



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1589

Introduced 2/15/2011, by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

750 ILCS 5/603	from Ch. 40, par. 603
750 ILCS 5/606	from Ch. 40, par. 606
750 ILCS 5/607	from Ch. 40, par. 607
750 ILCS 5/610	from Ch. 40, par. 610

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that any temporary order that modifies custody, in whole or in part, because of a party's deployment as a member of the United States Armed Forces must also provide that after a specified time following the end of the deployment, the custody order in effect prior to the deployment must be reinstated, unless the other party, who bears the burden of proof, shows that it is not in the best interest of the child to reinstate the order. Provides that if the party who was not deployed contests reinstatement of the prior order, that party bears the burden of proof to show that it should not be reinstated. Provides that in a custody hearing in which a parent is a member of the United States Armed Forces who is deployed or who has orders to be deployed: the proceedings shall, upon the service member's request, receive expedited priority in being set for hearing; the service member shall be permitted to testify by telephone or other electronic means when the service member is unavailable to appear due to the deployment; and, upon motion, the court may allow the deployed parent to designate another person to exercise the visitation that the deployed parent has under the existing order, if the court determines that it is in the child's best interest. Makes other changes.

LRB097 05412 AJ0 45470 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 603, 606, 607, and
6 610 as follows:

7 (750 ILCS 5/603) (from Ch. 40, par. 603)

8 Sec. 603. Temporary Orders.

9 (a) A party to a custody proceeding, including a proceeding
10 to modify custody, may move for a temporary custody order. The
11 court may award temporary custody under the standards of
12 Section 602 and the standards and procedures of Section 602.1,
13 after a hearing, or, if there is no objection, solely on the
14 basis of the affidavits. Any temporary custody order that
15 modifies custody, in whole or in part, because of a party's
16 deployment as a member of the United States Armed Forces must
17 also provide that after a specified time after the end of the
18 deployment, the custody order in effect prior to the deployment
19 must be reinstated unless the other party, who bears the burden
20 of proof, contests the reinstatement and shows that it is not
21 in the best interest of the child to reinstate the custody
22 order.

23 (b) If a proceeding for dissolution of marriage or legal

1 separation or declaration of invalidity of marriage is
2 dismissed, any temporary custody order is vacated unless a
3 parent or the child's custodian moves that the proceeding
4 continue as a custody proceeding and the court finds, after a
5 hearing, that the circumstances of the parents and the best
6 interest of the child requires that a custody judgment be
7 issued.

8 (c) If a custody proceeding commenced in the absence of a
9 petition for dissolution of marriage or legal separation, under
10 either subparagraph (ii) of paragraph (1), or paragraph (2), of
11 subsection (d) of Section 601, is dismissed, any temporary
12 custody order is vacated.

13 (Source: P.A. 86-530; 87-1255.)

14 (750 ILCS 5/606) (from Ch. 40, par. 606)

15 Sec. 606. Hearings.

16 (a) Custody proceedings shall receive priority in being set
17 for hearing.

18 (b) The court may tax as costs the payment of necessary
19 travel and other expenses incurred by any person whose presence
20 at the hearing the court deems necessary to determine the best
21 interest of the child.

22 (c) The court, without a jury, shall determine questions of
23 law and fact. If it finds that a public hearing may be
24 detrimental to the child's best interest, the court may exclude
25 the public from a custody hearing, but may admit any person who

1 has a direct and legitimate interest in the particular case or
2 a legitimate educational or research interest in the work of
3 the court.

4 (d) If the court finds it necessary, in order to protect
5 the child's welfare, that the record of any interview, report,
6 investigation, or testimony in a custody proceeding be kept
7 secret, the court may make an appropriate order sealing the
8 record.

9 (e) Previous statements made by the child relating to any
10 allegations that the child is an abused or neglected child
11 within the meaning of the Abused and Neglected Child Reporting
12 Act, or an abused or neglected minor within the meaning of the
13 Juvenile Court Act of 1987, shall be admissible in evidence in
14 a hearing concerning custody of or visitation with the child.
15 No such statement, however, if uncorroborated and not subject
16 to cross-examination, shall be sufficient in itself to support
17 a finding of abuse or neglect.

18 (f) Custody and visitation proceedings in which a parent is
19 a member of the United States Armed Forces who is deployed or
20 who has orders to be deployed shall, upon a request of the
21 service member, receive expedited priority in being set for
22 hearing.

23 (g) In any custody or visitation proceeding in which a
24 parent is a member of the United States Armed Forces who is
25 deployed or who has orders to be deployed, the court shall,
26 upon a request of the service member, permit the deployed

1 parent who is unavailable to appear for the proceeding to
2 testify by telephone, audiovisual means, or other electronic
3 means. The court shall cooperate with the deployed parent in
4 designating an appropriate location for the testimony.

5 (Source: P.A. 87-1081.)

