

94TH GENERAL ASSEMBLY**State of Illinois****2005 and 2006****SB0098**

Introduced 1/26/2005, by Sen. Wendell E. Jones

SYNOPSIS AS INTRODUCED:

750 ILCS 5/601	from Ch. 40, par. 601
750 ILCS 5/602	from Ch. 40, par. 602
750 ILCS 5/602.1	from Ch. 40, par. 602.1
750 ILCS 5/604	from Ch. 40, par. 604
750 ILCS 5/604.5	
750 ILCS 5/605	from Ch. 40, par. 605
750 ILCS 5/607	from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a guardian ad litem appointed in a child custody proceeding shall have completed 3 hours of training that relates to the functions and duties of a guardian ad litem and that includes training on the dynamics of domestic violence on partners and children. Requires a guardian ad litem in a child custody proceeding to investigate whether there is evidence that either partner engaged in domestic violence and to report to the court on the results of the investigation. Creates a rebuttable presumption that it is not in the best interest of the child for the court to grant sole or joint custody or visitation to a parent who: (i) has been adjudicated guilty of domestic violence as defined in the Illinois Domestic Violence Act of 1986 on multiple incidents of domestic violence or of a single incident of domestic violence that resulted in serious physical injury, as determined by the trier of fact, against the parent's partner or against the child; or (ii) has been convicted of violating an order of protection entered under the specified Sections of the Illinois Domestic Violence Act of 1986. Lists evidence that may be used to rebut the presumption. Provides that, in cases where the presumption is rebutted, the court shall state the evidence upon which the court determined that the presumption was rebutted and its findings relating to the reason that legal custody with that party is in the best interest of the child. Provides that, if there is a danger to the health or safety of a partner, joint mediation for custody shall not be required by the court. Requires that professional personnel, evaluators, and investigators, who advise the court concerning child interview or child custody, must have 3 hours of training in domestic violence and its effects on the partner and the child. Makes other changes. Effective immediately.

LRB094 05993 LCB 36050 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 601, 602, 602.1,
6 604, 604.5, 605, and 607 as follows:

7 (750 ILCS 5/601) (from Ch. 40, par. 601)

8 Sec. 601. Jurisdiction; Commencement of Proceeding.

9 (a) A court of this State competent to decide child custody
10 matters has jurisdiction to make a child custody determination
11 in original or modification proceedings as provided in Section
12 201 of the Uniform Child-Custody Jurisdiction and Enforcement
13 Act as adopted by this State.

14 (b) A child custody proceeding is commenced in the court:

15 (1) by a parent, by filing a petition:

16 (i) for dissolution of marriage or legal
17 separation or declaration of invalidity of marriage;
18 or

19 (ii) for custody of the child, in the county in
20 which he is permanently resident or found;

21 (2) by a person other than a parent, by filing a
22 petition for custody of the child in the county in which he
23 is permanently resident or found, but only if he is not in
24 the physical custody of one of his parents; or

25 (3) by a stepparent, by filing a petition, if all of
26 the following circumstances are met:

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

28 (B) the custodial parent and stepparent were
29 married for at least 5 years during which the child
30 resided with the parent and stepparent;

31 (C) the custodial parent is deceased or is disabled
32 and cannot perform the duties of a parent to the child;

1 (D) the stepparent provided for the care, control,
2 and welfare to the child prior to the initiation of
3 custody proceedings;

4 (E) the child wishes to live with the stepparent;
5 and

6 (F) it is alleged to be in the best interests and
7 welfare of the child to live with the stepparent as
8 provided in Section 602 of this Act.

9 (4) When one of the parents is deceased, by a
10 grandparent who is a parent or stepparent of a deceased
11 parent, by filing a petition, if one or more of the
12 following existed at the time of the parent's death:

13 (A) the surviving parent had been absent from the
14 marital abode for more than one month without the
15 deceased spouse knowing his or her whereabouts;

16 (B) the surviving parent was in State or federal
17 custody; or

18 (C) the surviving parent had: (i) received
19 supervision for or been convicted of any violation of
20 Article 12 of the Criminal Code of 1961 directed
21 towards the deceased parent or the child; or (ii)
22 received supervision or been convicted of violating an
23 order of protection entered under Section 217, 218, or
24 219 of the Illinois Domestic Violence Act of 1986 for
25 the protection of the deceased parent or the child.

