



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3486

Introduced 2/28/2007, by Rep. Paul D. Froehlich

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607
750 ILCS 5/609

from Ch. 40, par. 607
from Ch. 40, par. 609

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that upon motion by either parent, the court may grant a reasonable amount of electronic communication at reasonable hours to a parent at times during which the child is not in the parent's physical custody. Sets forth provisions governing such electronic communication. Provides that the court may not use the availability of electronic communication as a factor in support of the request of a custodial parent to remove a child from the area or the State, and that the parent seeking removal shall be responsible for the costs of providing any court ordered electronic communication equipment. Effective immediately.

LRB095 10239 AJ0 30453 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 607 and 609 as
6 follows:

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

8 Sec. 607. Visitation; electronic communication.

9 (a) In this Section:

10 "Visitation" means the in-person time spent between a child
11 and the child's parent, including any electronic
12 communication.

13 "Electronic communication" means time that a parent spends
14 with his or her child during which the child is not in the
15 parent's actual physical custody, but which is facilitated by
16 the use of communication tools, including without limitation
17 the telephone, a webcam, electronic mail (e-mail), instant
18 messaging, video conferencing, or other wired or wireless
19 technologies via the Internet or another medium of
20 communication.

21 (a-1) ~~(a)~~ A parent not granted custody of the child is
22 entitled to reasonable visitation and electronic communication
23 rights unless the court finds, after a hearing, that visitation

1 or electronic communication would endanger seriously the
2 child's physical, mental, moral or emotional health. If the
3 custodian's street address is not identified, pursuant to
4 Section 708, the court shall require the parties to identify
5 reasonable alternative arrangements for visitation and
6 electronic communication by a non-custodial parent, including,
7 but not limited to, visitation and electronic communication of
8 the minor child at the residence of another person or at a
9 local public or private facility.

10 (a-2) Upon motion by either parent, the court may grant a
11 reasonable amount of electronic communication at reasonable
12 hours to a parent at times during which the child is not in the
13 parent's physical custody. If a court enters an order that
14 includes electronic communication with the child, each of the
15 following provisions shall apply:

16 (1) Electronic communication may not be used as a
17 replacement or as a substitute for a parent's in-person
18 visitation time with the child.

19 (2) The court may not use the availability of
20 electronic communication as a factor in support of a
21 modification of a physical custody or visitation order.

22 (3) The court shall determine the equipment that is
23 available to the parties for the purposes of electronic
24 communication and may order either party to obtain the
25 necessary equipment for the facilitation of electronic
26 communication and, except as provided in Section 609 of

1 this Act, determine which party shall be responsible for
2 the costs of acquiring such equipment.

3 (4) Any supervised visitation shall include any
4 electronic visitation between a child and the supervised
5 parent.

6 (5) Each parent shall furnish the other parent with the
7 e-mail address and any other electronic communication
8 access information of the child and any change in the
9 e-mail address or other electronic communication access
10 information within 48 hours of the change.

11 (6) Each parent shall permit and encourage, at
12 reasonable hours and for a reasonable duration, reasonable
13 and uncensored electronic communication if the equipment
14 to facilitate such communication is reasonably available.
15 If the parties cannot reach an agreement as to whether or
16 not the equipment is reasonably available, the court shall
17 make that determination. In making such determination, the
18 court shall consider each of the following factors:

19 (1) The best interests of the child.

20 (2) Each parent's ability to pay any additional
21 expenses for the facilitation of electronic
22 communication.

23 (3) Any other factors the court considers
24 material.

25 (a-3) Grandparents, great-grandparents, and siblings of a
26 minor child, who is one year old or older, have standing to

1 bring an action in circuit court by petition, requesting
2 visitation in accordance with this Section. The term "sibling"
3 in this Section means a brother, sister, stepbrother, or
4 stepsister of the minor child. Grandparents,
5 great-grandparents, and siblings also have standing to file a
6 petition for visitation rights in a pending dissolution
7 proceeding or any other proceeding that involves custody or
8 visitation issues, requesting visitation in accordance with
9 this Section. A petition for visitation with a child by a
10 person other than a parent must be filed in the county in which
11 the child resides. Nothing in this subsection (a-3) and
12 subsection (a-5) of this Section shall apply to a child in
13 whose interests a petition is pending under Section 2-13 of the
14 Juvenile Court Act of 1987 or a petition to adopt an unrelated
15 child is pending under the Adoption Act.

