



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1628

Introduced 2/19/2009, by Sen. Iris Y. Martinez

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Public Aid Code, the Vital Records Act, the Criminal Code of 1961, the Illinois Marriage and Dissolution of Marriage Act, and the Illinois Parentage Act of 1984. Provides that the Department of Healthcare and Family Services' form for voluntary acknowledgement of paternity in connection with child support collection shall be the same form prepared by the Department and distributed to county clerks and registrars under the Vital Records Act. Provides that an acknowledgement of paternity and denial of paternity form shall include a statement informing the mother, the alleged father, and the presumed father, if any, that they have the right to request DNA tests regarding the issue of the child's paternity and that by signing the form, they expressly waive such tests. Requires that the statement on the acknowledgement and denial of paternity form concerning the right to request DNA tests be set forth in bold-face capital letters not less than 0.25 inches in height. Provides that in an action brought under the Illinois Parentage Act of 1984 to determine the existence of the father and child relationship or to declare the non-existence of the parent and child relationship, the court or Administrative Hearing Officer in an Expedited Child Support System shall, prior to the entry of a judgment in the case, advise the respondent who appears of the right to request an order that the parties and the child submit to DNA tests to determine inherited characteristics; provides that the advisement shall be noted in the record. Changes the name of the offense "unlawful visitation interference" to "unlawful visitation or parenting time interference" in the Criminal Code of 1961 and the Illinois Marriage and Dissolution of Marriage Act. Effective immediately.

LRB096 10620 KTG 20792 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning children.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by  
5 changing Section 10-17.7 as follows:

6 (305 ILCS 5/10-17.7)

7 Sec. 10-17.7. Administrative determination of paternity.  
8 The Illinois Department may provide by rule for the  
9 administrative determination of paternity by the Child and  
10 Spouse Support Unit in cases involving applicants for or  
11 recipients of financial aid under Article IV of this Act and  
12 other persons who are given access to the child support  
13 enforcement services of this Article as provided in Section  
14 10-1, including persons similarly situated and receiving  
15 similar services in other states. The rules shall extend to  
16 cases in which the mother and alleged father voluntarily  
17 acknowledge paternity in the form required by the Illinois  
18 Department or agree to be bound by the results of genetic  
19 testing or in which the alleged father has failed to respond to  
20 a notification of support obligation issued under Section 10-4  
21 and to cases of contested paternity. The Illinois Department's  
22 form for voluntary acknowledgement of paternity shall be the  
23 same form prepared by the Illinois Department for use under the

1 requirements of Section 12 of the Vital Records Act. Any  
2 presumption provided for under the Illinois Parentage Act of  
3 1984 shall apply to cases in which paternity is determined  
4 under the rules of the Illinois Department. The rules shall  
5 provide for notice and an opportunity to be heard by the  
6 responsible relative and the person receiving child support  
7 enforcement services under this Article if paternity is not  
8 voluntarily acknowledged, and any final administrative  
9 decision rendered by the Illinois Department shall be reviewed  
10 only under and in accordance with the Administrative Review  
11 Law. Determinations of paternity made by the Illinois  
12 Department under the rules authorized by this Section shall  
13 have the full force and effect of a court judgment of paternity  
14 entered under the Illinois Parentage Act of 1984.

15 In determining paternity in contested cases, the Illinois  
16 Department shall conduct the evidentiary hearing in accordance  
17 with Section 11 of the Parentage Act of 1984, except that  
18 references in that Section to "the court" shall be deemed to  
19 mean the Illinois Department's hearing officer in cases in  
20 which paternity is determined administratively by the Illinois  
21 Department.

22 Notwithstanding any other provision of this Article, a  
23 default determination of paternity may be made if service of  
24 the notice under Section 10-4 was made by publication under the  
25 rules for administrative paternity determination authorized by  
26 this Section. The rules as they pertain to service by

1 publication shall (i) be based on the provisions of Section  
2 2-206 and 2-207 of the Code of Civil Procedure, (ii) provide  
3 for service by publication in cases in which the whereabouts of  
4 the alleged father are unknown after diligent location efforts  
5 by the Child and Spouse Support Unit, and (iii) provide for  
6 publication of a notice of default paternity determination in  
7 the same manner that the notice under Section 10-4 was  
8 published.

