



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### HB1019

by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/602	from Ch. 40, par. 602
750 ILCS 5/607	from Ch. 40, par. 607
750 ILCS 5/610	from Ch. 40, par. 610
750 ILCS 5/612 new	

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that if an allegation that a child is an abused or neglected child is made in a custody or visitation proceeding, the court may request that the Department of Children and Family Services or a local law enforcement agency conduct an investigation of the allegation. Provides that if upon completion of the investigation, the Department or the local law enforcement agency finds that the allegation is unfounded, the court shall hold a hearing to review all available evidence regarding the allegation. Provides that if the court determines that an allegation that a child is an abused or neglected child is false, the person who made the allegation knew it to be false, and intended the allegation to influence a court ruling in the custody or visitation proceeding, the court may impose monetary sanctions and hold the person who made the false allegation in civil or criminal contempt. Provides that if a person has made a second false allegation, the court may also prohibit the person from receiving custody or visitation rights with regard to the child involved in the allegation. Requires the provision of written notice of the new provisions to parties in all proceedings in which custody or visitation is in issue.

LRB098 03915 HEP 33933 b

FISCAL NOTE ACT  
MAY APPLY

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 Sections 602, 607, and 610  
6 and by adding Section 612 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;

11 (9) whether one of the parents is a sex offender; ~~and~~

12 (10) the terms of a parent's military family-care plan  
13 that a parent must complete before deployment if a parent  
14 is a member of the United States Armed Forces who is being  
15 deployed; ~~and-~~

16 (11) whether there has been a finding under Section 612  
17 of this Act that a party has made a false allegation that  
18 the child is an abused or neglected child.

19 In the case of a custody proceeding in which a stepparent  
20 has standing under Section 601, it is presumed to be in the  
21 best interest of the minor child that the natural parent have  
22 the custody of the minor child unless the presumption is  
23 rebutted by the stepparent.

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

1 (c) Unless the court finds the occurrence of ongoing abuse  
2 as defined in Section 103 of the Illinois Domestic Violence Act  
3 of 1986, the court shall presume that the maximum involvement  
4 and cooperation of both parents regarding the physical, mental,  
5 moral, and emotional well-being of their child is in the best  
6 interest of the child. There shall be no presumption in favor  
7 of or against joint custody.

8 (Source: P.A. 95-331, eff. 8-21-07; 96-676, eff. 1-1-10.)

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

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

25 (2) "Electronic communication" means time that a

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

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

25 (a-5) (1) Except as otherwise provided in this subsection  
26 (a-5), any grandparent, great-grandparent, or sibling may file

1 a petition for visitation rights to a minor child if there is  
2 an unreasonable denial of visitation by a parent and at least  
3 one of the following conditions exists:

4 (A) (Blank);

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

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

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

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

1 (C) (Blank);

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

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

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

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

1 actions and decisions regarding visitation times are harmful to  
2 the child's mental, physical, or emotional health.

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

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

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

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

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

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

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

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

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

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

25 (J) any other fact that establishes that the loss of  
26 the relationship between the petitioner and the child is



1 likely to harm the child's mental, physical, or emotional  
2 health; ~~and~~

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

6 (L) whether there has been a finding under Section 612  
7 of this Act that a party has made a false allegation that  
8 the child is an abused or neglected child.

9 (5) The court may order visitation rights for the  
10 grandparent, great-grandparent, or sibling that include  
11 reasonable access without requiring overnight or possessory  
12 visitation.

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

20 (2) The court shall not modify an order that grants  
21 visitation to a grandparent, great-grandparent, or sibling  
22 unless it finds by clear and convincing evidence, upon the  
23 basis of facts that have arisen since the prior visitation  
24 order or that were unknown to the court at the time of entry of  
25 the prior visitation, that a change has occurred in the  
26 circumstances of the child or his or her custodian, and that

1 the modification is necessary to protect the mental, physical,  
2 or emotional health of the child. The court shall state in its  
3 decision specific findings of fact in support of its  
4 modification or termination of the grandparent,  
5 great-grandparent, or sibling visitation. A child's parent may  
6 always petition to modify visitation upon changed  
7 circumstances when necessary to promote the child's best  
8 interest.

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

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

15 (b) (1) (Blank.)

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

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

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

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

5 (D) the child wishes to have reasonable visitation with  
6 the stepparent; and

7 (E) the stepparent was providing for the care, control,  
8 and welfare to the child prior to the initiation of the  
9 petition for visitation.

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

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

24 (3) (Blank).

25 (c) The court may modify an order granting or denying  
26 visitation rights of a parent whenever modification would serve

1 the best interest of the child; but the court shall not  
2 restrict a parent's visitation rights unless it finds that the  
3 visitation would endanger seriously the child's physical,  
4 mental, moral or emotional health.

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

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

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

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

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

4           (2) Any order granting visitation privileges with the  
5           child to a grandparent or great-grandparent who is related  
6           to the child through the non-custodial parent shall contain  
7           the following provision:

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

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

1 successfully completes a treatment program approved by the  
2 court.

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

20 (g) (Blank).

21 (h) Upon motion, the court may allow a parent who is  
22 deployed or who has orders to be deployed as a member of the  
23 United States Armed Forces to designate a person known to the  
24 child to exercise reasonable substitute visitation on behalf of  
25 the deployed parent, if the court determines that substitute  
26 visitation is in the best interest of the child. In determining

1 whether substitute visitation is in the best interest of the  
2 child, the court shall consider all of the relevant factors  
3 listed in subsection (a) of Section 602 and apply those factors  
4 to the person designated as a substitute for the deployed  
5 parent for visitation purposes.