6 (750 ILCS 5/607) (from Ch. 40, par. 607)

7 Sec. 607. Visitation.

8 (a) A parent not granted custody of the child is entitled
9 to reasonable visitation rights unless the court finds, after a
10 hearing, that visitation would endanger seriously the child's
11 physical, mental, moral or emotional health. If the custodian's
12 street address is not identified, pursuant to Section 708, the
13 court shall require the parties to identify reasonable
14 alternative arrangements for visitation by a non-custodial
15 parent, including but not limited to visitation of the minor
16 child at the residence of another person or at a local public
17 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
24 is not in the parent's actual physical custody, but which
25 is facilitated by the use of communication tools such as

1 the telephone, electronic mail, instant messaging, video
2 conferencing or other wired or wireless technologies via
3 the Internet, or another medium of communication.

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

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

1 (A) (Blank);

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

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

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

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

24 (C) (Blank);

25 (D) the child is born out of wedlock, the parents are
26 not living together, and the petitioner is a maternal

1 grandparent, great-grandparent, or sibling of the child
2 born out of wedlock; or

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

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

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

26 (4) In determining whether to grant visitation, the court

1 shall consider the following:

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

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

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

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

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

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

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

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

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

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

26 (K) whether the grandparent, great-grandparent, or

1 sibling was a primary caretaker of the child for a period
2 of not less than 6 consecutive months.

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

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

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

1 circumstances when necessary to promote the child's best
2 interest.

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

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

9 (b) (1) (Blank.)

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

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

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

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

25 (D) the child wishes to have reasonable visitation with
26 the stepparent; and

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

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

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

18 (3) (Blank).

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

25 (d) If any court has entered an order prohibiting a
26 non-custodial parent of a child from any contact with a child

1 or restricting the non-custodial parent's contact with the
2 child, the following provisions shall apply:

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

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

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

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

24 (2) Any order granting visitation privileges with the
25 child to a grandparent or great-grandparent who is related
26 to the child through the non-custodial parent shall contain

1 the following provision:

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

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

23 (f) Unless the court determines, after considering all
24 relevant factors, including but not limited to those set forth
25 in Section 602(a), that it would be in the best interests of
26 the child to allow visitation, the court shall not enter an

1 order providing visitation rights and pursuant to a motion to
2 modify visitation shall revoke visitation rights previously
3 granted to any person who would otherwise be entitled to
4 petition for visitation rights under this Section who has been
5 convicted of first degree murder of the parent, grandparent,
6 great-grandparent, or sibling of the child who is the subject
7 of the order. Until an order is entered pursuant to this
8 subsection, no person shall visit, with the child present, a
9 person who has been convicted of first degree murder of the
10 parent, grandparent, great-grandparent, or sibling of the
11 child without the consent of the child's parent, other than a
12 parent convicted of first degree murder as set forth herein, or
13 legal guardian.

14 (g) (Blank).

15 (h) Upon motion, the Court may allow a parent who is
16 deployed or who has orders to be deployed as a member of the
17 United States Armed Forces to designate a person to exercise
18 reasonable, substitute visitation equivalent to the visitation
19 that the deployed parent presently has, if the court determines
20 that substitute visitation is in the best interests of the
21 child.

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

23 (750 ILCS 5/610) (from Ch. 40, par. 610)

24 Sec. 610. Modification.

25 (a) Unless by stipulation of the parties or except as

1 provided in subsection (a-5), no motion to modify a custody
2 judgment may be made earlier than 2 years after its date,
3 unless the court permits it to be made on the basis of
4 affidavits that there is reason to believe the child's present
5 environment may endanger seriously his physical, mental, moral
6 or emotional health.

7 (a-5) A motion to modify a custody judgment may be made at
8 any time by a party who has been informed of the existence of
9 facts requiring notice to be given under Section 609.5.

10 (b) The court shall not modify a prior custody judgment
11 unless it finds by clear and convincing evidence, upon the
12 basis of facts that have arisen since the prior judgment or
13 that were unknown to the court at the time of entry of the
14 prior judgment, that a change has occurred in the circumstances
15 of the child or his custodian, or in the case of a joint
16 custody arrangement that a change has occurred in the
17 circumstances of the child or either or both parties having
18 custody, and that the modification is necessary to serve the
19 best interest of the child. The existence of facts requiring
20 notice to be given under Section 609.5 of this Act shall be
21 considered a change in circumstance. In the case of joint
22 custody, if the parties agree to a termination of a joint
23 custody arrangement, the court shall so terminate the joint
24 custody and make any modification which is in the child's best
25 interest. The court shall state in its decision specific
26 findings of fact in support of its modification or termination

1 of joint custody if either parent opposes the modification or
2 termination.

3 (c) Attorney fees and costs shall be assessed against a
4 party seeking modification if the court finds that the
5 modification action is vexatious and constitutes harassment.

6 (d) Notice under this Section shall be given as provided in
7 subsections (c) and (d) of Section 601.

8 (e) The court shall not modify a prior custody judgment
9 while a party is unavailable due to the party's deployment as a
10 member of the United States Armed Forces. A party's past,
11 current, or possible future absence or relocation, or failure
12 to comply with the court's orders on custody, visitation, or
13 parenting time may not, by itself, be sufficient to justify a
14 modification of a prior order if the reason for the absence,
15 relocation, or failure to comply is the party's deployment as a
16 member of the United States Armed Forces.

17 (Source: P.A. 96-676, eff. 1-1-10.)