



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5425

by Rep. John M. Cabello

SYNOPSIS AS INTRODUCED:

750 ILCS 5/102	from Ch. 40, par. 102
750 ILCS 5/602.1	from Ch. 40, par. 602.1
750 ILCS 5/602.4 new	
750 ILCS 5/607	from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. To the list of purposes of the Act, adds: (i) continuing existing child-parent relationships; and (ii) recognizing that the involvement of each parent for equal time and not less than 35% of residential parenting time per week is presumptively in the children's best interests. Provides that the court shall allocate parenting time according to the child's best interests and that it is presumed that it is in the child's best interests to award equal time to each parent. Provides that unless the parents present a mutually agreed written and notarized parenting plan within 90 days of both parties filing an appearance, the court shall allocate parenting time. Provides that it is presumed that both parents are fit and the court shall not place any restrictions on parenting time unless it finds by clear and convincing evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health. Provides that in cases where the court finds that it is not in the best interests of the child for the parents to have equal time or that it is not possible for both parents to share time equally, a minimum of 35% residential time per week should be ordered for the non-custodial parent. Provides that the non-custodial parent may waive his or her right to a 35% minimum residential time per week. Provides that parents may agree to an alternate parenting schedule, subject to the court's approval. Provides that the term "visitation" includes parenting time. Provides that the parties shall implement an order allocating parenting time no more than 60 days after the entry of the order. Makes corresponding changes.

LRB098 15787 HEP 53892 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 102, 602.1, and
6 607 and by adding Section 602.4 as follows:

7 (750 ILCS 5/102) (from Ch. 40, par. 102)

8 Sec. 102. Purposes; Rules of Construction. This Act shall
9 be liberally construed and applied to promote its underlying
10 purposes, which are to:

11 (1) provide adequate procedures for the solemnization and
12 registration of marriage;

13 (2) strengthen and preserve the integrity of marriage and
14 safeguard family relationships;

15 (3) promote the amicable settlement of disputes that have
16 arisen between parties to a marriage;

17 (4) mitigate the potential harm to the spouses and their
18 children caused by the process of legal dissolution of
19 marriage;

20 (5) make reasonable provision for spouses and minor
21 children during and after litigation, including provision for
22 timely awards of interim fees to achieve substantial parity in
23 parties' access to funds for litigation costs;

1 (6) eliminate the consideration of marital misconduct in
2 the adjudication of rights and duties incident to the legal
3 dissolution of marriage, legal separation and declaration of
4 invalidity of marriage;

5 (7) continue existing parent-child relationships, and
6 secure the maximum involvement and cooperation of ~~both~~ parents
7 regarding the physical, mental, moral, and emotional
8 well-being of the children during and after the litigation; ~~and~~

9 (8) make provision for the preservation and conservation of
10 assets during the litigation; and -

11 (9) recognize that the involvement of each parent for equal
12 time and not less than 35% of residential parenting time per
13 week is presumptively in the children's best interests.

14 (Source: P.A. 89-712, eff. 6-1-97.)

15 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

16 Sec. 602.1. (a) The dissolution of marriage, the
17 declaration of invalidity of marriage, the legal separation of
18 the parents, or the parents living separate and apart shall not
19 diminish parental powers, rights, and responsibilities except
20 as the court for good reason may determine under the standards
21 of Section 602.

22 (b) Upon the application of either or both parents, or upon
23 its own motion, the court shall consider an award of joint
24 custody. Joint custody means custody determined pursuant to a
25 Joint Parenting Agreement or a Joint Parenting Order. In such

1 cases, the court shall initially request the parents to produce
2 a Joint Parenting Agreement. Such Agreement shall specify each
3 parent's powers, rights and responsibilities for the personal
4 care of the child and for major decisions such as education,
5 health care, and religious training. The Agreement shall
6 further specify a procedure by which proposed changes, disputes
7 and alleged breaches may be mediated or otherwise resolved and
8 shall provide for a periodic review of its terms by the
9 parents. In producing a Joint Parenting Agreement, the parents
10 shall be flexible in arriving at resolutions which further the
11 policy of this State as expressed in Sections 102 and 602. For
12 the purpose of assisting the court in making a determination
13 whether an award of joint custody is appropriate, the court may
14 order mediation and may direct that an investigation be
15 conducted pursuant to the provisions of Section 605. If there
16 is a danger to the health or safety of a partner, joint
17 mediation shall not be required by the court. In the event the
18 parents fail to produce a Joint Parenting Agreement, the court
19 may enter an appropriate Joint Parenting Order under the
20 standards of Section 602 which shall specify and contain the
21 same elements as a Joint Parenting Agreement, or it may award
22 sole custody under the standards of Sections 602, 607, and 608.

23 (c) The court may enter an order of joint custody if it
24 determines that joint custody would be in the best interests of
25 the child, taking into account the following:

26 (1) the ability of the parents to cooperate effectively

1 and consistently in matters that directly affect the joint
2 parenting of the child. "Ability of the parents to
3 cooperate" means the parents' capacity to substantially
4 comply with a Joint Parenting Order. The court shall not
5 consider the inability of the parents to cooperate
6 effectively and consistently in matters that do not
7 directly affect the joint parenting of the child;

8 (2) The residential circumstances of each parent; and

9 (3) all other factors which may be relevant to the best
10 interest of the child.