6 (Source: P.A. 96-331, eff. 1-1-10; 97-659, eff. 6-1-12.)

7 (750 ILCS 5/610) (from Ch. 40, par. 610)

8 Sec. 610. Modification.

9 (a) Unless by stipulation of the parties or except as  
10 provided in subsection (a-5), no motion to modify a custody  
11 judgment may be made earlier than 2 years after its date,  
12 unless the court permits it to be made on the basis of (i)  
13 affidavits that there is reason to believe the child's present  
14 environment may endanger seriously his physical, mental, moral  
15 or emotional health; or (ii) a determination under Section 612  
16 of this Act that a party has made a false allegation that the  
17 child is an abused or neglected child.

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

21 (b) The court shall not modify a prior custody judgment  
22 unless it finds by clear and convincing evidence, upon the  
23 basis of facts that have arisen since the prior judgment or  
24 that were unknown to the court at the time of entry of the  
25 prior judgment, that a change has occurred in the circumstances

1 of the child or his custodian, or in the case of a joint  
2 custody arrangement that a change has occurred in the  
3 circumstances of the child or either or both parties having  
4 custody, and that the modification is necessary to serve the  
5 best interest of the child. The existence of facts requiring  
6 notice to be given under Section 609.5 of this Act shall be  
7 considered a change in circumstance. In the case of joint  
8 custody, if the parties agree to a termination of a joint  
9 custody arrangement, the court shall so terminate the joint  
10 custody and make any modification which is in the child's best  
11 interest. The court shall state in its decision specific  
12 findings of fact in support of its modification or termination  
13 of joint custody if either parent opposes the modification or  
14 termination.

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

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

20 (e) (Blank).

21 (f) A court may only provide for a temporary modification  
22 of a custody or visitation order during a period of a parent's  
23 deployment by the United States Armed Forces in order to make  
24 reasonable accommodations necessitated by the deployment. The  
25 temporary order shall specify that deployment is the basis for  
26 the order and shall include provisions for:



1 (1) custody or reasonable visitation during a period of  
2 leave granted to the deployed parent if the custody or  
3 reasonable visitation is in the child's best interest;

4 (2) if appropriate, visitation by electronic  
5 communication; and

6 (3) the court's reservation of jurisdiction to modify  
7 or terminate the temporary modification order upon the  
8 termination of the deployed parent's deployment upon such  
9 terms and conditions as the court may deem necessary to  
10 serve the child's best interest at the time of the  
11 termination of the deployment.

12 (g) A party's past, current, or possible future absence or  
13 relocation, or failure to comply with the court's orders on  
14 custody, visitation, or parenting time may not, by itself, be  
15 sufficient to justify a modification of a prior order if the  
16 reason for the absence, relocation or failure to comply is the  
17 party's deployment as a member of the United States Armed  
18 Forces.

19 (h) A determination under Section 612 of this Act that an  
20 occurrence of a false allegation in a custody or visitation  
21 proceeding that the child is an abused or neglected child shall  
22 be considered a change in circumstance for the purposes of  
23 subsection (b) of this Section.

24 (Source: P.A. 96-676, eff. 1-1-10; 97-659, eff. 6-1-12.)

25 (750 ILCS 5/612 new)

1       Sec. 612. Allegations of abuse or neglect.

2       (a) As used in this Section:

3       "Abused child" has the meaning ascribed to it in Section 3  
4 of the Abused and Neglected Child Reporting Act;

5       "Department" means the Department of Children and Family  
6 Services; and

7       "Neglected child" has the meaning ascribed to it in Section  
8 3 of the Abused and Neglected Child Reporting Act.

9       (b) If an allegation that a child is an abused or neglected  
10 child is made in a custody or visitation proceeding, the court  
11 may request that the Department or a local law enforcement  
12 agency conduct an investigation of the allegation. Upon  
13 completion of the investigation, the Department or the local  
14 law enforcement agency shall report its findings to the court.  
15 If the Department or the local law enforcement agency finds  
16 that the allegation is unfounded, the court shall hold a  
17 hearing to review all available evidence regarding the  
18 allegation.

19       (c) If the court determines, based on the investigation  
20 described in subsection (b) or based on other evidence  
21 presented to the court, that an allegation that a child is an  
22 abused or neglected child is false and that the person who made  
23 the allegation knew it to be false at the time it was made and  
24 that the person intended the allegation to influence a court  
25 ruling in the custody or visitation proceeding, the court may:

26       (1) impose reasonable monetary sanctions equal to (i)

1 the total of all costs incurred by the accused party as a  
2 direct result of defending the allegation and by the  
3 Department or the local law enforcement agency as a direct  
4 result of investigating the allegation; and (ii)  
5 reasonable attorney's fees incurred in recovering the  
6 sanctions against the person making the allegation; and

7 (2) hold the person who made the false allegation in  
8 civil contempt or criminal contempt, or both.

9 (d) If a court determines under this Section that a person  
10 has made a second false allegation in a custody or visitation  
11 proceeding that a child is an abused or neglected child, the  
12 court may, in addition to any remedy under subsection (c) of  
13 this Section, prohibit the person from receiving custody or  
14 visitation rights with regard to the child involved in the  
15 allegation.

16 (e) The court shall direct the circuit court clerk to  
17 provide a written notice to any party in a proceeding in which  
18 custody or visitation is in issue that making a false  
19 allegation that a child is an abused or neglected child in a  
20 custody or visitation proceeding may result in:

21 (1) monetary sanctions and a holding of the person in  
22 contempt; and

23 (2) the loss of the person's right to custody or  
24 visitation.