



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5379

Introduced 1/26/2006, by Rep. Ruth Munson

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607

from Ch. 40, par. 607

Amends the Marriage and Dissolution of Marriage Act. Provides that reasonable visitation rights may include virtual visitation (visitation facilitated by tools such as telephone, e-mail, instant messaging, video conferencing and other wired or wireless technologies over the Internet or other communication media to supplement in-person visits). Provides that virtual visitation supplements in-person visitation. Provides that a court order that includes virtual visitation shall provide that each parent shall furnish the other with the child's e-mail address and other virtual visitation access information and permit, at reasonable hours and for a reasonable duration, reasonable and uncensored virtual visitation if the equipment is reasonably available. Provides that, in the case of a dispute as to whether the equipment is reasonably available, the court shall decide whether the equipment is reasonably available, taking specified factors into consideration.

LRB094 15980 AJ0 51211 b

1 AN ACT concerning civil procedure.

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 607 as follows:

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 (a-2) Reasonable visitation rights may include virtual
19 visitation. As used in this Section, "virtual visitation" means
20 visitation facilitated by tools such as telephone, e-mail,
21 instant messaging, video conferencing and other wired or
22 wireless technologies over the Internet or other communication
23 media to supplement in-person visits between a noncustodial
24 parent and a child or between a child and the custodial parent
25 when the child is staying with the noncustodial parent. Virtual
26 visitation is designed to supplement, not replace, in-person
27 visitation. If a court enters an order that includes virtual
28 visitation with the child, the following provisions shall
29 apply:

30 (1) Each parent shall furnish the other parent with the
31 e-mail address and other virtual visitation access
32 information of the child and any change in the e-mail

1 address or other virtual visitation access information
2 within 24 hours of the change.

3 (2) Each parent shall permit and encourage, at
4 reasonable hours and for a reasonable duration, reasonable
5 and uncensored virtual visitation if the equipment is
6 reasonably available. If the parties cannot agree on
7 whether the equipment is reasonably available, the court
8 shall decide whether the equipment for virtual visitation
9 is reasonably available, taking into consideration:

10 (i) the best interest of the child;

11 (ii) each parent's ability to pay any additional
12 expenses for virtual visitation; and

13 (iii) any other factors that the court considers
14 material.

15 (a-3) Nothing in subsection (a-5) of this Section shall
16 apply to a child in whose interests a petition under Section
17 2-13 of the Juvenile Court Act of 1987 is pending.

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

23 (A) one parent of the child is incompetent as a matter
24 of law or deceased or has been sentenced to a period of
25 imprisonment for more than 1 year;

26 (B) the child's mother and father are divorced or have
27 been legally separated from each other during the 3 month
28 period prior to the filing of the petition and at least one
29 parent does not object to the grandparent,
30 great-grandparent, or sibling having visitation with the
31 child. The visitation of the grandparent,
32 great-grandparent, or sibling must not diminish the
33 visitation of the parent who is not related to the
34 grandparent, great-grandparent, or sibling seeking
35 visitation;

36 (C) the court, other than a Juvenile Court, has

1 terminated a parent-child relationship and the
2 grandparent, great-grandparent, or sibling is the parent
3 of the person whose parental rights have been terminated,
4 except in cases of adoption. The visitation must not be
5 used to allow the parent who lost parental rights to
6 unlawfully visit with the child;

7 (D) the child is born out of wedlock, the parents are
8 not living together, and the petitioner is a maternal
9 grandparent, great-grandparent, or sibling of the child
10 born out of wedlock; or

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

16 (2) The grandparent, great-grandparent, or sibling of a
17 parent whose parental rights have been terminated through an
18 adoption proceeding may not petition for visitation rights.

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

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

29 (A) the preference of the child if the child is
30 determined to be of sufficient maturity to express a
31 preference;

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

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

35 (D) the length and quality of the prior relationship
36 between the child and the grandparent, great-grandparent,

1 or sibling;

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

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

4 (G) the quantity of the visitation time requested and
5 the potential adverse impact that visitation would have on
6 the child's customary activities;

7 (H) whether the child resided with the petitioner for
8 at least 6 consecutive months with or without the current
9 custodian present;

10 (I) whether the petitioner had frequent or regular
11 contact with the child for at least 12 consecutive months;
12 and

13 (J) any other fact that establishes that the loss of
14 the relationship between the petitioner and the child is
15 likely to harm the child's mental, physical, or emotional
16 health.

