



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3904

Introduced 2/26/2009, by Rep. Michael G. Connelly - Michael P. McAuliffe - Timothy L. Schmitz, Mark H. Beaubien, Jr., Jerry L. Mitchell, et al.

SYNOPSIS AS INTRODUCED:

750 ILCS 5/602	from Ch. 40, par. 602
750 ILCS 5/607	from Ch. 40, par. 607
750 ILCS 5/609	from Ch. 40, par. 609

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that unless the court finds the occurrence of ongoing abuse, a history of abuse, or a significant incident of abuse (instead of unless the court finds the occurrence of ongoing abuse), the court shall presume that the maximum involvement and cooperation of the parents is in the best interest of the child. Provides that a finding of such abuse creates a presumption against joint custody which may be rebutted by evidence of substantial steps taken to minimize the potential for abuse of the custodial parent or the minor child. Provides that the burden of proving that removal of a child from Illinois is in the best interests of the child is on the party seeking the removal unless the court finds ongoing abuse, a history of abuse, or a significant incident of abuse against the custodial parent or child (instead of the burden is on the party seeking the removal). Provides that if the removal request is based on abuse and the court grants the removal, the custodial parent shall not be required to provide his or her address or phone to the non-custodial parent and an alternative means of contact may be ordered. Provides that a court finding of ongoing abuse, a history of abuse, or a significant incident of abuse creates a presumption against visitation which may be rebutted by evidence of substantial steps taken to minimize the potential for abuse of the custodial parent or the minor child. Provides that before a minor child is temporarily removed from the State, contact information must be furnished to the other parent, unless this would create a significant risk of substantial harm to the custodial parent or the minor child (instead of contact information must be furnished to the other parent).

LRB096 09424 AJO 19581 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 602, 607, and 609
6 as follows:

7 (750 ILCS 5/602) (from Ch. 40, par. 602)

8 Sec. 602. Best Interest of Child.

9 (a) The court shall determine custody in accordance with
10 the best interest of the child. The court shall consider all
11 relevant factors including:

12 (1) the wishes of the child's parent or parents as to
13 his custody;

14 (2) the wishes of the child as to his custodian;

15 (3) the interaction and interrelationship of the child
16 with his parent or parents, his siblings and any other
17 person who may significantly affect the child's best
18 interest;

19 (4) the child's adjustment to his home, school and
20 community;

21 (5) the mental and physical health of all individuals
22 involved;

23 (6) the physical violence or threat of physical

1 violence by the child's potential custodian, whether
2 directed against the child or directed against another
3 person;

4 (7) the occurrence of ongoing or repeated abuse as
5 defined in Section 103 of the Illinois Domestic Violence
6 Act of 1986, whether directed against the child or directed
7 against another person;

8 (8) the willingness and ability of each parent to
9 facilitate and encourage a close and continuing
10 relationship between the other parent and the child; and

11 (9) whether one of the parents is a sex offender.

12 In the case of a custody proceeding in which a stepparent
13 has standing under Section 601, it is presumed to be in the
14 best interest of the minor child that the natural parent have
15 the custody of the minor child unless the presumption is
16 rebutted by the stepparent.

17 (b) The court shall not consider conduct of a present or
18 proposed custodian that does not affect his relationship to the
19 child.

20 (c) Unless the court finds the occurrence of ongoing abuse,
21 a history of abuse, or a significant incident of abuse, as
22 defined in Section 103 of the Illinois Domestic Violence Act of
23 1986, the court shall presume that the maximum involvement and
24 cooperation of both parents regarding the physical, mental,
25 moral, and emotional well-being of their child is in the best
26 interest of the child. There shall be no presumption in favor

1 of or against joint custody. A finding by the court of ongoing
2 abuse, a history of abuse, or a significant incident of abuse
3 of abuse creates a presumption against joint custody, which the
4 parent committing the abuse may rebut by presenting evidence of
5 substantial steps taken in order to minimize the potential for
6 abuse of the custodial parent or the minor child.

