest of the child for the duration of the custody
7 proceeding or for any modifications of any custody orders
8 entered. Nothing in this Section shall be construed to prevent
9 the court from appointing the same guardian ad litem for 2 or
10 more children that are siblings or half-siblings.

11 (Source: P.A. 93-108, eff. 1-1-04; 93-1026, eff. 1-1-05.)

12 (750 ILCS 5/607) (from Ch. 40, par. 607)

13 Sec. 607. Visitation.

14 (a) A parent not granted custody of the child is entitled
15 to reasonable visitation rights unless the court finds, after a
16 hearing, that visitation would endanger seriously the child's
17 physical, mental, moral or emotional health. If the custodian's
18 street address is not identified, pursuant to Section 708, the
19 court shall require the parties to identify reasonable
20 alternative arrangements for visitation by a non-custodial
21 parent, including but not limited to visitation of the minor
22 child at the residence of another person or at a local public
23 or private facility.

24 (a-3) Grandparents, great-grandparents, and siblings of a
25 minor child, who is one year old or older, have standing to

1 bring an action in circuit court by petition, requesting
2 visitation in accordance with this Section. The term "sibling"
3 in this Section means a brother, sister, stepbrother, or
4 stepsister of the minor child. Grandparents,
5 great-grandparents, and siblings also have standing to file a
6 petition for visitation rights in a pending dissolution
7 proceeding or any other proceeding that involves custody or
8 visitation issues, requesting visitation in accordance with
9 this Section. A petition for visitation with a child by a
10 person other than a parent must be filed in the county in which
11 the child resides. Nothing in this subsection (a-3) and
12 subsection (a-5) of this Section shall apply to a child in
13 whose interests a petition is pending under Section 2-13 of the
14 Juvenile Court Act of 1987 or a petition to adopt an unrelated
15 child is pending under the Adoption Act.

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

21 (A) (Blank);

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

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

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

6 (B) the child's mother and father are divorced or have
7 been legally separated from each other or there is pending
8 a dissolution proceeding involving a parent of the child or
9 another court proceeding involving custody or visitation
10 of the child (other than any adoption proceeding of an
11 unrelated child) and at least one parent does not object to
12 the grandparent, great-grandparent, or sibling having
13 visitation with the child. The visitation of the
14 grandparent, great-grandparent, or sibling must not
15 diminish the visitation of the parent who is not related to
16 the grandparent, great-grandparent, or sibling seeking
17 visitation;

18 (C) (Blank);

19 (D) the child is born out of wedlock, the parents are
20 not living together, and the petitioner is a maternal
21 grandparent, great-grandparent, or sibling of the child
22 born out of wedlock; or

23 (E) the child is born out of wedlock, the parents are
24 not living together, the petitioner is a paternal
25 grandparent, great-grandparent, or sibling, and the
26 paternity has been established by a court of competent

1 jurisdiction.

2 (2) Any visitation rights granted pursuant to this Section
3 before the filing of a petition for adoption of a child shall
4 automatically terminate by operation of law upon the entry of
5 an order terminating parental rights or granting the adoption
6 of the child, whichever is earlier. If the person or persons
7 who adopted the child are related to the child, as defined by
8 Section 1 of the Adoption Act, any person who was related to
9 the child as grandparent, great-grandparent, or sibling prior
10 to the adoption shall have standing to bring an action pursuant
11 to this Section requesting visitation with the child.

12 (3) In making a determination under this subsection (a-5),
13 there is a rebuttable presumption that a fit parent's actions
14 and decisions regarding grandparent, great-grandparent, or
15 sibling visitation are not harmful to the child's mental,
16 physical, or emotional health. The burden is on the party
17 filing a petition under this Section to prove that the parent's
18 actions and decisions regarding visitation times are harmful to
19 the child's mental, physical, or emotional health.

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

22 (A) the preference of the child if the child is
23 determined to be of sufficient maturity to express a
24 preference;

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

26 (C) the mental and physical health of the grandparent,

1 great-grandparent, or sibling;

2 (D) the length and quality of the prior relationship
3 between the child and the grandparent, great-grandparent,
4 or sibling;

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

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

7 (G) the quantity of the visitation time requested and
8 the potential adverse impact that visitation would have on
9 the child's customary activities;

10 (H) whether the child resided with the petitioner for
11 at least 6 consecutive months with or without the current
12 custodian present;

13 (I) whether the petitioner had frequent or regular
14 contact or visitation with the child for at least 12
15 consecutive months;

16 (J) any other fact that establishes that the loss of
17 the relationship between the petitioner and the child is
18 likely to harm the child's mental, physical, or emotional
19 health; and

20 (K) whether the grandparent, great-grandparent, or
21 sibling was a primary caretaker of the child for a period
22 of not less than 6 consecutive months.