17 (5) The court may order visitation rights for the
18 grandparent, great-grandparent, or sibling that include
19 reasonable access without requiring overnight or possessory
20 visitation.

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

28 (2) The court shall not modify a prior grandparent,
29 great-grandparent, or sibling visitation order unless it finds
30 by clear and convincing evidence, upon the basis of facts that
31 have arisen since the prior visitation order or that were
32 unknown to the court at the time of entry of the prior
33 visitation, that a change has occurred in the circumstances of
34 the child or his or her custodian, and that the modification is
35 necessary to protect the mental, physical, or emotional health
36 of the child. The court shall state in its decision specific

1 findings of fact in support of its modification or termination
2 of the grandparent, great-grandparent, or sibling visitation.

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

27 (E) the stepparent was providing for the care, control,
28 and welfare to the child prior to the initiation of the
29 petition for visitation.

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

34 (B) A petition for visitation privileges may not be filed
35 under this subsection (b) if the child who is the subject of
36 the grandparents' or great-grandparents' petition has been

1 voluntarily surrendered by the parent or parents, except for a
2 surrender to the Illinois Department of Children and Family
3 Services or a foster care facility, or has been previously
4 adopted by an individual or individuals who are not related to
5 the biological parents of the child or is the subject of a
6 pending adoption petition by an individual or individuals who
7 are not related to the biological parents of the child.

8 (3) (Blank).

9 (c) The court may modify an order granting or denying
10 visitation rights of a parent whenever modification would serve
11 the best interest of the child; but the court shall not
12 restrict a parent's visitation rights unless it finds that the
13 visitation would endanger seriously the child's physical,
14 mental, moral or emotional health. The court may modify an
15 order granting, denying, or limiting visitation rights of a
16 grandparent, great-grandparent, or sibling of any minor child
17 whenever a change of circumstances has occurred based on facts
18 occurring subsequent to the judgment and the court finds by
19 clear and convincing evidence that the modification is in the
20 best interest of the minor child.

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

25 (1) If an order has been entered granting visitation
26 privileges with the child to a grandparent or
27 great-grandparent who is related to the child through the
28 non-custodial parent, the visitation privileges of the
29 grandparent or great-grandparent may be revoked if:

30 (i) a court has entered an order prohibiting the
31 non-custodial parent from any contact with the child,
32 and the grandparent or great-grandparent is found to
33 have used his or her visitation privileges to
34 facilitate contact between the child and the
35 non-custodial parent; or

36 (ii) a court has entered an order restricting the

1 non-custodial parent's contact with the child, and the
2 grandparent or great-grandparent is found to have used
3 his or her visitation privileges to facilitate contact
4 between the child and the non-custodial parent in a
5 manner that violates the terms of the order restricting
6 the non-custodial parent's contact with the child.

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

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

14 "If the (grandparent or great-grandparent, whichever
15 is applicable) who has been granted visitation privileges
16 under this order uses the visitation privileges to
17 facilitate contact between the child and the child's
18 non-custodial parent, the visitation privileges granted
19 under this order shall be permanently revoked."

20 (e) No parent, not granted custody of the child, or
21 grandparent, or great-grandparent, or stepparent, or sibling
22 of any minor child, convicted of any offense involving an
23 illegal sex act perpetrated upon a victim less than 18 years of
24 age including but not limited to offenses for violations of
25 Article 12 of the Criminal Code of 1961, is entitled to
26 visitation rights while incarcerated or while on parole,
27 probation, conditional discharge, periodic imprisonment, or
28 mandatory supervised release for that offense, and upon
29 discharge from incarceration for a misdemeanor offense or upon
30 discharge from parole, probation, conditional discharge,
31 periodic imprisonment, or mandatory supervised release for a
32 felony offense, visitation shall be denied until the person
33 successfully completes a treatment program approved by the
34 court.

35 (f) Unless the court determines, after considering all
36 relevant factors, including but not limited to those set forth

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

16 (g) If an order has been entered limiting, for cause, a
17 minor child's contact or visitation with a grandparent,
18 great-grandparent, or sibling on the grounds that it was in the
19 best interest of the child to do so, that order may be modified
20 only upon a showing of a substantial change in circumstances
21 occurring subsequent to the entry of the order with proof by
22 clear and convincing evidence that modification is in the best
23 interest of the minor child.

24 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06.)