11 ~~(d) Nothing within this section shall imply or presume that~~
12 ~~joint custody shall necessarily mean equal parenting time.~~ The
13 physical residence of the child in joint custodial situations
14 shall be determined by:

15 (1) express agreement of the parties; or

16 (2) order of the court under the standards of this
17 Section.

18 (e) Notwithstanding any other provision of law, access to
19 records and information pertaining to a child, including but
20 not limited to medical, dental, child care and school records,
21 shall not be denied to a parent for the reason that such parent
22 is not the child's custodial parent; however, no parent shall
23 have access to the school records of a child if the parent is
24 prohibited by an order of protection from inspecting or
25 obtaining such records pursuant to the Illinois Domestic
26 Violence Act of 1986, as now or hereafter amended or pursuant

1 to the Code of Criminal Procedure of 1963. No parent who is a
2 named respondent in an order of protection issued pursuant to
3 the Illinois Domestic Violence Act of 1986 or the Code of
4 Criminal Procedure of 1963 shall have access to the health care
5 records of a child who is a protected person under that order
6 of protection.

7 (Source: P.A. 95-912, eff. 1-1-09; 96-651, eff. 1-1-10.)

8 (750 ILCS 5/602.4 new)

9 Sec. 602.4. Parenting time.

10 (a) The court shall allocate parenting time according to
11 the child's best interests. It is presumed that it is in the
12 child's best interests to award equal time to each parent.

13 (b) Unless the parents present a mutually agreed written
14 and notarized parenting plan within 90 days of both parties
15 filing an appearance, the court shall allocate parenting time.
16 It is presumed that both parents are fit and the court shall
17 not place any restrictions on parenting time unless it finds by
18 clear and convincing evidence that a parent's exercise of
19 parenting time would seriously endanger the child's physical,
20 mental, moral, or emotional health.

21 (c) In cases where the court finds that it is not in the
22 best interests of the child for the parents to have equal time
23 or that it is not possible for both parents to share time
24 equally, a minimum of 35% residential time per week should be
25 ordered for the non-custodial parent. The non-custodial parent

1 may waive his or her right to a 35% minimum residential time
2 per week.

3 (d) The parents may agree to an alternate parenting
4 schedule, subject to the court's approval.

5 (e) The parties shall implement an order allocating
6 parenting time entered under this Section no more than 60 days
7 after the entry of the order.

8 (750 ILCS 5/607) (from Ch. 40, par. 607)

9 Sec. 607. Visitation.

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

20 (1) "Visitation" means in-person time spent between a
21 child and the child's parent. In appropriate
22 circumstances, it may include electronic communication
23 under conditions and at times determined by the court.
24 "Visitation" includes parenting time under Section 602.4
25 of this Act.

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

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

26 (a-5) (1) Except as otherwise provided in this subsection

1 (a-5), any grandparent, great-grandparent, or sibling may file
2 a petition for visitation rights to a minor child if there is
3 an unreasonable denial of visitation by a parent and at least
4 one of the following conditions exists:

5 (A) (Blank);

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

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

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

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

1 visitation;

2 (C) (Blank);

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

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

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

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

1 filing a petition under this Section to prove that the parent's
2 actions and decisions regarding visitation times are harmful to
3 the child's mental, physical, or emotional health.

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

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

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

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

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

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

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

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

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

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

26 (J) any other fact that establishes that the loss of

1 the relationship between the petitioner and the child is
2 likely to harm the child's mental, physical, or emotional
3 health; and

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

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

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

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

1 decision specific findings of fact in support of its
2 modification or termination of the grandparent,
3 great-grandparent, or sibling visitation. A child's parent may
4 always petition to modify visitation upon changed
5 circumstances when necessary to promote the child's best
6 interest.

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

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

13 (b) (1) (Blank.)

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

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

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

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

3 (D) the child wishes to have reasonable visitation with
4 the stepparent; and

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

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

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

22 (3) (Blank).

23 (c) The court may modify an order granting or denying
24 visitation rights of a parent whenever modification would serve
25 the best interest of the child; but the court shall not
26 restrict a parent's visitation rights unless it finds that the

1 visitation would endanger seriously the child's physical,
2 mental, moral or emotional health.

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

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

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

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

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

1 law.

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

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

12 (e) No parent, not granted custody of the child, or
13 grandparent, or great-grandparent, or stepparent, or sibling
14 of any minor child, convicted of any offense involving an
15 illegal sex act perpetrated upon a victim less than 18 years of
16 age including but not limited to offenses for violations of
17 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70,
18 or Article 12 of the Criminal Code of 1961 or the Criminal Code
19 of 2012, is entitled to visitation rights while incarcerated or
20 while on parole, probation, conditional discharge, periodic
21 imprisonment, or mandatory supervised release for that
22 offense, and upon discharge from incarceration for a
23 misdemeanor offense or upon discharge from parole, probation,
24 conditional discharge, periodic imprisonment, or mandatory
25 supervised release for a felony offense, visitation shall be
26 denied until the person successfully completes a treatment

1 program approved by the court.

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

19 (g) (Blank).

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

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

5 (Source: P.A. 96-331, eff. 1-1-10; 97-659, eff. 6-1-12;
6 97-1150, eff. 1-25-13.)