9 The Illinois Department may implement this Section through  
10 the use of emergency rules in accordance with Section 5-45 of  
11 the Illinois Administrative Procedure Act. For purposes of the  
12 Illinois Administrative Procedure Act, the adoption of rules to  
13 implement this Section shall be considered an emergency and  
14 necessary for the public interest, safety, and welfare.

15 (Source: P.A. 92-590, eff. 7-1-02.)

16 Section 10. The Vital Records Act is amended by changing  
17 Section 12 as follows:

18 (410 ILCS 535/12) (from Ch. 111 1/2, par. 73-12)

19 Sec. 12. Live births; place of registration.

20 (1) Each live birth which occurs in this State shall be  
21 registered with the local or subregistrar of the district in  
22 which the birth occurred as provided in this Section, within 7  
23 days after the birth. When a birth occurs on a moving  
24 conveyance, the city, village, township, or road district in

1 which the child is first removed from the conveyance shall be  
2 considered the place of birth and a birth certificate shall be  
3 filed in the registration district in which the place is  
4 located.

5 (2) When a birth occurs in an institution, the person in  
6 charge of the institution or his designated representative  
7 shall obtain and record all the personal and statistical  
8 particulars relative to the parents of the child that are  
9 required to properly complete the live birth certificate; shall  
10 secure the required personal signatures on the hospital  
11 worksheet; shall prepare the certificate from this worksheet;  
12 and shall file the certificate with the local registrar. The  
13 institution shall retain the hospital worksheet permanently or  
14 as otherwise specified by rule. The physician in attendance  
15 shall verify or provide the date of birth and medical  
16 information required by the certificate, within 24 hours after  
17 the birth occurs.

18 (3) When a birth occurs outside an institution, the  
19 certificate shall be prepared and filed by one of the following  
20 in the indicated order of priority:

21 (a) The physician in attendance at or immediately after  
22 the birth, or in the absence of such a person,

23 (b) Any other person in attendance at or immediately  
24 after the birth, or in the absence of such a person,

25 (c) The father, the mother, or in the absence of the  
26 father and the inability of the mother, the person in

1 charge of the premises where the birth occurred.

2 (4) Unless otherwise provided in this Act, if the mother  
3 was not married to the father of the child at either the time  
4 of conception or the time of birth, the name of the father  
5 shall be entered on the child's birth certificate only if the  
6 mother and the person to be named as the father have signed an  
7 acknowledgment of parentage in accordance with subsection (5).

8 Unless otherwise provided in this Act, if the mother was  
9 married at the time of conception or birth and the presumed  
10 father (that is, the mother's husband) is not the biological  
11 father of the child, the name of the biological father shall be  
12 entered on the child's birth certificate only if, in accordance  
13 with subsection (5), (i) the mother and the person to be named  
14 as the father have signed an acknowledgment of parentage and  
15 (ii) the mother and presumed father have signed a denial of  
16 paternity.

17 (5) Upon the birth of a child to an unmarried woman, or  
18 upon the birth of a child to a woman who was married at the time  
19 of conception or birth and whose husband is not the biological  
20 father of the child, the institution at the time of birth and  
21 the local registrar or county clerk after the birth shall do  
22 the following:

23 (a) Provide (i) an opportunity for the child's mother  
24 and father to sign an acknowledgment of parentage and (ii)  
25 if the presumed father is not the biological father, an  
26 opportunity for the mother and presumed father to sign a

1 denial of paternity. The signing and witnessing of the  
2 acknowledgment of parentage or, if the presumed father of  
3 the child is not the biological father, the acknowledgment  
4 of parentage and denial of paternity conclusively  
5 establishes a parent and child relationship in accordance  
6 with Sections 5 and 6 of the Illinois Parentage Act of  
7 1984.