7 (Source: P.A. 94-377, eff. 7-29-05; 94-643, eff. 1-1-06;
8 95-331, eff. 8-21-07.)

9 (750 ILCS 5/607) (from Ch. 40, par. 607)

10 Sec. 607. Visitation.

11 (a) A parent not granted custody of the child is entitled
12 to reasonable visitation rights unless the court finds, after a
13 hearing, that visitation would endanger seriously the child's
14 physical, mental, moral or emotional health. A finding by the
15 court of ongoing abuse, a history of abuse, or a significant
16 incident of abuse creates a presumption against visitation,
17 which the parent committing the abuse may rebut by presenting
18 evidence of substantial steps taken in order to minimize the
19 potential for abuse of the custodial parent or the minor child.

20 If the custodian's street address is not identified, pursuant
21 to Section 708, the court shall require the parties to identify
22 reasonable alternative arrangements for visitation by a
23 non-custodial parent, including but not limited to visitation
24 of the minor child at the residence of another person or at a
25 local public or private facility.

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

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

23 (A) (Blank);

24 (A-5) the child's other parent is deceased or has been
25 missing for at least 3 months. For the purposes of this
26 Section a parent is considered to be missing if the

1 parent's location has not been determined and the parent
2 has been reported as missing to a law enforcement agency;

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

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

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

20 (C) (Blank);

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

25 (E) the child is born out of wedlock, the parents are
26 not living together, the petitioner is a paternal

1 grandparent, great-grandparent, or sibling, and the
2 paternity has been established by a court of competent
3 jurisdiction.

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

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

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

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

- 1 (B) the mental and physical health of the child;
- 2 (C) the mental and physical health of the grandparent,
3 great-grandparent, or sibling;
- 4 (D) the length and quality of the prior relationship
5 between the child and the grandparent, great-grandparent,
6 or sibling;
- 7 (E) the good faith of the party in filing the petition;
- 8 (F) the good faith of the person denying visitation;
- 9 (G) the quantity of the visitation time requested and
10 the potential adverse impact that visitation would have on
11 the child's customary activities;
- 12 (H) whether the child resided with the petitioner for
13 at least 6 consecutive months with or without the current
14 custodian present;
- 15 (I) whether the petitioner had frequent or regular
16 contact or visitation with the child for at least 12
17 consecutive months;
- 18 (J) any other fact that establishes that the loss of
19 the relationship between the petitioner and the child is
20 likely to harm the child's mental, physical, or emotional
21 health; and
- 22 (K) whether the grandparent, great-grandparent, or
23 sibling was a primary caretaker of the child for a period
24 of not less than 6 consecutive months.
- 25 (5) The court may order visitation rights for the
26 grandparent, great-grandparent, or sibling that include

1 reasonable access without requiring overnight or possessory
2 visitation.

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

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

25 (3) Attorney fees and costs shall be assessed against a
26 party seeking modification of the visitation order if the court

1 finds that the modification action is vexatious and constitutes
2 harassment.

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

5 (b) (1) (Blank.)

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

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

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

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

21 (D) the child wishes to have reasonable visitation with
22 the stepparent; and

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

26 (2) (A) A petition for visitation privileges shall not be

1 filed pursuant to this subsection (b) by the parents or
2 grandparents of a putative father if the paternity of the
3 putative father has not been legally established.

4 (B) A petition for visitation privileges may not be filed
5 under this subsection (b) if the child who is the subject of
6 the grandparents' or great-grandparents' petition has been
7 voluntarily surrendered by the parent or parents, except for a
8 surrender to the Illinois Department of Children and Family
9 Services or a foster care facility, or has been previously
10 adopted by an individual or individuals who are not related to
11 the biological parents of the child or is the subject of a
12 pending adoption petition by an individual or individuals who
13 are not related to the biological parents of the child.

14 (3) (Blank).

15 (c) The court may modify an order granting or denying
16 visitation rights of a parent whenever modification would serve
17 the best interest of the child; but the court shall not
18 restrict a parent's visitation rights unless it finds that the
19 visitation would endanger seriously the child's physical,
20 mental, moral or emotional health.