26 (c) Notice of a child custody proceeding, including an
27 action for modification of a previous custody order, shall be
28 given to the child's parents, guardian and custodian, who may
29 appear, be heard, and file a responsive pleading. The court,
30 upon showing of good cause, may permit intervention of other
31 interested parties.

32 (d) Proceedings for modification of a previous custody
33 order commenced more than 30 days following the entry of a
34 previous custody order must be initiated by serving a written
35 notice and a copy of the petition for modification upon the
36 child's parent, guardian and custodian at least 30 days prior

1 to hearing on the petition. Nothing in this Section shall
2 preclude a party in custody modification proceedings from
3 moving for a temporary order under Section 603 of this Act.

4 (e) (Blank).

5 (f) The court shall, at the court's discretion or upon the
6 request of any party entitled to petition for custody of the
7 child, appoint a guardian ad litem to represent the best
8 interest of the child for the duration of the custody
9 proceeding or for any modifications of any custody orders
10 entered. The guardian ad litem shall have completed 3 hours of
11 training that relates to the functions and duties of a guardian
12 ad litem and that includes training on the dynamics of domestic
13 violence on partners and children. The guardian ad litem shall
14 investigate whether there is evidence that either partner
15 engaged in domestic violence and shall report to the court on
16 the results of the investigation. Nothing in this Section shall
17 be construed to prevent the court from appointing the same
18 guardian ad litem for 2 or more children that are siblings or
19 half-siblings.

20 (Source: P.A. 93-108, eff. 1-1-04; 93-1026, eff. 1-1-05.)

21 (750 ILCS 5/602) (from Ch. 40, par. 602)

22 Sec. 602. Best Interest of Child.

23 (a) The court shall determine custody in accordance with
24 the best interest of the child. The court shall consider all
25 relevant factors including:

26 (1) the wishes of the child's parent or parents as to
27 his custody;

28 (2) the wishes of the child as to his custodian;

29 (3) the interaction and interrelationship of the child
30 with his parent or parents, his siblings and any other
31 person who may significantly affect the child's best
32 interest;

33 (4) the child's adjustment to his home, school and
34 community;

35 (5) the mental and physical health of all individuals

1 involved;

2 (6) the physical violence or threat of physical
3 violence by the child's potential custodian, whether
4 directed against the child or directed against another
5 person;

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

10 (8) the willingness and ability of each parent to
11 facilitate and encourage a close and continuing
12 relationship between the other parent and the child.

13 In the case of a custody proceeding in which a stepparent
14 has standing under Section 601, it is presumed to be in the
15 best interest of the minor child that the natural parent have
16 the custody of the minor child unless the presumption is
17 rebutted by the stepparent.

18 (a-3) There is a rebuttable presumption that it is not in
19 the best interest of the child for the court to grant custody
20 to a parent who: (i) has been adjudicated guilty of domestic
21 violence as defined in Section 103 of the Illinois Domestic
22 Violence Act of 1986 on multiple incidents of domestic violence
23 or on a single incident of domestic violence that resulted in
24 serious physical injury, as determined by the trier of fact,
25 against the parent's partner or against the child; or (ii) has
26 been convicted of violating an order of protection entered
27 under Section 217, 218, or 219 of the Illinois Domestic
28 Violence Act of 1986.

29 (a-5) The presumption stated in subsection (a-3) of this
30 Section may be rebutted only by a preponderance of evidence
31 that: (i) the party who committed the abuse or domestic
32 violence has successfully completed treatment for abusers or
33 persons who have committed domestic violence provided through a
34 certified treatment program or by a certified treatment
35 provider and is not abusing alcohol or any other drug; (ii) it
36 is in the best interest of the child for the primary physical

1 aggressor to be awarded sole custody based on a consideration
2 of the factors; and (iii) there is little likelihood of future
3 injury to the child resulting from an act of abuse or domestic
4 violence.

5 (a-7) In any case where the presumption is rebutted, the
6 court shall state in writing the evidence upon which the court
7 determined that the presumption was rebutted and its findings
8 relating to the reason that legal custody with that party is in
9 the best interest of the child.

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

13 (c) Unless the court finds the occurrence of ongoing abuse
14 as defined in Section 103 of the Illinois Domestic Violence Act
15 of 1986, the court shall presume that the maximum involvement
16 and cooperation of both parents regarding the physical, mental,
17 moral, and emotional well-being of their child is in the best
18 interest of the child. There shall be no presumption in favor
19 of or against joint custody.

