



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB2938

Introduced 2/19/2021, by Rep. Avery Bourne

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/602.9

Amends the Illinois Marriage and Dissolution of Marriage Act. Requires that proceedings concerning a petition for visitation brought by a grandparent or great-grandparent be given priority in being set for a hearing, and that a decision be rendered within 6 months of the petition for visitation being filed, unless the parties agree otherwise. Requires the court to set the first hearing date for a petition for visitation within 45 days of filing the petition. Requires that further hearing dates be set in court within 45 days of the prior hearing. Allows the court to impose penalties and sanctions on any party that intentionally or recklessly causes an undue delay in proceedings regarding a visitation petition brought by a grandparent or great-grandparent.

LRB102 10266 LNS 15592 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 Section 602.9 as follows:

6 (750 ILCS 5/602.9)

7 Sec. 602.9. Visitation by certain non-parents.

8 (a) As used in this Section:

9 (1) "electronic communication" means time that a  
10 grandparent, great-grandparent, sibling, or step-parent  
11 spends with a child during which the child is not in the  
12 person's actual physical custody, but which is facilitated  
13 by the use of communication tools such as the telephone,  
14 electronic mail, instant messaging, video conferencing or  
15 other wired or wireless technologies via the Internet, or  
16 another medium of communication;

17 (2) "sibling" means a brother or sister either of the  
18 whole blood or the half blood, stepbrother, or stepsister  
19 of the minor child;

20 (3) "step-parent" means a person married to a child's  
21 parent, including a person married to the child's parent  
22 immediately prior to the parent's death; and

23 (4) "visitation" means in-person time spent between a

1 child and the child's grandparent, great-grandparent,  
2 sibling, step-parent, or any person designated under  
3 subsection (d) of Section 602.7. In appropriate  
4 circumstances, visitation may include electronic  
5 communication under conditions and at times determined by  
6 the court.

7 (b) General provisions.

8 (1) An appropriate person, as identified in subsection  
9 (c) of this Section, may bring an action in circuit court  
10 by petition, or by filing a petition in a pending  
11 dissolution proceeding or any other proceeding that  
12 involves parental responsibilities or visitation issues  
13 regarding the child, requesting visitation with the child  
14 pursuant to this Section. If there is not a pending  
15 proceeding involving parental responsibilities or  
16 visitation with the child, the petition for visitation  
17 with the child must be filed in the county in which the  
18 child resides. Notice of the petition shall be given as  
19 provided in subsection (c) of Section 601.2 of this Act.

20 (2) This Section does not apply to a child:

21 (A) in whose interests a petition is pending under  
22 Section 2-13 of the Juvenile Court Act of 1987; or

23 (B) in whose interests a petition to adopt by an  
24 unrelated person is pending under the Adoption Act; or

25 (C) who has been voluntarily surrendered by the  
26 parent or parents, except for a surrender to the

1 Department of Children and Family Services or a foster  
2 care facility; or

3 (D) who has been previously adopted by an  
4 individual or individuals who are not related to the  
5 biological parents of the child or who is the subject  
6 of a pending adoption petition by an individual or  
7 individuals who are not related to the biological  
8 parents of the child; or

9 (E) who has been relinquished pursuant to the  
10 Abandoned Newborn Infant Protection Act.

11 (3) A petition for visitation may be filed under this  
12 Section only if there has been an unreasonable denial of  
13 visitation by a parent and the denial has caused the child  
14 undue mental, physical, or emotional harm.

15 (4) There is a rebuttable presumption that a fit  
16 parent's actions and decisions regarding grandparent,  
17 great-grandparent, sibling, or step-parent visitation are  
18 not harmful to the child's mental, physical, or emotional  
19 health. The burden is on the party filing a petition under  
20 this Section to prove that the parent's actions and  
21 decisions regarding visitation will cause undue harm to  
22 the child's mental, physical, or emotional health.

23 (5) In determining whether to grant visitation, the  
24 court shall consider the following:

25 (A) the wishes of the child, taking into account  
26 the child's maturity and ability to express reasoned

1 and independent preferences as to visitation;

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

3 (C) the mental and physical health of the  
4 grandparent, great-grandparent, sibling, or  
5 step-parent;

6 (D) the length and quality of the prior  
7 relationship between the child and the grandparent,  
8 great-grandparent, sibling, or step-parent;

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

11 (F) the good faith of the person denying  
12 visitation;

13 (G) the quantity of the visitation time requested  
14 and the potential adverse impact that visitation would  
15 have on the child's customary activities;

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

20 (I) whether visitation can be structured in a way  
21 to minimize the child's exposure to conflicts between  
22 the adults.

23 (6) Any visitation rights granted under this Section  
24 before the filing of a petition for adoption of the child  
25 shall automatically terminate by operation of law upon the  
26 entry of an order terminating parental rights or granting

1 the adoption of the child, whichever is earlier. If the  
2 person or persons who adopted the child are related to the  
3 child, as defined by Section 1 of the Adoption Act, any  
4 person who was related to the child as grandparent,  
5 great-grandparent, or sibling prior to the adoption shall  
6 have standing to bring an action under this Section  
7 requesting visitation with the child.