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

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

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

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

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

3 (b) (1) (Blank.)

4 (1.5) The Court may grant reasonable visitation privileges
5 to a stepparent upon petition to the court by the stepparent,
6 with notice to the parties required to be notified under
7 Section 601 of this Act, if the court determines that it is in
8 the best interests and welfare of the child, and may issue any
9 necessary orders to enforce those visitation privileges. A
10 petition for visitation privileges may be filed under this
11 paragraph (1.5) whether or not a petition pursuant to this Act
12 has been previously filed or is currently pending if the
13 following circumstances are met:

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

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

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

19 (D) the child wishes to have reasonable visitation with
20 the stepparent; and

21 (E) the stepparent was providing for the care, control,
22 and welfare to the child prior to the initiation of the
23 petition for visitation.

24 Notwithstanding that one or more of the circumstances
25 described in subparagraphs (A) through (E) in this paragraph
26 (1.5) are not met, a stepparent may file a petition for

1 visitation privileges if the stepparent shows:

2 (F) the child's age;

3 (G) the nature and length of the child's previous
4 residency arrangements with the parent and step-parent;

5 (H) the parent's physical and mental condition as it
6 relates to the parent's ability to care for the child;
7 whether the parent is incompetent, incarcerated, absent
8 (with his or her whereabouts unknown), or otherwise unable
9 or unavailable to care for the child; or the parent is
10 deceased;

11 (I) the child's wishes concerning visitation with the
12 stepparent;

13 (J) the circumstances that exist concerning the
14 stepparent's care, control, and provision for the welfare
15 of the child prior to the initiation of the petition for
16 visitation; and

17 (K) other circumstances that exist that show that
18 granting visitation privileges to the stepparent is in the
19 best interests and welfare of the child.

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

24 (B) A petition for visitation privileges may not be filed
25 under this subsection (b) if the child who is the subject of
26 the grandparents' or great-grandparents' petition has been

1 voluntarily surrendered by the parent or parents, except for a
2 surrender to the Illinois Department of Children and Family
3 Services or a foster care facility, or has been previously
4 adopted by an individual or individuals who are not related to
5 the biological parents of the child or is the subject of a
6 pending adoption petition by an individual or individuals who
7 are not related to the biological parents of the child.

8 (3) (Blank).

9 (c) The court may modify an order granting or denying
10 visitation rights of a parent whenever modification would serve
11 the best interest of the child; but the court shall not
12 restrict a parent's visitation rights unless it finds that the
13 visitation would endanger seriously the child's physical,
14 mental, moral or emotional health.

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

19 (1) If an order has been entered granting visitation
20 privileges with the child to a grandparent or
21 great-grandparent who is related to the child through the
22 non-custodial parent, the visitation privileges of the
23 grandparent or great-grandparent may be revoked if:

24 (i) a court has entered an order prohibiting the
25 non-custodial parent from any contact with the child,
26 and the grandparent or great-grandparent is found to

1 have used his or her visitation privileges to
2 facilitate contact between the child and the
3 non-custodial parent; or

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

11 Nothing in this subdivision (1) limits the authority of
12 the court to enforce its orders in any manner permitted by
13 law.

14 (2) Any order granting visitation privileges with the
15 child to a grandparent or great-grandparent who is related
16 to the child through the non-custodial parent shall contain
17 the following provision:

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

24 (e) No parent, not granted custody of the child, or
25 grandparent, or great-grandparent, or stepparent, or sibling
26 of any minor child, convicted of any offense involving an

1 illegal sex act perpetrated upon a victim less than 18 years of
2 age including but not limited to offenses for violations of
3 Article 12 of the Criminal Code of 1961, is entitled to
4 visitation rights while incarcerated or while on parole,
5 probation, conditional discharge, periodic imprisonment, or
6 mandatory supervised release for that offense, and upon
7 discharge from incarceration for a misdemeanor offense or upon
8 discharge from parole, probation, conditional discharge,
9 periodic imprisonment, or mandatory supervised release for a
10 felony offense, visitation shall be denied until the person
11 successfully completes a treatment program approved by the
12 court.

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

5 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06;
6 94-1026, eff. 1-1-07.)