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

21 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

22 Sec. 602.1. (a) The dissolution of marriage, the
23 declaration of invalidity of marriage, the legal separation of
24 the parents, or the parents living separate and apart shall not
25 diminish parental powers, rights, and responsibilities except
26 as the court for good reason may determine under the standards
27 of Section 602.

28 (b) Upon the application of either or both parents, or upon
29 its own motion, the court shall consider an award of joint
30 custody. Joint custody means custody determined pursuant to a
31 Joint Parenting Agreement or a Joint Parenting Order. In such
32 cases, the court shall initially request the parents to produce
33 a Joint Parenting Agreement. Such Agreement shall specify each
34 parent's powers, rights and responsibilities for the personal
35 care of the child and for major decisions such as education,

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

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

22 (1) the ability of the parents to cooperate effectively
23 and consistently in matters that directly affect the joint
24 parenting of the child. "Ability of the parents to
25 cooperate" means the parents' capacity to substantially
26 comply with a Joint Parenting Order. The court shall not
27 consider the inability of the parents to cooperate
28 effectively and consistently in matters that do not
29 directly affect the joint parenting of the child;

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

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

33 (c-3) There is a rebuttable presumption that it is not in
34 the best interest of the child for the court to grant joint
35 custody to a party who: (i) has been adjudicated guilty of
36 domestic violence as defined in Section 103 of the Illinois

1 Domestic Violence Act of 1986 on multiple incidents of domestic
2 violence or on a single incident of domestic violence that
3 resulted in serious physical injury, as determined by the trier
4 of fact, against the parent's partner or against the child; or
5 (ii) has been convicted of violating an order of protection
6 entered under Section 217, 218, or 219 of the Illinois Domestic
7 Violence Act of 1986.

8 (c-5) The presumption stated in subsection (c-3) of this
9 Section may be rebutted only by a preponderance of evidence
10 that: (i) the abuser or person who has committed the domestic
11 violence has successfully completed treatment for abusers or
12 persons who have committed domestic violence provided through a
13 certified treatment program or by a certified treatment
14 provider and is not abusing alcohol or any other drug; (ii) it
15 is in the best interest of the child for the party who
16 committed the abuse or domestic violence to be awarded joint
17 custody based on a consideration of the factors; and (iii)
18 there is little likelihood of future injury to the child
19 resulting from an act of abuse or domestic violence.

20 (c-9) In any case where the presumption is rebutted, the
21 court shall state in writing the evidence upon which the court
22 determined that the presumption was rebutted and its findings
23 relating to the reason that joint custody is in the best
24 interest of the child.

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

29 (1) express agreement of the parties; or

30 (2) order of the court under the standards of this
31 Section.

32 (e) Notwithstanding any other provision of law, access to
33 records and information pertaining to a child, including but
34 not limited to medical, dental, child care and school records,
35 shall not be denied to a parent for the reason that such parent
36 is not the child's custodial parent; however, no parent shall

1 have access to the school records of a child if the parent is
2 prohibited by an order of protection from inspecting or
3 obtaining such records pursuant to the Illinois Domestic
4 Violence Act of 1986, as now or hereafter amended.

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

6 (750 ILCS 5/604) (from Ch. 40, par. 604)

7 Sec. 604. Interviews.) (a) The court may interview the
8 child in chambers to ascertain the child's wishes as to his
9 custodian and as to visitation. Counsel shall be present at the
10 interview unless otherwise agreed upon by the parties. The
11 court shall cause a court reporter to be present who shall make
12 a complete record of the interview instantaneously to be part
13 of the record in the case.

14 (b) The court may seek the advice of professional
15 personnel, whether or not employed by the court on a regular
16 basis. The professional personnel must have completed 3 hours
17 of training in domestic violence and its effects on the partner
18 and the child. The advice given shall be in writing and made
19 available by the court to counsel. Counsel may examine, as a
20 witness, any professional personnel consulted by the court,
21 designated as a court's witness.

22 (Source: P.A. 80-923.)

23 (750 ILCS 5/604.5)

24 Sec. 604.5. Evaluation of child's best interest.

25 (a) In a proceeding for custody, visitation, or removal of
26 a child from Illinois, upon notice and motion made within a
27 reasonable time before trial, the court may order an evaluation
28 concerning the best interest of the child as it relates to
29 custody, visitation, or removal. All evaluators must have
30 completed 3 hours of training in domestic violence and its
31 effects on the partner and the child. The motion may be made by
32 a party, a parent, the child's custodian, the attorney for the
33 child, the child's guardian ad litem, or the child's
34 representative. The requested evaluation may be in place of or

1 in addition to an evaluation conducted under subsection (b) of
2 Section 604.

