



**Filed: 3/21/2007**

09500HB1978ham001

LRB095 09212 AJO 34079 a

1 AMENDMENT TO HOUSE BILL 1978

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1978 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of  
5 Marriage Act is amended by changing Sections 607 and 609 as  
6 follows:

7 (750 ILCS 5/607) (from Ch. 40, par. 607)

8 Sec. 607. Visitation.

9 (a) A parent not granted custody of the child is entitled  
10 to reasonable visitation rights unless the court finds, after a  
11 hearing, that visitation would endanger seriously the child's  
12 physical, mental, moral or emotional health. If the custodian's  
13 street address is not identified, pursuant to Section 708, the  
14 court shall require the parties to identify reasonable  
15 alternative arrangements for visitation by a non-custodial  
16 parent, including but not limited to visitation of the minor

1 child at the residence of another person or at a local public  
2 or private facility.

3 (1) "Visitation" means in-person time spent between a  
4 child and the child's parent. In appropriate  
5 circumstances, it may include electronic communication  
6 under conditions and at times determined by the court.

7 (2) "Electronic communication" means time that a  
8 parent spends with his or her child during which the child  
9 is not in the parent's actual physical custody, but which  
10 is facilitated by the use of communication tools such as  
11 the telephone, electronic mail, instant messaging, video  
12 conferencing or other wired or wireless technologies via  
13 the Internet, or another medium of communication.

14 (a-3) Grandparents, great-grandparents, and siblings of a  
15 minor child, who is one year old or older, have standing to  
16 bring an action in circuit court by petition, requesting  
17 visitation in accordance with this Section. The term "sibling"  
18 in this Section means a brother, sister, stepbrother, or  
19 stepsister of the minor child. Grandparents,  
20 great-grandparents, and siblings also have standing to file a  
21 petition for visitation and any electronic communication  
22 rights in a pending dissolution proceeding or any other  
23 proceeding that involves custody or visitation issues,  
24 requesting visitation in accordance with this Section. A  
25 petition for visitation with a child by a person other than a  
26 parent must be filed in the county in which the child resides.

1 Nothing in this subsection (a-3) and subsection (a-5) of this  
2 Section shall apply to a child in whose interests a petition is  
3 pending under Section 2-13 of the Juvenile Court Act of 1987 or  
4 a petition to adopt an unrelated child is pending under the  
5 Adoption Act.

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

11 (A) (Blank);

12 (A-5) the child's other parent is deceased or has been  
13 missing for at least 3 months. For the purposes of this  
14 Section a parent is considered to be missing if the  
15 parent's location has not been determined and the parent  
16 has been reported as missing to a law enforcement agency;

17 (A-10) a parent of the child is incompetent as a matter  
18 of law;

19 (A-15) a parent has been incarcerated in jail or prison  
20 during the 3 month period preceding the filing of the  
21 petition;

22 (B) the child's mother and father are divorced or have  
23 been legally separated from each other or there is pending  
24 a dissolution proceeding involving a parent of the child or  
25 another court proceeding involving custody or visitation  
26 of the child (other than any adoption proceeding of an

1 unrelated child) and at least one parent does not object to  
2 the grandparent, great-grandparent, or sibling having  
3 visitation with the child. The visitation of the  
4 grandparent, great-grandparent, or sibling must not  
5 diminish the visitation of the parent who is not related to  
6 the grandparent, great-grandparent, or sibling seeking  
7 visitation;

8 (C) (Blank);

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

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

18 (2) Any visitation rights granted pursuant to this Section  
19 before the filing of a petition for adoption of a child shall  
20 automatically terminate by operation of law upon the entry of  
21 an order terminating parental rights or granting the adoption  
22 of the child, whichever is earlier. If the person or persons  
23 who adopted the child are related to the child, as defined by  
24 Section 1 of the Adoption Act, any person who was related to  
25 the child as grandparent, great-grandparent, or sibling prior  
26 to the adoption shall have standing to bring an action pursuant

1 to this Section requesting visitation with the child.

2 (3) In making a determination under this subsection (a-5),  
3 there is a rebuttable presumption that a fit parent's actions  
4 and decisions regarding grandparent, great-grandparent, or  
5 sibling visitation are not harmful to the child's mental,  
6 physical, or emotional health. The burden is on the party  
7 filing a petition under this Section to prove that the parent's  
8 actions and decisions regarding visitation times are harmful to  
9 the child's mental, physical, or emotional health.

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

12 (A) the preference of the child if the child is  
13 determined to be of sufficient maturity to express a  
14 preference;

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

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

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

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

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

23 (G) the quantity of the visitation time requested and  
24 the potential adverse impact that visitation would have on  
25 the child's customary activities;

26 (H) whether the child resided with the petitioner for

1 at least 6 consecutive months with or without the current  
2 custodian present;

3 (I) whether the petitioner had frequent or regular  
4 contact or visitation with the child for at least 12  
5 consecutive months;

6 (J) any other fact that establishes that the loss of  
7 the relationship between the petitioner and the child is  
8 likely to harm the child's mental, physical, or emotional  
9 health; and

10 (K) whether the grandparent, great-grandparent, or  
11 sibling was a primary caretaker of the child for a period  
12 of not less than 6 consecutive months.

