



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2595

Introduced 1/20/2006, by Sen. William R. Haine - Pamela J. Althoff - Cheryl Axley - Wendell E. Jones

#### 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. Provides that there is a rebuttable presumption that it is not in the best interest of a child to award custody to a parent who has been convicted of a crime that is in one of several designated categories (including battery, unlawful restraint, and stalking), convicted of a crime that resulted in serious physical injury to a family or household member, or determined by a court order to have violated an order of protection. The presumption can be rebutted by a preponderance of the evidence that the parent has completed a partner abuse program; alcohol and drug screening, if the court deems the screening to be appropriate, and alcohol or drug counseling or treatment, if applicable; all of the factors weigh in the parent's favor; and there is little likelihood of any future injury to the child. If the presumption is rebutted, the court shall state the evidence relied upon. If the presumption is not rebutted, custody shall be with the other parent, provided that is in the best interest of the child. If the presumptions for both parents are not rebutted, the court may award custody to one parent, if to do so is in the best interest of the child. Deletes from the list of relevant factors to consider in the determination of the best interest of the child, the willingness and ability of each parent to facilitate and encourage a continuing relationship between the other parent and the child.

LRB094 15644 AJO 53921 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; and

31 (8) (Blank). ~~the willingness and ability of each parent~~  
32 ~~to 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 (b) The court shall not consider conduct of a present or  
9 proposed custodian that does not affect his relationship to the  
10 child.

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

18 (d) (1) There is a rebuttable presumption that it is not in  
19 the best interest of the child for the court to grant  
20 custody, either joint or sole, to a parent:

21 (A) if that parent was convicted of a crime under  
22 the Criminal Code of 1961, that is included in this  
23 list of offenses: unlawful restraint, aggravated  
24 unlawful restraint, aggravated assault, battery,  
25 domestic battery, aggravated domestic battery,  
26 aggravated battery, heinous battery, aggravated  
27 battery of a child, stalking, aggravated stalking, or  
28 cyberstalking;

29 (B) if that parent was convicted of any crime that  
30 resulted in serious physical injury to any family or  
31 household member, as that term is defined by the  
32 Illinois Domestic Violence Act of 1986; or

33 (C) if a court order determined that the parent  
34 violated an order of protection entered under the  
35 Illinois Domestic Violence Act of 1986, or violated an  
36 order of protection entered under the Code of Criminal

1 Procedure of 1963, or

2 (D) if that parent was convicted of a crime  
3 pursuant to a statute of another state, tribe, or  
4 United States territory that is substantially similar  
5 to a crime described in subparagraph (A) or  
6 subparagraph (B) of paragraph 1 of subsection (d); or

7 (E) if a court order determined that the parent  
8 violated an order of protection or a substantially  
9 similar order entered under a statute of another state,  
10 tribe, or United States territory that is  
11 substantially similar to the Illinois Domestic  
12 Violence Act of 1986 or Article 112A Domestic Violence;  
13 Order of Protection in the Code of Criminal Procedure  
14 of 1963.

15 (2) This presumption may be rebutted only by a  
16 preponderance of the evidence that:

17 (A) the parent who was convicted of one of the  
18 crimes described in subparagraph (A) or subparagraph  
19 (B) of paragraph 1 of subsection (d) has successfully  
20 completed, since the conviction, a Partner Abuse  
21 Intervention Program that is in compliance with the  
22 Illinois Department of Human Services State standards;

23 (B) complete alcohol and drug screening  
24 assessments, if the court finds that it is appropriate  
25 for the parent to complete alcohol and drug screening  
26 assessments by a certified substance abuse counselor  
27 or program, and

28 (1) either or both screening assessments  
29 recommend counseling, treatment, or other measures  
30 and the parent has successfully met all of the  
31 recommendations that were made to the parent, or

32 (2) the alcohol and drug screening assessments  
33 conclude that there is no need for that parent to  
34 undergo any counseling, treatment, or other  
35 measures;