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

21 (A) (Blank);

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

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

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

6 (B) the child's mother and father are divorced or have
7 been legally separated from each other or there is pending
8 a dissolution proceeding involving a parent of the child or
9 another court proceeding involving custody or visitation
10 of the child (other than any adoption proceeding of an
11 unrelated child) and at least one parent does not object to
12 the grandparent, great-grandparent, or sibling having
13 visitation with the child. The visitation of the
14 grandparent, great-grandparent, or sibling must not
15 diminish the visitation of the parent who is not related to
16 the grandparent, great-grandparent, or sibling seeking
17 visitation;

18 (C) (Blank);

19 (D) the child is born out of wedlock, the parents are
20 not living together, and the petitioner is a maternal
21 grandparent, great-grandparent, or sibling of the child
22 born out of wedlock; or

23 (E) the child is born out of wedlock, the parents are
24 not living together, the petitioner is a paternal
25 grandparent, great-grandparent, or sibling, and the
26 paternity has been established by a court of competent

1 jurisdiction.

2 (2) Any visitation rights granted pursuant to this Section
3 before the filing of a petition for adoption of a child shall
4 automatically terminate by operation of law upon the entry of
5 an order terminating parental rights or granting the adoption
6 of the child, whichever is earlier. If the person or persons
7 who adopted the child are related to the child, as defined by
8 Section 1 of the Adoption Act, any person who was related to
9 the child as grandparent, great-grandparent, or sibling prior
10 to the adoption shall have standing to bring an action pursuant
11 to this Section requesting visitation with the child.

12 (3) In making a determination under this subsection (a-5),
13 there is a rebuttable presumption that a fit parent's actions
14 and decisions regarding grandparent, great-grandparent, or
15 sibling visitation are not harmful to the child's mental,
16 physical, or emotional health. The burden is on the party
17 filing a petition under this Section to prove that the parent's
18 actions and decisions regarding visitation times are harmful to
19 the child's mental, physical, or emotional health.

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

22 (A) the preference of the child if the child is
23 determined to be of sufficient maturity to express a
24 preference;

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

26 (C) the mental and physical health of the grandparent,

1 great-grandparent, or sibling;

2 (D) the length and quality of the prior relationship
3 between the child and the grandparent, great-grandparent,
4 or sibling;

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

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

7 (G) the quantity of the visitation time requested and
8 the potential adverse impact that visitation would have on
9 the child's customary activities;

10 (H) whether the child resided with the petitioner for
11 at least 6 consecutive months with or without the current
12 custodian present;

13 (I) whether the petitioner had frequent or regular
14 contact or visitation with the child for at least 12
15 consecutive months;

16 (J) any other fact that establishes that the loss of
17 the relationship between the petitioner and the child is
18 likely to harm the child's mental, physical, or emotional
19 health; and

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

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.

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

8 (2) The court shall not modify an order that grants
9 visitation to a grandparent, great-grandparent, or sibling
10 unless it finds by clear and convincing evidence, upon the
11 basis of facts that have arisen since the prior visitation
12 order or that were unknown to the court at the time of entry of
13 the prior visitation, that a change has occurred in the
14 circumstances of the child or his or her custodian, and that
15 the modification is necessary to protect the mental, physical,
16 or emotional health of the child. The court shall state in its
17 decision specific findings of fact in support of its
18 modification or termination of the grandparent,
19 great-grandparent, or sibling visitation. A child's parent may
20 always petition to modify visitation upon changed
21 circumstances when necessary to promote the child's best
22 interest.

23 (3) Attorney fees and costs shall be assessed against a
24 party seeking modification of the visitation order if the court
25 finds that the modification action is vexatious and constitutes
26 harassment.

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

3 (b) (1) (Blank.)

4 (1.5) The Court may grant reasonable visitation privileges
5 to a stepparent upon petition to the court by the stepparent,
6 with notice to the parties required to be notified under
7 Section 601 of this Act, if the court determines that it is in
8 the best interests and welfare of the child, and may issue any
9 necessary orders to enforce those visitation privileges. A
10 petition for visitation privileges may be filed under this
11 paragraph (1.5) whether or not a petition pursuant to this Act
12 has been previously filed or is currently pending if the
13 following circumstances are met:

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

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

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

19 (D) the child wishes to have reasonable visitation with
20 the stepparent; and

21 (E) the stepparent was providing for the care, control,
22 and welfare to the child prior to the initiation of the
23 petition for visitation.