3 The motion shall state the identity of the proposed
4 evaluator and set forth the evaluator's specialty or
5 discipline. The court may refuse to order an evaluation by the
6 proposed evaluator, but in that event, the court may permit the
7 party seeking the evaluation to propose one or more other
8 evaluators.

9 (b) An order for an evaluation shall fix the time, place,
10 conditions, and scope of the evaluation and shall designate the
11 evaluator. A party or person shall not be required to travel an
12 unreasonable distance for the evaluation.

13 (c) The person requesting an evaluator shall pay the fee
14 for the evaluation unless otherwise ordered by the court.

15 (d) Within 21 days after the completion of the evaluation,
16 if the moving party or person intends to call the evaluator as
17 a witness, the evaluator shall prepare and mail or deliver to
18 the attorneys of record duplicate originals of the written
19 evaluation. The evaluation shall set forth the evaluator's
20 findings, the results of all tests administered, and the
21 evaluator's conclusions and recommendations. If the written
22 evaluation is not delivered or mailed to the attorneys within
23 21 days or within any extensions or modifications granted by
24 the court, the written evaluation and the evaluator's
25 testimony, conclusions, and recommendations may not be
26 received into evidence.

27 (e) The person calling an evaluator to testify at trial
28 shall disclose the evaluator as an opinion witness in
29 accordance with the Supreme Court Rules.

30 (f) Subject to compliance with the Supreme Court Rules,
31 nothing in this Section bars a person who did not request the
32 evaluation from calling the evaluator as a witness. In that
33 case, however, that person shall pay the evaluator's fee for
34 testifying unless otherwise ordered by the court.

35 (Source: P.A. 91-746, eff. 6-2-00.)

1 (750 ILCS 5/605) (from Ch. 40, par. 605)

2 Sec. 605. Investigations and Reports. (a) In contested
3 custody proceedings, and in other custody proceedings if a
4 parent or the child's custodian so requests, the court may
5 order an investigation and report concerning custodial
6 arrangements for the child. The investigation and report may be
7 made by a child welfare agency approved by the Department of
8 Children and Family Services, but shall not be made by that
9 Department unless the court determines either that there is no
10 child welfare agency available or that the parent or the
11 child's custodian is financially unable to pay for the
12 investigation or report.

13 (b) An investigator who makes a report to the court must
14 have completed 3 hours of accepted training in domestic
15 violence and its effects on the partner and the child. In
16 preparing his report concerning a child, the investigator may
17 consult any person who may have information about the child and
18 his potential custodial arrangements. Under order of the court,
19 the investigator may refer the child to professional personnel
20 for diagnosis. The investigator may consult with and obtain
21 information from medical, psychiatric or other expert persons
22 who have served the child in the past, without obtaining the
23 consent of the parent or the child's custodian. The child's
24 consent must be obtained if he has reached the age of 16,
25 unless the court finds that he lacks mental capacity to
26 consent.

27 (c) The investigator shall mail the report to counsel, and
28 to any party not represented by counsel, at least 10 days prior
29 to the hearing. The court may examine and consider the
30 investigator's report in determining custody. The investigator
31 shall make available to counsel, and to any party not
32 represented by counsel, the investigator's file of underlying
33 data, reports, and the complete texts of diagnostic reports
34 made to the investigator pursuant to the provisions of
35 subsection (b) of this Section, and the names and addresses of
36 all persons whom the investigator has consulted. Any party to

1 the proceeding may call the investigator, or any person whom he
2 has consulted, as a court's witness, for cross-examination. A
3 party may not waive his right of cross-examination prior to the
4 hearing.

5 (Source: P.A. 86-659.)

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-3) Nothing in subsection (a-5) of this Section shall
19 apply to a child in whose interests a petition under Section
20 2-13 of the Juvenile Court Act of 1987 is pending.

