



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB1978

Introduced 2/26/2007, by Rep. Ruth Munson

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/607  
750 ILCS 5/609

from Ch. 40, par. 607  
from Ch. 40, par. 609

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides for reasonable visitation between a child and a non-custodial parent through electronic communication such as telephone, e-mail, instant messaging, and other modes of electronic communication. Provides that the court may not use time spent in electronic communication to affect child support, custody, visitation, or removal of a child from the State. Provides for the custodial parent to provide any new e-mail address of the child to the noncustodial parent within 24 hours of the change. Makes other changes concerning electronic communication between a parent and a child and between a grandparent, great-grandparent, or sibling and a child.

LRB095 09212 AJ0 29405 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 607 and 609 as  
6 follows:

7 (750 ILCS 5/607) (from Ch. 40, par. 607)

8 Sec. 607. Visitation.

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

22 (1) "Visitation" means in-person time spent between a  
23 child and the child's parent, including any electronic

1       communication.

2           (2) "Electronic communication" means time that a  
3       parent spends with his or her child during which the child  
4       is not in the parent's actual physical custody, but which  
5       is facilitated by the use of communication tools such as  
6       the telephone, electronic mail, instant messaging, video  
7       conferencing or other wired or wireless technologies via  
8       the Internet, or another medium of communication.

9           (a-2) Upon motion by either parent, the court may grant a  
10       reasonable amount of electronic communication at reasonable  
11       hours to a parent when the child is not in the parent's  
12       physical custody. If a court enters an order that includes  
13       electronic communication with the child, the following  
14       provisions shall apply:

15           (1) Electronic communication may not be used as a  
16       replacement or as a substitute for a parent's periods of  
17       in-person visitation with the child.

18           (2) The court may not use the availability of  
19       electronic communication as a factor in support of a  
20       modification of a physical custody or visitation order.

21           (3) The court may not use the amount of time electronic  
22       communication is used as a factor in the calculation of  
23       child support.

24           (4) Any supervised visitation shall include any  
25       electronic visitation between a child and the supervised  
26       parent.

1           (5) Each parent shall furnish the other parent with the  
2           e-mail address and any other electronic communication  
3           access information of the child and any change in the  
4           e-mail address or other electronic communication access  
5           information within 24 hours of the change.

6           (6) Each parent shall permit and encourage, at  
7           reasonable hours and for a reasonable duration, reasonable  
8           and uncensored electronic communication if the equipment  
9           is reasonably available. If the parties cannot agree on  
10           whether the equipment is reasonably available, the court  
11           shall decide whether the equipment for electronic  
12           communication is reasonably available, taking into  
13           consideration:

14                   (A) the best interests of the child;

15                   (B) each parent's ability to pay any additional  
16                   expenses for electronic communication; and

17                   (C) any other factors the court considers  
18                   material.

19           (a-3) Grandparents, great-grandparents, and siblings of a  
20           minor child, who is one year old or older, have standing to  
21           bring an action in circuit court by petition, requesting  
22           visitation and any electronic communication in accordance with  
23           this Section. The term "sibling" in this Section means a  
24           brother, sister, stepbrother, or stepsister of the minor child.  
25           Grandparents, great-grandparents, and siblings also have  
26           standing to file a petition for visitation and any electronic

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

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

16 (A) (Blank);

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;

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;

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

13 (C) (Blank);

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) Any visitation rights granted pursuant to this Section  
24 before the filing of a petition for adoption of a child shall  
25 automatically terminate by operation of law upon the entry of  
26 an order terminating parental rights or granting the adoption

1 of the child, whichever is earlier. If the person or persons  
2 who adopted the child are related to the child, as defined by  
3 Section 1 of the Adoption Act, any person who was related to  
4 the child as grandparent, great-grandparent, or sibling prior  
5 to the adoption shall have standing to bring an action pursuant  
6 to this Section requesting visitation with the child.

