

HB4452



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4452

Introduced 1/16/2024, by Rep. Mary Gill

SYNOPSIS AS INTRODUCED:

750 ILCS 5/602.9

Amends the Illinois Marriage and Dissolution of Marriage Act. Allows a grandparent to file a petition seeking visitation if there has been a complete denial of visitation, subject to specified criteria.

LRB103 36298 LNS 66395 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 602.9 as follows:

6 (750 ILCS 5/602.9)

7 Sec. 602.9. Visitation by certain non-parents.

8 (a) As used in this Section:

9 (1) "electronic communication" means time that a
10 grandparent, great-grandparent, sibling, or step-parent
11 spends with a child during which the child is not in the
12 person's actual physical custody, but which is facilitated
13 by the use of communication tools such as the telephone,
14 electronic mail, instant messaging, video conferencing or
15 other wired or wireless technologies via the Internet, or
16 another medium of communication;

17 (2) "sibling" means a brother or sister either of the
18 whole blood or the half blood, stepbrother, or stepsister
19 of the minor child;

20 (3) "step-parent" means a person married to a child's
21 parent, including a person married to the child's parent
22 immediately prior to the parent's death; and

23 (4) "visitation" means in-person time spent between a

1 child and the child's grandparent, great-grandparent,
2 sibling, step-parent, or any person designated under
3 subsection (d) of Section 602.7. In appropriate
4 circumstances, visitation may include electronic
5 communication under conditions and at times determined by
6 the court.

7 (b) General provisions.

8 (1) An appropriate person, as identified in subsection
9 (c) of this Section, may bring an action in circuit court
10 by petition, or by filing a petition in a pending
11 dissolution proceeding or any other proceeding that
12 involves parental responsibilities or visitation issues
13 regarding the child, requesting visitation with the child
14 pursuant to this Section. If there is not a pending
15 proceeding involving parental responsibilities or
16 visitation with the child, the petition for visitation
17 with the child must be filed in the county in which the
18 child resides. Notice of the petition shall be given as
19 provided in subsection (c) of Section 601.2 of this Act.

20 (2) This Section does not apply to a child:

21 (A) in whose interests a petition is pending under
22 Section 2-13 of the Juvenile Court Act of 1987; or

23 (B) in whose interests a petition to adopt by an
24 unrelated person is pending under the Adoption Act; or

25 (C) who has been voluntarily surrendered by the
26 parent or parents, except for a surrender to the

1 Department of Children and Family Services or a foster
2 care facility; or

3 (D) who has been previously adopted by an
4 individual or individuals who are not related to the
5 biological parents of the child or who is the subject
6 of a pending adoption petition by an individual or
7 individuals who are not related to the biological
8 parents of the child; or

9 (E) who has been relinquished pursuant to the
10 Abandoned Newborn Infant Protection Act.

11 (3) Except for petitions filed by grandparents under
12 subsection (b)(4)(B) of this Section, a ~~A~~ petition for
13 visitation may be filed under this Section only if there
14 has been an unreasonable denial of visitation by a parent
15 and the denial has caused the child undue mental,
16 physical, or emotional harm.

17 (4) (A) Except for a complete denial of visitation for
18 grandparents, there ~~There~~ is a rebuttable presumption that
19 a fit parent's actions and decisions regarding
20 grandparent, great-grandparent, sibling, or step-parent
21 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
24 parent's actions and decisions regarding visitation will
25 cause undue harm to the child's mental, physical, or
26 emotional health.

1 (B) In the case of grandparent visitation, if there
2 has been a complete denial of all visitation, a
3 petitioning grandparent may be granted visitation if the
4 petitioner can show that visitation is beneficial to the
5 child's mental, physical, or emotional health. Visitation
6 shall not be granted if a fit parent reasonably believes
7 that allowing visitation would cause the child mental,
8 physical, or emotional harm.

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

11 (A) the wishes of the child, taking into account
12 the child's maturity and ability to express reasoned
13 and independent preferences as to visitation;

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

15 (C) the mental and physical health of the
16 grandparent, great-grandparent, sibling, or
17 step-parent;

18 (D) the length and quality of the prior
19 relationship between the child and the grandparent,
20 great-grandparent, sibling, or step-parent;

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

23 (F) the good faith of the person denying
24 visitation;

25 (G) the quantity of the visitation time requested
26 and the potential adverse impact that visitation would

1 have on the child's customary activities;

2 (H) any other fact that establishes that the loss
3 of the relationship between the petitioner and the
4 child is likely to unduly harm the child's mental,
5 physical, or emotional health; and

6 (I) whether visitation can be structured in a way
7 to minimize the child's exposure to conflicts between
8 the adults.

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

20 (7) The court may order visitation rights for the
21 grandparent, great-grandparent, sibling, or step-parent
22 that include reasonable access without requiring overnight
23 or possessory visitation.

24 (c) Visitation by grandparents, great-grandparents,
25 step-parents, and siblings.