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

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

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

1 visitation of the parent who is not related to the
2 grandparent, great-grandparent, or sibling seeking
3 visitation;

4 (C) the court, other than a Juvenile Court, has
5 terminated a parent-child relationship and the
6 grandparent, great-grandparent, or sibling is the parent
7 of the person whose parental rights have been terminated,
8 except in cases of adoption. The visitation must not be
9 used to allow the parent who lost parental rights to
10 unlawfully visit with the child;

11 (D) the child is illegitimate, the parents are not
12 living together, and the petitioner is a maternal
13 grandparent, great-grandparent, or sibling of the
14 illegitimate child; or

15 (E) the child is illegitimate, the parents are not
16 living together, the petitioner is a paternal grandparent,
17 great-grandparent, or sibling, and the paternity has been
18 established by a court of competent jurisdiction.

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

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

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

32 (A) the preference of the child if the child is
33 determined to be of sufficient maturity to express a
34 preference;

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

36 (C) the mental and physical health of the grandparent,

1 great-grandparent, or sibling;

2 (D) the length and quality of the prior relationship
3 between the child and the grandparent, great-grandparent,
4 or sibling;

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

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

7 (G) the quantity of the visitation time requested and
8 the potential adverse impact that visitation would have on
9 the child's customary activities;

10 (H) whether the child resided with the petitioner for
11 at least 6 consecutive months with or without the current
12 custodian present;

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

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

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

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

31 (2) The court shall not modify a prior grandparent,
32 great-grandparent, or sibling visitation order unless it finds
33 by clear and convincing evidence, upon the basis of facts that
34 have arisen since the prior visitation order or that were
35 unknown to the court at the time of entry of the prior
36 visitation, that a change has occurred in the circumstances of

1 the child or his or her custodian, and that the modification is
2 necessary to protect the mental, physical, or emotional health
3 of the child. The court shall state in its decision specific
4 findings of fact in support of its modification or termination
5 of the grandparent, great-grandparent, or sibling visitation.

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

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

12 (b) (1) (Blank.)

13 (1.5) The Court may grant reasonable visitation privileges
14 to a stepparent upon petition to the court by the stepparent,
15 with notice to the parties required to be notified under
16 Section 601 of this Act, if the court determines that it is in
17 the best interests and welfare of the child, and may issue any
18 necessary orders to enforce those visitation privileges. A
19 petition for visitation privileges may be filed under this
20 paragraph (1.5) whether or not a petition pursuant to this Act
21 has been previously filed or is currently pending if the
22 following circumstances are met:

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

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

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

28 (D) the child wishes to have reasonable visitation with
29 the stepparent; and

30 (E) the stepparent was providing for the care, control,
31 and welfare to the child prior to the initiation of the
32 petition for visitation.

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

1 (B) A petition for visitation privileges may not be filed
2 under this subsection (b) if the child who is the subject of
3 the grandparents' or great-grandparents' petition has been
4 voluntarily surrendered by the parent or parents, except for a
5 surrender to the Illinois Department of Children and Family
6 Services or a foster care facility, or has been previously
7 adopted by an individual or individuals who are not related to
8 the biological parents of the child or is the subject of a
9 pending adoption petition by an individual or individuals who
10 are not related to the biological parents of the child.

11 (3) (Blank).

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

24 (c-3) There is a rebuttable presumption that it is not in
25 the best interest of the child for the court to grant
26 visitation to a partner who has been adjudicated guilty of
27 domestic violence as defined in Section 103 of the Illinois
28 Domestic Violence Act of 1986 on multiple incidents of domestic
29 violence or on a single incident of domestic violence that
30 resulted in serious physical injury, as determined by the trier
31 of fact, against the partner or the child or has been convicted
32 of violating an order of protection entered under Section 217,
33 218, or 219 of the same Act.

34 (c-5) The presumption stated in subsection (c-3) of this
35 Section may be rebutted only by a preponderance of evidence
36 that: (i) the abuser or person who has committed the domestic

1 violence has successfully completed treatment for abusers or
2 persons who have committed domestic violence provided through a
3 certified treatment program or by a certified treatment
4 provider and is not abusing alcohol or any other drug; (ii) it
5 is in the best interest of the child for the party who
6 committed the abuse or domestic violence to be awarded
7 visitation based on a consideration of the factors; and (iii)
8 there is little likelihood of future injury to the child
9 resulting from an act of abuse or domestic violence. In any
10 case where the presumption is rebutted, the court shall state
11 in writing the evidence upon which the court determined that
12 the presumption was rebutted and its findings relating to the
13 reason why visitation is in the best interest of the child.