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

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

17 (A) the preference of the child if the child is  
18 determined to be of sufficient maturity to express a  
19 preference;

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

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

23 (D) the length and quality of the prior relationship  
24 between the child and the grandparent, great-grandparent,  
25 or sibling;

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

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

2 (G) the quantity of the visitation time requested and  
3 the potential adverse impact that visitation would have on  
4 the child's customary activities;

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

8 (I) whether the petitioner had frequent or regular  
9 contact or visitation with the child for at least 12  
10 consecutive months;

11 (J) any other fact that establishes that the loss of  
12 the relationship between the petitioner and the child is  
13 likely to harm the child's mental, physical, or emotional  
14 health; and

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

18 (5) The court may order visitation rights for the  
19 grandparent, great-grandparent, or sibling that include  
20 reasonable access without requiring overnight or possessory  
21 visitation.

22 (a-7) (1) Unless by stipulation of the parties, no motion to  
23 modify a grandparent, great-grandparent, or sibling visitation  
24 order may be made earlier than 2 years after the date the order  
25 was filed, unless the court permits it to be made on the basis  
26 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 order that grants  
4 visitation to a grandparent, great-grandparent, or sibling  
5 unless it finds by clear and convincing evidence, upon the  
6 basis of facts that have arisen since the prior visitation  
7 order or that were unknown to the court at the time of entry of  
8 the prior visitation, that a change has occurred in the  
9 circumstances of the child or his or her custodian, and that  
10 the modification is necessary to protect the mental, physical,  
11 or emotional health of the child. The court shall state in its  
12 decision specific findings of fact in support of its  
13 modification or termination of the grandparent,  
14 great-grandparent, or sibling visitation. A child's parent may  
15 always petition to modify visitation upon changed  
16 circumstances when necessary to promote the child's best  
17 interest.

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

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

24 (b) (1) (Blank.)

25 (1.5) The Court may grant reasonable visitation privileges  
26 to a stepparent upon petition to the court by the stepparent,

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

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

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

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

14 (D) the child wishes to have reasonable visitation with  
15 the stepparent; and

16 (E) the stepparent was providing for the care, control,  
17 and welfare to the child prior to the initiation of the  
18 petition for visitation.

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

23 (B) A petition for visitation privileges may not be filed  
24 under this subsection (b) if the child who is the subject of  
25 the grandparents' or great-grandparents' petition has been  
26 voluntarily surrendered by the parent or parents, except for a

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

7 (3) (Blank).

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

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

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

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

1 facilitate contact between the child and the  
2 non-custodial parent; or

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

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

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

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

23 (e) No parent, not granted custody of the child, or  
24 grandparent, or great-grandparent, or stepparent, or sibling  
25 of any minor child, convicted of any offense involving an  
26 illegal sex act perpetrated upon a victim less than 18 years of

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

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

1 parent convicted of first degree murder as set forth herein, or  
2 legal guardian.

3 (g) (Blank).

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

6 (750 ILCS 5/609) (from Ch. 40, par. 609)

7 Sec. 609. Leave to Remove Children.)

8 (a) The court may grant leave, before or after judgment, to  
9 any party having custody of any minor child or children to  
10 remove such child or children from Illinois whenever such  
11 approval is in the best interests of such child or children.  
12 The burden of proving that such removal is in the best  
13 interests of such child or children is on the party seeking the  
14 removal. When such removal is permitted, the court may require  
15 the party removing such child or children from Illinois to give  
16 reasonable security guaranteeing the return of such children.

17 (b) Before a minor child is temporarily removed from  
18 Illinois, the parent responsible for the removal shall inform  
19 the other parent, or the other parent's attorney, of the  
20 address and telephone number where the child may be reached  
21 during the period of temporary removal, and the date on which  
22 the child shall return to Illinois.

23 (c) The court may not use the availability of electronic  
24 communication as a factor in support of a removal of a child by  
25 the custodial parent from Illinois.

1           (d) The moving parent shall be responsible for the costs of  
2 providing any court-ordered electronic communication  
3 equipment.

4           The State of Illinois retains jurisdiction when the minor  
5 child is absent from the State pursuant to this subsection.

6           (Source: P.A. 85-768.)