8 The Department of Healthcare and Family Services shall  
9 furnish the acknowledgment of parentage and denial of  
10 paternity form to institutions, county clerks, and State  
11 and local registrars' offices. The form shall include  
12 instructions to send the original signed and witnessed  
13 acknowledgment of parentage and denial of paternity to the  
14 Department of Healthcare and Family Services. The  
15 acknowledgement of paternity and denial of paternity form  
16 shall also include a statement informing the mother, the  
17 alleged father, and the presumed father, if any, that they  
18 have the right to request deoxyribonucleic acid (DNA) tests  
19 regarding the issue of the child's paternity and that by  
20 signing the form, they expressly waive such tests. The  
21 statement shall be set forth in bold-face capital letters  
22 not less than 0.25 inches in height.

23 (b) Provide the following documents, furnished by the  
24 Department of Healthcare and Family Services, to the  
25 child's mother, biological father, and (if the person  
26 presumed to be the child's father is not the biological

1 father) presumed father for their review at the time the  
2 opportunity is provided to establish a parent and child  
3 relationship:

4 (i) An explanation of the implications of,  
5 alternatives to, legal consequences of, and the rights  
6 and responsibilities that arise from signing an  
7 acknowledgment of parentage and, if necessary, a  
8 denial of paternity, including an explanation of the  
9 parental rights and responsibilities of child support,  
10 visitation, custody, retroactive support, health  
11 insurance coverage, and payment of birth expenses.

12 (ii) An explanation of the benefits of having a  
13 child's parentage established and the availability of  
14 parentage establishment and child support enforcement  
15 services.

16 (iii) A request for an application for child  
17 support enforcement services from the Department of  
18 Healthcare and Family Services.

19 (iv) Instructions concerning the opportunity to  
20 speak, either by telephone or in person, with staff of  
21 the Department of Healthcare and Family Services who  
22 are trained to clarify information and answer  
23 questions about paternity establishment.

24 (v) Instructions for completing and signing the  
25 acknowledgment of parentage and denial of paternity.

26 (c) Provide an oral explanation of the documents and



1 instructions set forth in subdivision (5)(b), including an  
2 explanation of the implications of, alternatives to, legal  
3 consequences of, and the rights and responsibilities that  
4 arise from signing an acknowledgment of parentage and, if  
5 necessary, a denial of paternity. The oral explanation may  
6 be given in person or through the use of video or audio  
7 equipment.

8 (6) The institution, State or local registrar, or county  
9 clerk shall provide an opportunity for the child's father or  
10 mother to sign a rescission of parentage. The signing and  
11 witnessing of the rescission of parentage voids the  
12 acknowledgment of parentage and nullifies the presumption of  
13 paternity if executed and filed with the Department of  
14 Healthcare and Family Services (formerly Illinois Department  
15 of Public Aid) within the time frame contained in Section 5 of  
16 the Illinois Parentage Act of 1984. The Department of  
17 Healthcare and Family Services shall furnish the rescission of  
18 parentage form to institutions, county clerks, and State and  
19 local registrars' offices. The form shall include instructions  
20 to send the original signed and witnessed rescission of  
21 parentage to the Department of Healthcare and Family Services.

22 (7) An acknowledgment of paternity signed pursuant to  
23 Section 6 of the Illinois Parentage Act of 1984 may be  
24 challenged in court only on the basis of fraud, duress, or  
25 material mistake of fact, with the burden of proof upon the  
26 challenging party. Pending outcome of a challenge to the

1 acknowledgment of paternity, the legal responsibilities of the  
2 signatories shall remain in full force and effect, except upon  
3 order of the court upon a showing of good cause.

4 (8) When the process for acknowledgment of parentage as  
5 provided for under subsection (5) establishes the paternity of  
6 a child whose certificate of birth is on file in another state,  
7 the Department of Healthcare and Family Services shall forward  
8 a copy of the acknowledgment of parentage, the denial of  
9 paternity, if applicable, and the rescission of parentage, if  
10 applicable, to the birth record agency of the state where the  
11 child's certificate of birth is on file.

12 (9) In the event the parent-child relationship has been  
13 established in accordance with subdivision (a)(1) of Section 6  
14 of the Parentage Act of 1984, the names of the biological  
15 mother and biological father so established shall be entered on  
16 the child's birth certificate, and the names of the surrogate  
17 mother and surrogate mother's husband, if any, shall not be on  
18 the birth certificate.