14 (c-7) If the court finds that a party has engaged in a
15 pattern or serious incident of abuse or domestic violence and
16 the court awards visitation to the party who has committed the
17 domestic violence or abuse, the court shall provide for the
18 safety and well-being of the child and for the safety and well
19 being of the party who was the victim of domestic violence or
20 abuse. For that purpose, the court, giving consideration to the
21 availability of services or programs and to the ability of the
22 party who committed the domestic violence or abuse to pay for
23 those services or programs, shall impose one or more of the
24 following, as appropriate:

25 (1) Requiring the exchange of the child to occur in a
26 protected setting or in the presence of an appropriate
27 third party who agrees by affidavit or other supporting
28 evidence to assume the responsibility assigned by the court
29 and to be accountable to the court for his or her actions
30 with respect to the responsibility.

31 (2) Requiring the child's periods of visitation with
32 the party who committed the abuse or domestic violence to
33 be supervised by an appropriate third party who agrees by
34 affidavit or other supporting evidence to assume the
35 responsibility assigned by the court and to be accountable
36 to the court for his or her actions with respect to the

1 responsibility.

2 (3) Requiring the partner who committed the abuse or
3 domestic violence to pay the costs of supervised
4 visitation.

5 (4) Requiring the party who committed the abuse or
6 domestic violence to attend and complete, to the
7 satisfaction of the court, treatment for abusers or persons
8 who have committed domestic violence provided through a
9 certified treatment program or by a certified treatment
10 provider as a condition of exercising his or her
11 visitation.

12 (5) If the party who committed the abuse or domestic
13 violence has a significant problem with alcohol or drug
14 abuse, prohibiting that party from being under the
15 influence of alcohol or any controlled substance when the
16 parties exchange the child for visitation and from
17 possessing or consuming alcohol or any controlled
18 substance during his or her periods of visitation.

19 (6) Prohibiting the party who committed the abuse or
20 domestic violence from having overnight visitation with
21 the child.

22 (7) Requiring the party who committed the abuse or
23 domestic violence to post bond for the return and safety of
24 the child.

25 (8) Imposing any other condition that the court
26 determines is necessary for the safety and well-being of
27 the child or the safety of the party who was the victim of
28 the abuse or domestic violence.

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

33 (1) If an order has been entered granting visitation
34 privileges with the child to a grandparent or
35 great-grandparent who is related to the child through the
36 non-custodial parent, the visitation privileges of the

1 grandparent or great-grandparent may be revoked if:

2 (i) a court has entered an order prohibiting the
3 non-custodial parent from any contact with the child,
4 and the grandparent or great-grandparent is found to
5 have used his or her visitation privileges to
6 facilitate contact between the child and the
7 non-custodial parent; or

8 (ii) a court has entered an order restricting the
9 non-custodial parent's contact with the child, and the
10 grandparent or great-grandparent is found to have used
11 his or her visitation privileges to facilitate contact
12 between the child and the non-custodial parent in a
13 manner that violates the terms of the order restricting
14 the non-custodial parent's contact with the child.

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

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

22 "If the (grandparent or great-grandparent, whichever
23 is applicable) who has been granted visitation privileges
24 under this order uses the visitation privileges to
25 facilitate contact between the child and the child's
26 non-custodial parent, the visitation privileges granted
27 under this order shall be permanently revoked."

28 (e) No parent, not granted custody of the child, or
29 grandparent, or great-grandparent, or stepparent, or sibling
30 of any minor child, convicted of any offense involving an
31 illegal sex act perpetrated upon a victim less than 18 years of
32 age including but not limited to offenses for violations of
33 Article 12 of the Criminal Code of 1961, is entitled to
34 visitation rights while incarcerated or while on parole,
35 probation, conditional discharge, periodic imprisonment, or
36 mandatory supervised release for that offense, and upon

1 discharge from incarceration for a misdemeanor offense or upon
2 discharge from parole, probation, conditional discharge,
3 periodic imprisonment, or mandatory supervised release for a
4 felony offense, visitation shall be denied until the person
5 successfully completes a treatment program approved by the
6 court.

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

24 (g) If an order has been entered limiting, for cause, a
25 minor child's contact or visitation with a grandparent,
26 great-grandparent, or sibling on the grounds that it was in the
27 best interest of the child to do so, that order may be modified
28 only upon a showing of a substantial change in circumstances
29 occurring subsequent to the entry of the order with proof by
30 clear and convincing evidence that modification is in the best
31 interest of the minor child.

32 (Source: P.A. 93-911, eff. 1-1-05.)

33 Section 99. Effective date. This Act takes effect upon
34 becoming law.