26 (1) Grandparents, great-grandparents, step-parents,

1 and siblings of a minor child who is one year old or older
2 may bring a petition for visitation and electronic
3 communication under this Section if there is an
4 unreasonable denial of visitation by a parent that causes
5 undue mental, physical, or emotional harm to the child and
6 if at least one of the following conditions exists:

7 (A) the child's other parent is deceased or has
8 been missing for at least 90 days. For the purposes of
9 this subsection a parent is considered to be missing
10 if the parent's location has not been determined and
11 the parent has been reported as missing to a law
12 enforcement agency; or

13 (B) a parent of the child is incompetent as a
14 matter of law; or

15 (C) a parent has been incarcerated in jail or
16 prison for a period in excess of 90 days immediately
17 prior to the filing of the petition; or

18 (D) the child's parents have been granted a
19 dissolution of marriage or have been legally separated
20 from each other or there is pending a dissolution
21 proceeding involving a parent of the child or another
22 court proceeding involving parental responsibilities
23 or visitation of the child (other than an adoption
24 proceeding of an unrelated child, a proceeding under
25 Article II of the Juvenile Court Act of 1987, or an
26 action for an order of protection under the Illinois

1 Domestic Violence Act of 1986 or Article 112A of the
2 Code of Criminal Procedure of 1963) and at least one
3 parent does not object to the grandparent,
4 great-grandparent, step-parent, or sibling having
5 visitation with the child. The visitation of the
6 grandparent, great-grandparent, step-parent, or
7 sibling must not diminish the parenting time of the
8 parent who is not related to the grandparent,
9 great-grandparent, step-parent, or sibling seeking
10 visitation; or

11 (E) (i) the child is born to parents who are not
12 married to each other; (ii) the parents are not living
13 together; (iii) the petitioner is a grandparent,
14 great-grandparent, step-parent, or sibling of the
15 child; and (iv) the parent-child relationship has been
16 legally established. For purposes of this subdivision
17 (E), if the petitioner is a grandparent or
18 great-grandparent, the parent-child relationship need
19 be legally established only with respect to the parent
20 who is related to the grandparent or
21 great-grandparent. For purposes of this subdivision
22 (E), if the petitioner is a step-parent, the
23 parent-child relationship need be legally established
24 only with respect to the parent who is married to the
25 petitioner or was married to the petitioner
26 immediately before the parent's death.

1 (2) In addition to the factors set forth in
2 subdivision (b)(5) of this Section, the court should
3 consider:

4 (A) whether the child resided with the petitioner
5 for at least 6 consecutive months with or without a
6 parent present;

7 (B) whether the child had frequent and regular
8 contact or visitation with the petitioner for at least
9 12 consecutive months; and

10 (C) whether the grandparent, great-grandparent,
11 sibling, or step-parent was a primary caretaker of the
12 child for a period of not less than 6 consecutive
13 months within the 24-month period immediately
14 preceding the commencement of the proceeding.

15 (3) An order granting visitation privileges under this
16 Section is subject to subsections (c) and (d) of Section
17 603.10.

18 (4) A petition for visitation privileges may not be
19 filed pursuant to this subsection (c) by the parents or
20 grandparents of a parent of the child if parentage between
21 the child and the related parent has not been legally
22 established.

23 (d) Modification of visitation orders.

24 (1) Unless by stipulation of the parties, no motion to
25 modify a grandparent, great-grandparent, sibling, or
26 step-parent visitation order may be made earlier than 2

1 years after the date the order was filed, unless the court
2 permits it to be made on the basis of affidavits that there
3 is reason to believe the child's present environment may
4 endanger seriously the child's mental, physical, or
5 emotional health.

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

22 (3) Notice of a motion requesting modification of a
23 visitation order shall be provided as set forth in
24 subsection (c) of Section 601.2 of this Act.

25 (4) Attorney's fees and costs shall be assessed
26 against a party seeking modification of the visitation

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

3 (e) No child's grandparent, great-grandparent, sibling, or
4 step-parent, or any person to whom the court is considering
5 granting visitation privileges pursuant to subsection (d) of
6 Section 602.7, who was 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 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70,
10 or Article 12 of the Criminal Code of 1961 or the Criminal Code
11 of 2012, is entitled to visitation while incarcerated or while
12 on parole, probation, conditional discharge, periodic
13 imprisonment, or mandatory supervised release for that
14 offense, and upon discharge from incarceration for a
15 misdemeanor offense or upon discharge from parole, probation,
16 conditional discharge, periodic imprisonment, or mandatory
17 supervised release for a felony offense. Visitation shall be
18 denied until the person successfully completes a treatment
19 program approved by the court. Upon completion of treatment,
20 the court may deny visitation based on the factors listed in
21 subdivision (b) (5) of this Section.

22 (f) No child's grandparent, great-grandparent, sibling, or
23 step-parent, or any person to whom the court is considering
24 granting visitation privileges pursuant to subsection (d) of
25 Section 602.7, may be granted visitation if he or she has been
26 convicted of first degree murder of a parent, grandparent,

1 great-grandparent, or sibling of the child who is the subject
2 of the visitation request. Pursuant to a motion to modify
3 visitation, the court shall revoke visitation rights
4 previously granted to any person who would otherwise be
5 entitled to petition for visitation rights under this Section
6 or granted visitation under subsection (d) of Section 602.7,
7 if the person has been convicted of first degree murder of a
8 parent, grandparent, great-grandparent, or sibling of the
9 child who is the subject of the visitation order. Until an
10 order is entered pursuant to this subsection, no person may
11 visit, with the child present, a person who has been convicted
12 of first degree murder of the parent, grandparent,
13 great-grandparent, or sibling of the child without the consent
14 of the child's parent, other than a parent convicted of first
15 degree murder as set forth herein, or legal guardian.

16 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17;
17 100-706, eff. 1-1-19.)