19 (Source: P.A. 95-331, eff. 8-21-07.)

20 Section 15. The Criminal Code of 1961 is amended by  
21 changing Section 10-5.5 as follows:

22 (720 ILCS 5/10-5.5)

23 Sec. 10-5.5. Unlawful visitation or parenting time  
24 interference.

1 (a) As used in this Section, the terms "child", "detain",  
2 and "lawful custodian" shall have the meanings ascribed to them  
3 in Section 10-5 of this Code.

4 (b) Every person who, in violation of the visitation,  
5 parenting time, or custody time provisions of a court order  
6 relating to child custody, detains or conceals a child with the  
7 intent to deprive another person of his or her rights to  
8 visitation, parenting time, or custody time shall be guilty of  
9 unlawful visitation or parenting time interference.

10 (c) A person committing unlawful visitation or parenting  
11 time interference is guilty of a petty offense. However, any  
12 person violating this Section after 2 prior convictions of  
13 unlawful visitation interference or unlawful visitation or  
14 parenting time interference is guilty of a Class A misdemeanor.

15 (d) Any law enforcement officer who has probable cause to  
16 believe that a person has committed or is committing an act in  
17 violation of this Section shall issue to that person a notice  
18 to appear.

19 (e) The notice shall:

20 (1) be in writing;

21 (2) state the name of the person and his address, if  
22 known;

23 (3) set forth the nature of the offense;

24 (4) be signed by the officer issuing the notice; and

25 (5) request the person to appear before a court at a  
26 certain time and place.

1 (f) Upon failure of the person to appear, a summons or  
2 warrant of arrest may be issued.

3 (g) It is an affirmative defense that:

4 (1) a person or lawful custodian committed the act to  
5 protect the child from imminent physical harm, provided  
6 that the defendant's belief that there was physical harm  
7 imminent was reasonable and that the defendant's conduct in  
8 withholding visitation rights, parenting time, or custody  
9 time was a reasonable response to the harm believed  
10 imminent;

11 (2) the act was committed with the mutual consent of  
12 all parties having a right to custody and visitation of the  
13 child or parenting time with the child; or

14 (3) the act was otherwise authorized by law.

15 (h) A person convicted of unlawful visitation or parenting  
16 time interference shall not be subject to a civil contempt  
17 citation for the same conduct for violating visitation,  
18 parenting time, or custody time provisions of a court order  
19 issued under the Illinois Marriage and Dissolution of Marriage  
20 Act.

21 (Source: P.A. 88-96.)

22 Section 20. Illinois Marriage and Dissolution of Marriage  
23 Act is amended by changing Section 607.1 as follows:

24 (750 ILCS 5/607.1) (from Ch. 40, par. 607.1)

1           Sec. 607.1. Enforcement of visitation orders; visitation  
2 abuse.

3           (a) The circuit court shall provide an expedited procedure  
4 for enforcement of court ordered visitation in cases of  
5 visitation abuse. Visitation abuse occurs when a party has  
6 willfully and without justification: (1) denied another party  
7 visitation as set forth by the court; or (2) exercised his or  
8 her visitation rights in a manner that is harmful to the child  
9 or child's custodian.

10           (b) An Action may be commenced by filing a petition setting  
11 forth: (i) the petitioner's name, residence address or mailing  
12 address, and telephone number; (ii) respondent's name and place  
13 of residence, place of employment, or mailing address; (iii)  
14 the nature of the visitation abuse, giving dates and other  
15 relevant information; (iv) that a reasonable attempt was made  
16 to resolve the dispute; and (v) the relief sought.

17           Notice of the filing of the petitions shall be given as  
18 provided in Section 511.

19           (c) After hearing all of the evidence, the court may order  
20 one or more of the following:

21           (1) Modification of the visitation order to  
22 specifically outline periods of visitation or restrict  
23 visitation as provided by law.

24           (2) Supervised visitation with a third party or public  
25 agency.

26           (3) Make up visitation of the same time period, such as

1 weekend for weekend, holiday for holiday.