13 (5) The court may order visitation rights for the  
14 grandparent, great-grandparent, or sibling that include  
15 reasonable access without requiring overnight or possessory  
16 visitation.

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

24 (2) The court shall not modify an order that grants  
25 visitation to a grandparent, great-grandparent, or sibling  
26 unless it finds by clear and convincing evidence, upon the

1 basis of facts that have arisen since the prior visitation  
2 order or that were unknown to the court at the time of entry of  
3 the prior visitation, that a change has occurred in the  
4 circumstances of the child or his or her custodian, and that  
5 the modification is necessary to protect the mental, physical,  
6 or emotional health of the child. The court shall state in its  
7 decision specific findings of fact in support of its  
8 modification or termination of the grandparent,  
9 great-grandparent, or sibling visitation. A child's parent may  
10 always petition to modify visitation upon changed  
11 circumstances when necessary to promote the child's best  
12 interest.

13 (3) Attorney fees and costs shall be assessed against a  
14 party seeking modification of the visitation order if the court  
15 finds that the modification action is vexatious and constitutes  
16 harassment.

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

19 (b) (1) (Blank.)

20 (1.5) The Court may grant reasonable visitation privileges  
21 to a stepparent upon petition to the court by the stepparent,  
22 with notice to the parties required to be notified under  
23 Section 601 of this Act, if the court determines that it is in  
24 the best interests and welfare of the child, and may issue any  
25 necessary orders to enforce those visitation privileges. A  
26 petition for visitation privileges may be filed under this

1 paragraph (1.5) whether or not a petition pursuant to this Act  
2 has been previously filed or is currently pending if the  
3 following circumstances are met:

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

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

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

9 (D) the child wishes to have reasonable visitation with  
10 the stepparent; and

11 (E) the stepparent was providing for the care, control,  
12 and welfare to the child prior to the initiation of the  
13 petition for visitation.

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

18 (B) A petition for visitation privileges may not be filed  
19 under this subsection (b) if the child who is the subject of  
20 the grandparents' or great-grandparents' petition has been  
21 voluntarily surrendered by the parent or parents, except for a  
22 surrender to the Illinois Department of Children and Family  
23 Services or a foster care facility, or has been previously  
24 adopted by an individual or individuals who are not related to  
25 the biological parents of the child or is the subject of a  
26 pending adoption petition by an individual or individuals who



1 are not related to the biological parents of the child.

2 (3) (Blank).

3 (c) The court may modify an order granting or denying  
4 visitation rights of a parent whenever modification would serve  
5 the best interest of the child; but the court shall not  
6 restrict a parent's visitation rights unless it finds that the  
7 visitation would endanger seriously the child's physical,  
8 mental, moral or emotional health.

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

13 (1) If an order has been entered granting visitation  
14 privileges with the child to a grandparent or  
15 great-grandparent who is related to the child through the  
16 non-custodial parent, the visitation privileges of the  
17 grandparent or great-grandparent may be revoked if:

18 (i) a court has entered an order prohibiting the  
19 non-custodial parent from any contact with the child,  
20 and the grandparent or great-grandparent is found to  
21 have used his or her visitation privileges to  
22 facilitate contact between the child and the  
23 non-custodial parent; or

24 (ii) a court has entered an order restricting the  
25 non-custodial parent's contact with the child, and the  
26 grandparent or great-grandparent is found to have used

1 his or her visitation privileges to facilitate contact  
2 between the child and the non-custodial parent in a  
3 manner that violates the terms of the order restricting  
4 the non-custodial parent's contact with the child.

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

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

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

18 (e) No parent, not granted custody of the child, or  
19 grandparent, or great-grandparent, or stepparent, or sibling  
20 of any minor child, convicted of any offense involving an  
21 illegal sex act perpetrated upon a victim less than 18 years of  
22 age including but not limited to offenses for violations of  
23 Article 12 of the Criminal Code of 1961, is entitled to  
24 visitation rights while incarcerated or while on parole,  
25 probation, conditional discharge, periodic imprisonment, or  
26 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) (Blank).

25 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06;  
26 94-1026, eff. 1-1-07.)

1 (750 ILCS 5/609) (from Ch. 40, par. 609)

2 Sec. 609. Leave to Remove Children.)

3 (a) The court may grant leave, before or after judgment, to  
4 any party having custody of any minor child or children to  
5 remove such child or children from Illinois whenever such  
6 approval is in the best interests of such child or children.  
7 The burden of proving that such removal is in the best  
8 interests of such child or children is on the party seeking the  
9 removal. When such removal is permitted, the court may require  
10 the party removing such child or children from Illinois to give  
11 reasonable security guaranteeing the return of such children.

12 (b) Before a minor child is temporarily removed from  
13 Illinois, the parent responsible for the removal shall inform  
14 the other parent, or the other parent's attorney, of the  
15 address and telephone number where the child may be reached  
16 during the period of temporary removal, and the date on which  
17 the child shall return to Illinois.

18 (c) The court may not use the availability of electronic  
19 communication as a factor in support of a removal of a child by  
20 the custodial parent from Illinois.

21 The State of Illinois retains jurisdiction when the minor  
22 child is absent from the State pursuant to this subsection.

23 (Source: P.A. 85-768.)".