

SB0354



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB0354

Introduced 2/15/2005, by Sen. Susan Garrett

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607

from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Makes a technical change in a Section concerning visitation.

LRB094 10494 LCB 40765 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 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 ~~the~~ court finds,
10 after a hearing, that visitation would endanger seriously the
11 child's physical, mental, moral or emotional health. If the
12 custodian's street address is not identified, pursuant to
13 Section 708, the court shall require the parties to identify
14 reasonable alternative arrangements for visitation by a
15 non-custodial parent, including but not limited to visitation
16 of the minor child at the residence of another person or at a
17 local public 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,

1 great-grandparent, or sibling having visitation with the
2 child. The visitation of the grandparent,
3 great-grandparent, or sibling must not diminish the
4 visitation of the parent who is not related to the
5 grandparent, great-grandparent, or sibling seeking
6 visitation;

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

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

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

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

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

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

35 (A) the preference of the child if the child is
36 determined to be of sufficient maturity to express a

1 preference;

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

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

5 (D) the length and quality of the prior relationship
6 between the child and the grandparent, great-grandparent,
7 or sibling;

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

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

10 (G) the quantity of the visitation time requested and
11 the potential adverse impact that visitation would have on
12 the child's customary activities;

13 (H) whether the child resided with the petitioner for
14 at least 6 consecutive months with or without the current
15 custodian present;

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

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

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

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

34 (2) The court shall not modify a prior grandparent,
35 great-grandparent, or sibling visitation order unless it finds
36 by clear and convincing evidence, upon the basis of facts that

1 have arisen since the prior visitation order or that were
2 unknown to the court at the time of entry of the prior
3 visitation, that a change has occurred in the circumstances of
4 the child or his or her custodian, and that the modification is
5 necessary to protect the mental, physical, or emotional health
6 of the child. The court shall state in its decision specific
7 findings of fact in support of its modification or termination
8 of the grandparent, great-grandparent, or sibling visitation.

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

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

15 (b) (1) (Blank.)

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

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

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

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

31 (D) the child wishes to have reasonable visitation with
32 the stepparent; and

33 (E) the stepparent was providing for the care, control,
34 and welfare to the child prior to the initiation of the
35 petition for visitation.

36 (2) (A) A petition for visitation privileges shall not be

1 filed pursuant to this subsection (b) by the parents or
2 grandparents of a putative father if the paternity of the
3 putative father has not been legally established.

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

14 (3) (Blank).

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

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

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

36 (i) a court has entered an order prohibiting the

1 non-custodial parent from any contact with the child,
2 and the grandparent or great-grandparent is found to
3 have used his or her visitation privileges to
4 facilitate contact between the child and the
5 non-custodial parent; or

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

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

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

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

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

1 periodic imprisonment, or mandatory supervised release for a
2 felony offense, visitation shall be denied until the person
3 successfully completes a treatment program approved by the
4 court.

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

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

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