



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB1431

Introduced 2/10/2005, by Rep. Richard P. Myers

SYNOPSIS AS INTRODUCED:

750 ILCS 5/602
750 ILCS 5/602.1

from Ch. 40, par. 602
from Ch. 40, par. 602.1

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that the court shall use a rebuttable presumption that joint legal and physical custody is in the best interest of the child. Provides that, whenever it appears that both parents are fit, but that joint legal and physical custody is not feasible and cannot be remedied by a Joint Parenting Agreement between the parents, the court shall use a rebuttable presumption that the best interests of the child will be served by granting legal and physical custody to the parent more disposed to encourage and permit frequent and continuing contact by the other parent with the child. Requires the court to justify any departure from the presumptions with detailed findings.

LRB094 05668 LCB 35717 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 602 and 602.1 as
6 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
24 violence by the child's potential custodian, whether
25 directed against the child or directed against another
26 person;

27 (7) the occurrence of ongoing abuse as defined in
28 Section 103 of the Illinois Domestic Violence Act of 1986,
29 whether directed against the child or directed against
30 another person; and

31 (8) the willingness and ability of each parent to
32 facilitate and encourage a close and continuing

1 relationship between the other parent and the child.

2 In the case of a custody proceeding in which a stepparent
3 has standing under Section 601, it is presumed to be in the
4 best interest of the minor child that the natural parent have
5 the custody of the minor child unless the presumption is
6 rebutted by the stepparent.

7 (a-3) The court shall use a rebuttable presumption that
8 joint legal and physical custody is in the best interests of
9 the child. Any departure from the presumption must be justified
10 by detailed findings.

11 (a-5) Whenever it appears that both parents are fit, but
12 that joint legal and physical custody is not feasible and
13 cannot be remedied by a Joint Parenting Agreement between the
14 parents, the court shall use a rebuttable presumption that the
15 best interests of the child will be served by granting legal
16 and physical custody to the parent more disposed to encourage
17 and permit frequent and continuing contact by the other parent
18 with the child. Any departure from this presumption must be
19 justified by detailed findings.

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

23 (c) Unless the court finds the occurrence of ongoing abuse
24 as defined in Section 103 of the Illinois Domestic Violence Act
25 of 1986, the court shall presume that the maximum involvement
26 and cooperation of both parents regarding the physical, mental,
27 moral, and emotional well-being of their child is in the best
28 interest of the child. ~~There shall be no presumption in favor~~
29 ~~of or against joint custody.~~

30 (Source: P.A. 90-782, eff. 8-14-98.)

31 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

32 Sec. 602.1. (a) The dissolution of marriage, the
33 declaration of invalidity of marriage, the legal separation of
34 the parents, or the parents living separate and apart shall not
35 diminish parental powers, rights, and responsibilities except

1 as the court for good reason may determine under the standards
2 of Section 602.

3 (b) Upon the application of either or both parents, or upon
4 its own motion, the court shall consider an award of joint
5 custody. Joint custody means custody determined pursuant to a
6 Joint Parenting Agreement or a Joint Parenting Order. In such
7 cases, the court shall initially request the parents to produce
8 a Joint Parenting Agreement. Such Agreement shall specify each
9 parent's powers, rights and responsibilities for the personal
10 care of the child and for major decisions such as education,
11 health care, and religious training. The Agreement shall
12 further specify a procedure by which proposed changes, disputes
13 and alleged breaches may be mediated or otherwise resolved and
14 shall provide for a periodic review of its terms by the
15 parents. In producing a Joint Parenting Agreement, the parents
16 shall be flexible in arriving at resolutions which further the
17 policy of this State as expressed in Sections 102 and 602. For
18 the purpose of assisting the court in making a determination
19 whether an award of joint custody is appropriate, the court may
20 order mediation and may direct that an investigation be
21 conducted pursuant to the provisions of Section 605. In the
22 event the parents fail to produce a Joint Parenting Agreement,
23 the court may enter an appropriate Joint Parenting Order under
24 the standards of Section 602 which shall specify and contain
25 the same elements as a Joint Parenting Agreement, or it may
26 award sole custody under the standards of Sections 602, 607,
27 and 608.

28 (c) (Blank). ~~The court may enter an order of joint custody~~
29 ~~if it determines that joint custody would be in the best~~
30 ~~interests of the child, taking into account the following:~~

31 ~~(1) the ability of the parents to cooperate effectively~~
32 ~~and consistently in matters that directly affect the joint~~
33 ~~parenting of the child. "Ability of the parents to~~
34 ~~cooperate" means the parents' capacity to substantially~~
35 ~~comply with a Joint Parenting Order. The court shall not~~
36 ~~consider the inability of the parents to cooperate~~

1 ~~effectively and consistently in matters that do not~~
2 ~~directly affect the joint parenting of the child;~~

3 ~~(2) The residential circumstances of each parent; and~~

4 ~~(3) all other factors which may be relevant to the best~~
5 ~~interest of the child.~~

6 (d) Nothing within this section shall imply or presume that
7 joint custody shall necessarily mean equal parenting time. The
8 physical residence of the child in joint custodial situations
9 shall be determined by:

10 (1) express agreement of the parties; or

11 (2) order of the court under the standards of this
12 Section.

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

22 (Source: P.A. 88-409.)