24 (2) (A) A petition for visitation privileges shall not be
25 filed pursuant to this subsection (b) by the parents or
26 grandparents of a putative father if the paternity of the

1 putative father has not been legally established.

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

12 (3) (Blank).

13 (c) The court may modify an order granting or denying
14 visitation rights of a parent whenever modification would serve
15 the best interest of the child; but the court shall not
16 restrict a parent's visitation rights unless it finds that the
17 visitation would endanger seriously the child's physical,
18 mental, moral or emotional health.

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

23 (1) If an order has been entered granting visitation
24 privileges with the child to a grandparent or
25 great-grandparent who is related to the child through the
26 non-custodial parent, the visitation privileges of the

1 grandparent or great-grandparent may be revoked if:

2 (i) a court has entered an order prohibiting the
3 non-custodial parent from any contact with the child,
4 and the grandparent or great-grandparent is found to
5 have used his or her visitation privileges to
6 facilitate contact between the child and the
7 non-custodial parent; or

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

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

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

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

1 under this order shall be permanently revoked."

2 (e) No parent, not granted custody of the child, or
3 grandparent, or great-grandparent, or stepparent, or sibling
4 of any minor child, convicted of any offense involving an
5 illegal sex act perpetrated upon a victim less than 18 years of
6 age including but not limited to offenses for violations of
7 Article 12 of the Criminal Code of 1961, is entitled to
8 visitation rights while incarcerated or while on parole,
9 probation, conditional discharge, periodic imprisonment, or
10 mandatory supervised release for that offense, and upon
11 discharge from incarceration for a misdemeanor offense or upon
12 discharge from parole, probation, conditional discharge,
13 periodic imprisonment, or mandatory supervised release for a
14 felony offense, visitation shall be denied until the person
15 successfully completes a treatment program approved by the
16 court.

17 (f) Unless the court determines, after considering all
18 relevant factors, including but not limited to those set forth
19 in Section 602(a), that it would be in the best interests of
20 the child to allow visitation, the court shall not enter an
21 order providing visitation rights and pursuant to a motion to
22 modify visitation shall revoke visitation rights previously
23 granted to any person who would otherwise be entitled to
24 petition for visitation rights under this Section who has been
25 convicted of first degree murder of the parent, grandparent,
26 great-grandparent, or sibling of the child who is the subject

1 of the order. Until an order is entered pursuant to this
2 subsection, no person shall visit, with the child present, a
3 person who has been convicted of first degree murder of the
4 parent, grandparent, great-grandparent, or sibling of the
5 child without the consent of the child's parent, other than a
6 parent convicted of first degree murder as set forth herein, or
7 legal guardian.

8 (g) (Blank).

9 (Source: P.A. 93-911, eff. 1-1-05; 94-229, eff. 1-1-06;
10 94-1026, eff. 1-1-07.)

11 (750 ILCS 5/609) (from Ch. 40, par. 609)

12 Sec. 609. Leave to Remove Children.) (a) The court may
13 grant leave, before or after judgment, to any party having
14 custody of any minor child or children to remove such child or
15 children from Illinois whenever such approval is in the best
16 interests of such child or children. The burden of proving that
17 such removal is in the best interests of such child or children
18 is on the party seeking the removal. When such removal is
19 permitted, the court may require the party removing such child
20 or children from Illinois to give reasonable security
21 guaranteeing the return of such children.

22 (b) Before a minor child is temporarily removed from
23 Illinois, the parent responsible for the removal shall inform
24 the other parent, or the other parent's attorney, of the
25 address and telephone number where the child may be reached

1 during the period of temporary removal, and the date on which
2 the child shall return to Illinois.

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

5 (c) The court may not use the availability of electronic
6 communication as a factor in support of the request of a
7 custodial parent to remove a child from the area or the State.

8 (d) The parent seeking removal shall be responsible for the
9 costs of providing any court ordered electronic communication
10 equipment.

11 (e) In this Section, "electronic communication" has the
12 meaning given to that term in Section 607 of this Act.

13 (Source: P.A. 85-768.)

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.