



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5368

Introduced 01/26/06, by Rep. Richard P. Myers

SYNOPSIS AS INTRODUCED:

750 ILCS 5/602
750 ILCS 5/602.1

from Ch. 40, par. 602
from Ch. 40, par. 602.1

Amends the Illinois Marriage and Dissolution of Marriage Act. Establishes a rebuttable presumption that joint legal and physical custody is in the best interest of the child. If both parents are fit but joint legal and physical custody is not feasible and cannot be remedied by a Joint Parenting Agreement between the parents, establishes a rebuttable presumption that it is in the best interests of the child to grant legal and physical custody to the parent more disposed to encourage and permit frequent and continuing contact by the other parent with the child. Requires the court to justify any departure from either presumption with detailed findings. Deletes language providing: that there shall be no presumption in favor of or against joint custody; and that the court may enter an order of joint custody if it determines that joint custody is in the best interests of the child, taking certain factors into account.

LRB094 17648 WGH 52946 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 602 and 602.1 as
6 follows:

7 (750 ILCS 5/602) (from Ch. 40, par. 602)

8 Sec. 602. Best Interest of Child.

9 (a) The court shall determine custody in accordance with
10 the best interest of the child. The court shall consider all
11 relevant factors including:

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

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

15 (3) the interaction and interrelationship of the child
16 with his parent or parents, his siblings and any other
17 person who may significantly affect the child's best
18 interest;

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

21 (5) the mental and physical health of all individuals
22 involved;

23 (6) the physical violence or threat of physical
24 violence by the child's potential custodian, whether
25 directed against the child or directed against another
26 person;

27 (7) the occurrence of ongoing or repeated abuse as
28 defined in Section 103 of the Illinois Domestic Violence
29 Act of 1986, whether directed against the child or directed
30 against another person;

31 (8) the willingness and ability of each parent to
32 facilitate and encourage a close and continuing

1 relationship between the other parent and the child; and

2 (9) whether one of the parents is a sex offender.

3 In the case of a custody proceeding in which a stepparent
4 has standing under Section 601, it is presumed to be in the
5 best interest of the minor child that the natural parent have
6 the custody of the minor child unless the presumption is
7 rebutted by the stepparent.

8 (a-3) The court shall use a rebuttable presumption that
9 joint legal and physical custody is in the best interests of
10 the child. Any departure from the presumption must be justified
11 by detailed findings.

12 (a-5) Whenever it appears that both parents are fit, but
13 that joint legal and physical custody is not feasible and
14 cannot be remedied by a Joint Parenting Agreement between the
15 parents, the court shall use a rebuttable presumption that the
16 best interests of the child will be served by granting legal
17 and physical custody to the parent more disposed to encourage
18 and permit frequent and continuing contact by the other parent
19 with the child. Any departure from this presumption must be
20 justified by detailed findings.

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

24 (c) Unless the court finds the occurrence of ongoing abuse
25 as defined in Section 103 of the Illinois Domestic Violence Act
26 of 1986, the court shall presume that the maximum involvement
27 and cooperation of both parents regarding the physical, mental,
28 moral, and emotional well-being of their child is in the best
29 interest of the child. ~~There shall be no presumption in favor~~
30 ~~of or against joint custody.~~

31 (Source: P.A. 94-377, eff. 7-29-05; 94-643, eff. 1-1-06;
32 revised 8-29-05.)

33 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

34 Sec. 602.1. (a) The dissolution of marriage, the
35 declaration of invalidity of marriage, the legal separation of

1 the parents, or the parents living separate and apart shall not
2 diminish parental powers, rights, and responsibilities except
3 as the court for good reason may determine under the standards
4 of Section 602.

5 (b) Upon the application of either or both parents, or upon
6 its own motion, the court shall consider an award of joint
7 custody. Joint custody means custody determined pursuant to a
8 Joint Parenting Agreement or a Joint Parenting Order. In such
9 cases, the court shall initially request the parents to produce
10 a Joint Parenting Agreement. Such Agreement shall specify each
11 parent's powers, rights and responsibilities for the personal
12 care of the child and for major decisions such as education,
13 health care, and religious training. The Agreement shall
14 further specify a procedure by which proposed changes, disputes
15 and alleged breaches may be mediated or otherwise resolved and
16 shall provide for a periodic review of its terms by the
17 parents. In producing a Joint Parenting Agreement, the parents
18 shall be flexible in arriving at resolutions which further the
19 policy of this State as expressed in Sections 102 and 602. For
20 the purpose of assisting the court in making a determination
21 whether an award of joint custody is appropriate, the court may
22 order mediation and may direct that an investigation be
23 conducted pursuant to the provisions of Section 605. If there
24 is a danger to the health or safety of a partner, joint
25 mediation shall not be required by the court. In the event the
26 parents fail to produce a Joint Parenting Agreement, the court
27 may enter an appropriate Joint Parenting Order under the
28 standards of Section 602 which shall specify and contain the
29 same elements as a Joint Parenting Agreement, or it may award
30 sole custody under the standards of Sections 602, 607, and 608.

31 (c) (Blank). ~~The court may enter an order of joint custody~~
32 ~~if it determines that joint custody would be in the best~~
33 ~~interests of the child, taking into account the following:~~

34 ~~(1) the ability of the parents to cooperate effectively~~
35 ~~and consistently in matters that directly affect the joint~~
36 ~~parenting of the child. "Ability of the parents to~~

1 ~~cooperate" means the parents' capacity to substantially~~
2 ~~comply with a Joint Parenting Order. The court shall not~~
3 ~~consider the inability of the parents to cooperate~~
4 ~~effectively and consistently in matters that do not~~
5 ~~directly affect the joint parenting of the child;~~

6 ~~(2) The residential circumstances of each parent; and~~

7 ~~(3) all other factors which may be relevant to the best~~
8 ~~interest of the child.~~

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

13 (1) express agreement of the parties; or

14 (2) order of the court under the standards of this
15 Section.

16 (e) Notwithstanding any other provision of law, access to
17 records and information pertaining to a child, including but
18 not limited to medical, dental, child care and school records,
19 shall not be denied to a parent for the reason that such parent
20 is not the child's custodial parent; however, no parent shall
21 have access to the school records of a child if the parent is
22 prohibited by an order of protection from inspecting or
23 obtaining such records pursuant to the Illinois Domestic
24 Violence Act of 1986, as now or hereafter amended.

25 (Source: P.A. 94-377, eff. 7-29-05.)