2 (4) Counseling or mediation, except in cases where  
3 there is evidence of domestic violence, as defined in  
4 Section 1 of the Domestic Violence Shelters Act, occurring  
5 between the parties.

6 (5) Other appropriate relief deemed equitable.

7 (d) Nothing contained in this Section shall be construed to  
8 limit the court's contempt power, except as provided in  
9 subsection (g) of this Section.

10 (e) When the court issues an order holding a party in  
11 contempt of court for violation of a visitation order, the  
12 clerk shall transmit a copy of the contempt order to the  
13 sheriff of the county. The sheriff shall furnish a copy of each  
14 contempt order to the Department of State Police on a daily  
15 basis in the form and manner required by the Department. The  
16 Department shall maintain a complete record and index of the  
17 contempt orders and make this data available to all local law  
18 enforcement agencies.

19 (f) Attorney fees and costs shall be assessed against a  
20 party if the court finds that the enforcement action is  
21 vexatious and constitutes harassment.

22 (g) A person convicted of unlawful visitation or parenting  
23 time interference under Section 10-5.5 of the Criminal Code of  
24 1961 shall not be subject to the provisions of this Section and  
25 the court may not enter a contempt order for visitation abuse  
26 against any person for the same conduct for which the person

1 was convicted of unlawful visitation interference or subject  
2 that person to the sanctions provided for in this Section.

3 (Source: P.A. 87-895; 88-96.)

4 Section 25. The Illinois Parentage Act of 1984 is amended  
5 by changing Section 11 as follows:

6 (750 ILCS 45/11) (from Ch. 40, par. 2511)

7 Sec. 11. Tests to determine inherited characteristics.

8 (a) In any action brought under Section 7 to determine the  
9 existence of the father and child relationship or to declare  
10 the non-existence of the parent and child relationship, the  
11 court or Administrative Hearing Officer in an Expedited Child  
12 Support System shall, prior to the entry of a judgment in the  
13 case, advise the respondent who appears of the right to request  
14 an order that the parties and the child submit to  
15 deoxyribonucleic acid (DNA) tests to determine inherited  
16 characteristics. The advisement shall be noted in the record.

17 As soon as practicable, the court or Administrative Hearing  
18 Officer in an Expedited Child Support System may, and upon  
19 request of a party shall, order or direct the mother, child and  
20 alleged father to submit to deoxyribonucleic acid (DNA) tests  
21 to determine inherited characteristics. If any party refuses to  
22 submit to the tests, the court may resolve the question of  
23 paternity against that party or enforce its order if the rights  
24 of others and the interests of justice so require.

1 (b) The tests shall be conducted by an expert qualified as  
2 an examiner of blood or tissue types and appointed by the  
3 court. The expert shall determine the testing procedures.  
4 However, any interested party, for good cause shown, in advance  
5 of the scheduled tests, may request a hearing to object to the  
6 qualifications of the expert or the testing procedures. The  
7 expert appointed by the court shall testify at the pre-test  
8 hearing at the expense of the party requesting the hearing,  
9 except as provided in subsection (h) of this Section for an  
10 indigent party. An expert not appointed by the court shall  
11 testify at the pre-test hearing at the expense of the party  
12 retaining the expert. Inquiry into an expert's qualifications  
13 at the pre-test hearing shall not affect either parties' right  
14 to have the expert qualified at trial.

15 (c) The expert shall prepare a written report of the test  
16 results. If the test results show that the alleged father is  
17 not excluded, the report shall contain a combined paternity  
18 index relating to the probability of paternity. The expert may  
19 be called by the court as a witness to testify to his or her  
20 findings and, if called, shall be subject to cross-examination  
21 by the parties. If the test results show that the alleged  
22 father is not excluded, any party may demand that other  
23 experts, qualified as examiners of blood or tissue types,  
24 perform independent tests under order of court, including, but  
25 not limited to, blood types or other tests of genetic markers  
26 such as those found by Human Leucocyte Antigen (HLA) tests. The



1 results of the tests may be offered into evidence. The number  
2 and qualifications of the experts shall be determined by the  
3 court.