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

25 (1) If an order has been entered granting visitation
26 privileges with the child to a grandparent or

1 great-grandparent who is related to the child through the
2 non-custodial parent, the visitation privileges of the
3 grandparent or great-grandparent may be revoked if:

4 (i) a court has entered an order prohibiting the
5 non-custodial parent from any contact with the child,
6 and the grandparent or great-grandparent is found to
7 have used his or her visitation privileges to
8 facilitate contact between the child and the
9 non-custodial parent; or

10 (ii) a court has entered an order restricting the
11 non-custodial parent's contact with the child, and the
12 grandparent or great-grandparent is found to have used
13 his or her visitation privileges to facilitate contact
14 between the child and the non-custodial parent in a
15 manner that violates the terms of the order restricting
16 the non-custodial parent's contact with the child.

17 Nothing in this subdivision (1) limits the authority of
18 the court to enforce its orders in any manner permitted by
19 law.

20 (2) Any order granting visitation privileges with the
21 child to a grandparent or great-grandparent who is related
22 to the child through the non-custodial parent shall contain
23 the following provision:

24 "If the (grandparent or great-grandparent, whichever
25 is applicable) who has been granted visitation privileges
26 under this order uses the visitation privileges to

1 facilitate contact between the child and the child's
2 non-custodial parent, the visitation privileges granted
3 under this order shall be permanently revoked."

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

19 (f) Unless the court determines, after considering all
20 relevant factors, including but not limited to those set forth
21 in Section 602(a), that it would be in the best interests of
22 the child to allow visitation, the court shall not enter an
23 order providing visitation rights and pursuant to a motion to
24 modify visitation shall revoke visitation rights previously
25 granted to any person who would otherwise be entitled to
26 petition for visitation rights under this Section who has been

1 convicted of first degree murder of the parent, grandparent,
2 great-grandparent, or sibling of the child who is the subject
3 of the order. Until an order is entered pursuant to this
4 subsection, no person shall visit, with the child present, a
5 person who has been convicted of first degree murder of the
6 parent, grandparent, great-grandparent, or sibling of the
7 child without the consent of the child's parent, other than a
8 parent convicted of first degree murder as set forth herein, or
9 legal guardian.

10 (g) (Blank).

11 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06;
12 94-1026, eff. 1-1-07.)

13 (750 ILCS 5/609) (from Ch. 40, par. 609)

14 Sec. 609. Leave to Remove Children.) (a) The court may
15 grant leave, before or after judgment, to any party having
16 custody of any minor child or children to remove such child or
17 children from Illinois whenever such approval is in the best
18 interests of such child or children. The burden of proving that
19 such removal is in the best interests of such child or children
20 is on the party seeking the removal unless the court finds the
21 occurrence of ongoing abuse, a history of abuse, or a
22 significant incident of abuse, as defined in Section 103 of the
23 Illinois Domestic Violence Act of 1986, against the custodial
24 parent or such child or children. This finding by the Court
25 places the burden on the parent committing the abuse to prove

1 that the removal is not in the best interest of the child.

2 If a request for removal is based upon an ongoing
3 occurrence of abuse, a history of abuse, or a significant
4 incident of abuse, and the court grants the request, the
5 custodial parent shall not be required to provide an address or
6 telephone number to the noncustodial parent, and the court may
7 designate an alternative manner of contact such as a conference
8 call number or other appropriate means of contact that does not
9 give the abusive parent a means of directly contacting the
10 custodial parent.

11 When such removal is permitted, the court may require the
12 party removing such child or children from Illinois to give
13 reasonable security guaranteeing the return of such children.

14 (b) Before a minor child is temporarily removed from
15 Illinois, the parent responsible for the removal shall inform
16 the other parent, or the other parent's attorney, of the
17 address and telephone number where the child may be reached
18 during the period of temporary removal, and the date on which
19 the child shall return to Illinois, unless providing that
20 information would create a significant risk of substantial harm
21 to the party responsible for the removal or the minor child.

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

24 (Source: P.A. 85-768.)