

HB3009



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3009

Introduced 2/26/2007, by Rep. Tom Cross

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607

from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Makes a technical change in a Section concerning visitation.

LRB095 06591 AJO 26695 b

A BILL FOR

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 ~~the~~ child is
9 entitled to reasonable visitation rights unless the court
10 finds, after a hearing, that visitation would endanger
11 seriously the child's physical, mental, moral or emotional
12 health. If the custodian's street address is not identified,
13 pursuant to Section 708, the court shall require the parties to
14 identify reasonable alternative arrangements for visitation by
15 a non-custodial parent, including but not limited to visitation
16 of the minor child at the residence of another person or at a
17 local public 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,

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

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

17 (A) (Blank);

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

1 petition;

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

14 (C) (Blank);

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

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

24 (2) Any visitation rights granted pursuant to this Section
25 before the filing of a petition for adoption of a child shall
26 automatically terminate by operation of law upon the entry of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a-7) (1) Unless by stipulation of the parties, no motion to
24 modify a grandparent, great-grandparent, or sibling visitation
25 order may be made earlier than 2 years after the date the order
26 was filed, unless the court permits it to be made on the basis

1 of affidavits that there is reason to believe the child's
2 present environment may endanger seriously the child's mental,
3 physical, or emotional health.

4 (2) The court shall not modify an 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

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

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

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

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

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

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

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.)