

HB0984



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB0984

Introduced 01/31/11, by Rep. Michael J. Madigan

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.

LRB097 03804 AJ0 43841 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 (1) "Visitation" means in-person time spent between a
19 child and the child's parent. In appropriate
20 circumstances, it may include electronic communication
21 under conditions and at times determined by the court.

22 (2) "Electronic communication" means time that a
23 parent spends with his or her child during which the child

1 is not in the parent's actual physical custody, but which
2 is facilitated by the use of communication tools such as
3 the telephone, electronic mail, instant messaging, video
4 conferencing or other wired or wireless technologies via
5 the Internet, or another medium of communication.

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

24 (a-5) (1) Except as otherwise provided in this subsection
25 (a-5), any grandparent, great-grandparent, or sibling may file
26 a petition for visitation rights to a minor child if there is

1 an unreasonable denial of visitation by a parent and at least
2 one of the following conditions exists:

3 (A) (Blank);

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

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

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

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

26 (C) (Blank);

1 (D) the child is born out of wedlock, the parents are
2 not living together, and the petitioner is a maternal
3 grandparent, great-grandparent, or sibling of the child
4 born out of wedlock; or

5 (E) the child is born out of wedlock, the parents are
6 not living together, the petitioner is a paternal
7 grandparent, great-grandparent, or sibling, and the
8 paternity has been established by a court of competent
9 jurisdiction.

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

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

1 the child's mental, physical, or emotional health.

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

4 (A) the preference of the child if the child is
5 determined to be of sufficient maturity to express a
6 preference;

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

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

10 (D) the length and quality of the prior relationship
11 between the child and the grandparent, great-grandparent,
12 or sibling;

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

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

15 (G) the quantity of the visitation time requested and
16 the potential adverse impact that visitation would have on
17 the child's customary activities;

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

21 (I) whether the petitioner had frequent or regular
22 contact or visitation with the child for at least 12
23 consecutive months;

24 (J) any other fact that establishes that the loss of
25 the relationship between the petitioner and the child is
26 likely to harm the child's mental, physical, or emotional

1 health; and

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

5 (5) The court may order visitation rights for the
6 grandparent, great-grandparent, or sibling that include
7 reasonable access without requiring overnight or possessory
8 visitation.

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

16 (2) The court shall not modify an order that grants
17 visitation to a grandparent, great-grandparent, or sibling
18 unless it finds by clear and convincing evidence, upon the
19 basis of facts that have arisen since the prior visitation
20 order or that were unknown to the court at the time of entry of
21 the prior visitation, that a change has occurred in the
22 circumstances of the child or his or her custodian, and that
23 the modification is necessary to protect the mental, physical,
24 or emotional health of the child. The court shall state in its
25 decision specific findings of fact in support of its
26 modification or termination of the grandparent,

1 great-grandparent, or sibling visitation. A child's parent may
2 always petition to modify visitation upon changed
3 circumstances when necessary to promote the child's best
4 interest.

5 (3) Attorney fees and costs shall be assessed against a
6 party seeking modification of the visitation order if the court
7 finds that the modification action is vexatious and constitutes
8 harassment.

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

11 (b) (1) (Blank.)

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

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

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

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

1 (D) the child wishes to have reasonable visitation with
2 the stepparent; and

3 (E) the stepparent was providing for the care, control,
4 and welfare to the child prior to the initiation of the
5 petition for visitation.

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

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

20 (3) (Blank).

21 (c) The court may modify an order granting or denying
22 visitation rights of a parent whenever modification would serve
23 the best interest of the child; but the court shall not
24 restrict a parent's visitation rights unless it finds that the
25 visitation would endanger seriously the child's physical,
26 mental, moral or emotional health.

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

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

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

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

23 Nothing in this subdivision (1) limits the authority of
24 the court to enforce its orders in any manner permitted by
25 law.

26 (2) Any order granting visitation privileges with the

1 child to a grandparent or great-grandparent who is related
2 to the child through the non-custodial parent shall contain
3 the following provision:

4 "If the (grandparent or great-grandparent, whichever
5 is applicable) who has been granted visitation privileges
6 under this order uses the visitation privileges to
7 facilitate contact between the child and the child's
8 non-custodial parent, the visitation privileges granted
9 under this order shall be permanently revoked."

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

25 (f) Unless the court determines, after considering all
26 relevant factors, including but not limited to those set forth

1 in Section 602(a), that it would be in the best interests of
2 the child to allow visitation, the court shall not enter an
3 order providing visitation rights and pursuant to a motion to
4 modify visitation shall revoke visitation rights previously
5 granted to any person who would otherwise be entitled to
6 petition for visitation rights under this Section who has been
7 convicted of first degree murder of the parent, grandparent,
8 great-grandparent, or sibling of the child who is the subject
9 of the order. Until an order is entered pursuant to this
10 subsection, no person shall visit, with the child present, a
11 person who has been convicted of first degree murder of the
12 parent, grandparent, great-grandparent, or sibling of the
13 child without the consent of the child's parent, other than a
14 parent convicted of first degree murder as set forth herein, or
15 legal guardian.

16 (g) (Blank).

17 (Source: P.A. 96-331, eff. 1-1-10.)