4 (d) Documentation of the chain of custody of the blood or  
5 tissue samples, accompanied by an affidavit or certification in  
6 accordance with Section 1-109 of the Code of Civil Procedure,  
7 is competent evidence to establish the chain of custody.

8 (e) The report of the test results prepared by the  
9 appointed expert shall be made by affidavit or by certification  
10 as provided in Section 1-109 of the Code of Civil Procedure and  
11 shall be mailed to all parties. A proof of service shall be  
12 filed with the court. The verified report shall be admitted  
13 into evidence at trial without foundation testimony or other  
14 proof of authenticity or accuracy, unless a written motion  
15 challenging the admissibility of the report is filed by either  
16 party within 28 days of receipt of the report, in which case  
17 expert testimony shall be required. A party may not file such a  
18 motion challenging the admissibility of the report later than  
19 28 days before commencement of trial. Before trial, the court  
20 shall determine whether the motion is sufficient to deny  
21 admission of the report by verification. Failure to make that  
22 timely motion constitutes a waiver of the right to object to  
23 admission by verification and shall not be grounds for a  
24 continuance of the hearing to determine paternity.

25 (f) Tests taken pursuant to this Section shall have the  
26 following effect:

1           (1) If the court finds that the conclusion of the  
2 expert or experts, as disclosed by the evidence based upon  
3 the tests, is that the alleged father is not the parent of  
4 the child, the question of paternity shall be resolved  
5 accordingly.

6           (2) If the experts disagree in their findings or  
7 conclusions, the question shall be weighed with other  
8 competent evidence of paternity.

9           (3) If the tests show that the alleged father is not  
10 excluded and that the combined paternity index is less than  
11 500 to 1, this evidence shall be admitted by the court and  
12 shall be weighed with other competent evidence of  
13 paternity.

14           (4) If the tests show that the alleged father is not  
15 excluded and that the combined paternity index is at least  
16 500 to 1, the alleged father is presumed to be the father,  
17 and this evidence shall be admitted. This presumption may  
18 be rebutted by clear and convincing evidence.

19           (g) Any presumption of parentage as set forth in Section 5  
20 of this Act is rebutted if the court finds that the conclusion  
21 of the expert or experts excludes paternity of the presumed  
22 father.

23           (h) The expense of the tests shall be paid by the party who  
24 requests the tests. Where the tests are requested by the party  
25 seeking to establish paternity and that party is found to be  
26 indigent by the court, the expense shall be paid by the public

1 agency providing representation; except that where a public  
2 agency is not providing representation, the expense shall be  
3 paid by the county in which the action is brought. Where the  
4 tests are ordered by the court on its own motion or are  
5 requested by the alleged or presumed father and that father is  
6 found to be indigent by the court, the expense shall be paid by  
7 the county in which the action is brought. Any part of the  
8 expense may be taxed as costs in the action, except that no  
9 costs may be taxed against a public agency that has not  
10 requested the tests.

11 (i) The compensation of each expert witness appointed by  
12 the court shall be paid as provided in subsection (h) of this  
13 Section. Any part of the payment may be taxed as costs in the  
14 action, except that no costs may be taxed against a public  
15 agency that has not requested the services of the expert  
16 witness.

17 (j) Nothing in this Section shall prevent any party from  
18 obtaining tests of his or her own blood or tissue independent  
19 of those ordered by the court or from presenting expert  
20 testimony interpreting those tests or any other blood tests  
21 ordered pursuant to this Section. Reports of all the  
22 independent tests, accompanied by affidavit or certification  
23 pursuant to Section 1-109 of the Code of Civil Procedure, and  
24 notice of any expert witnesses to be called to testify to the  
25 results of those tests shall be submitted to all parties at  
26 least 30 days before any hearing set to determine the issue of

1 parentage.

2 (Source: P.A. 87-428; 87-435; 88-353; 88-687, eff. 1-24-95.)

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 305 ILCS 5/10-17.7

4 410 ILCS 535/12 from Ch. 111 1/2, par. 73-12

5 720 ILCS 5/10-5.5

6 750 ILCS 5/607.1 from Ch. 40, par. 607.1

7 750 ILCS 45/11 from Ch. 40, par. 2511