36 (C) all of the factors in Section 602 and the

1 recent history of the parent outweighs the violation of  
2 an order of protection, the criminal conviction, and,  
3 if applicable, the reasons for the assessments'  
4 recommendations for alcohol or drug counseling,  
5 treatment, or other measures; and

6 (D) there is little likelihood of future injury to  
7 the child or other party, notwithstanding the  
8 violation of an order of protection, conviction of the  
9 parent for a crime described in subparagraph (A) or  
10 subparagraph (B) of paragraph 1 of subsection (d), or,  
11 if applicable, the reasons for the assessments'  
12 recommendations for alcohol or drug counseling,  
13 treatment, or other measures.

14 (3) In a case where the presumption described in paragraph  
15 (1) of subsection (d) is rebutted, the court shall state in  
16 writing the evidence upon which the court relied for the  
17 determination that the presumption was rebutted and the  
18 findings of the court relating to the reason that custody with  
19 that parent, if so determined by the court, is in the best  
20 interest of the child.

21 (4) If there is no evidence against either parent of a  
22 conviction of a listed crime or a court order that determined  
23 that either parent's violated an order of protection, and  
24 whenever it appears that both parents are fit, the court may  
25 enter an order of joint custody taking into account the best  
26 interest of the child and the other applicable provisions of  
27 this Act. If a rebuttable presumption under paragraph (1) of  
28 subsection (d) exists and that presumption is not rebutted,  
29 sole custody shall be granted to the other parent, provided  
30 that no unrebutted presumption exists as to the other parent  
31 and no other evidence leads the court to conclude that an order  
32 of sole custody with that parent would be contrary to the best  
33 interest of the child. If a rebuttable presumption exists as to  
34 each parent under paragraph (1) of subsection (d) and that  
35 presumption is not rebutted as to either parent, sole custody  
36 may be granted to one of the parents taking into account the

1 best interest of the child, other applicable provisions of this  
2 Act and, provided that no un rebutted presumption exists as to  
3 the other parent and no other evidence leads the court to  
4 conclude that an order of sole custody with that parent would  
5 be contrary to the best interest of the child.

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

8 (750 ILCS 5/602.1) (from Ch. 40, par. 602.1)

9 Sec. 602.1. (a) The dissolution of marriage, the  
10 declaration of invalidity of marriage, the legal separation of  
11 the parents, or the parents living separate and apart shall not  
12 diminish parental powers, rights, and responsibilities except  
13 as the court for good reason may determine under the standards  
14 of Section 602.

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

1 parents fail to produce a Joint Parenting Agreement, the court  
2 may enter an appropriate Joint Parenting Order under the  
3 standards of Section 602 which shall specify and contain the  
4 same elements as a Joint Parenting Agreement, or it may award  
5 sole custody under the standards of Sections 602, 607, and 608.

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

9 ~~(1) the ability of the parents to cooperate effectively  
10 and consistently in matters that directly affect the joint  
11 parenting of the child. "Ability of the parents to  
12 cooperate" means the parents' capacity to substantially  
13 comply with a Joint Parenting Order. The court shall not  
14 consider the inability of the parents to cooperate  
15 effectively and consistently in matters that do not  
16 directly affect the joint parenting of the child;~~

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

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

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

24 (1) express agreement of the parties; or

25 (2) order of the court under the standards of this  
26 Section.

27 (e) Notwithstanding any other provision of law, access to  
28 records and information pertaining to a child, including but  
29 not limited to medical, dental, child care and school records,  
30 shall not be denied to a parent for the reason that such parent  
31 is not the child's custodial parent; however, no parent shall  
32 have access to the school records of a child if the parent is  
33 prohibited by an order of protection from inspecting or  
34 obtaining such records pursuant to the Illinois Domestic  
35 Violence Act of 1986, as now or hereafter amended.

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