8 (7) The court may order visitation rights for the  
9 grandparent, great-grandparent, sibling, or step-parent  
10 that include reasonable access without requiring overnight  
11 or possessory visitation.

12 (8) Proceedings concerning a petition brought under  
13 this Section by a grandparent or great-grandparent shall  
14 receive priority in being set for a hearing. The court  
15 shall render a decision not later than 6 months after the  
16 petition has been filed, unless the parties agree  
17 otherwise. At the time of filing a petition under this  
18 Section by a grandparent or great-grandparent, the court  
19 shall set the first hearing within 45 days of the petition  
20 being filed, and each subsequent hearing shall be  
21 scheduled within 45 days of the immediately preceding  
22 hearing. If a party intentionally or recklessly causes  
23 undue delay of the proceedings on a petition for  
24 visitation rights brought by a grandparent or  
25 great-grandparent, the court shall impose penalties and  
26 sanctions, including, but not limited to, costs and

1           attorney's fees.

2           (c) Visitation by grandparents, great-grandparents,  
3 step-parents, and siblings.

4           (1) Grandparents, great-grandparents, step-parents,  
5 and siblings of a minor child who is one year old or older  
6 may bring a petition for visitation and electronic  
7 communication under this Section if there is an  
8 unreasonable denial of visitation by a parent that causes  
9 undue mental, physical, or emotional harm to the child and  
10 if at least one of the following conditions exists:

11           (A) the child's other parent is deceased or has  
12 been missing for at least 90 days. For the purposes of  
13 this subsection a parent is considered to be missing  
14 if the parent's location has not been determined and  
15 the parent has been reported as missing to a law  
16 enforcement agency; or

17           (B) a parent of the child is incompetent as a  
18 matter of law; or

19           (C) a parent has been incarcerated in jail or  
20 prison for a period in excess of 90 days immediately  
21 prior to the filing of the petition; or

22           (D) the child's parents have been granted a  
23 dissolution of marriage or have been legally separated  
24 from each other or there is pending a dissolution  
25 proceeding involving a parent of the child or another  
26 court proceeding involving parental responsibilities

1 or visitation of the child (other than an adoption  
2 proceeding of an unrelated child, a proceeding under  
3 Article II of the Juvenile Court Act of 1987, or an  
4 action for an order of protection under the Illinois  
5 Domestic Violence Act of 1986 or Article 112A of the  
6 Code of Criminal Procedure of 1963) and at least one  
7 parent does not object to the grandparent,  
8 great-grandparent, step-parent, or sibling having  
9 visitation with the child. The visitation of the  
10 grandparent, great-grandparent, step-parent, or  
11 sibling must not diminish the parenting time of the  
12 parent who is not related to the grandparent,  
13 great-grandparent, step-parent, or sibling seeking  
14 visitation; or

15 (E) (i) the child is born to parents who are not  
16 married to each other; (ii) the parents are not living  
17 together; (iii) the petitioner is a grandparent,  
18 great-grandparent, step-parent, or sibling of the  
19 child; and (iv) the parent-child relationship has been  
20 legally established. For purposes of this subdivision  
21 (E), if the petitioner is a grandparent or  
22 great-grandparent, the parent-child relationship need  
23 be legally established only with respect to the parent  
24 who is related to the grandparent or  
25 great-grandparent. For purposes of this subdivision  
26 (E), if the petitioner is a step-parent, the



1 parent-child relationship need be legally established  
2 only with respect to the parent who is married to the  
3 petitioner or was married to the petitioner  
4 immediately before the parent's death.

5 (2) In addition to the factors set forth in  
6 subdivision (b)(5) of this Section, the court should  
7 consider:

8 (A) whether the child resided with the petitioner  
9 for at least 6 consecutive months with or without a  
10 parent present;

11 (B) whether the child had frequent and regular  
12 contact or visitation with the petitioner for at least  
13 12 consecutive months; and

14 (C) whether the grandparent, great-grandparent,  
15 sibling, or step-parent was a primary caretaker of the  
16 child for a period of not less than 6 consecutive  
17 months within the 24-month period immediately  
18 preceding the commencement of the proceeding.

19 (3) An order granting visitation privileges under this  
20 Section is subject to subsections (c) and (d) of Section  
21 603.10.

22 (4) A petition for visitation privileges may not be  
23 filed pursuant to this subsection (c) by the parents or  
24 grandparents of a parent of the child if parentage between  
25 the child and the related parent has not been legally  
26 established.

1 (d) Modification of visitation orders.

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

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

26 (3) Notice of a motion requesting modification of a

1 visitation order shall be provided as set forth in  
2 subsection (c) of Section 601.2 of this Act.

3 (4) Attorney's fees and costs shall be assessed  
4 against a party seeking modification of the visitation  
5 order if the court finds that the modification action is  
6 vexatious and constitutes harassment.

7 (e) No child's grandparent, great-grandparent, sibling, or  
8 step-parent, or any person to whom the court is considering  
9 granting visitation privileges pursuant to subsection (d) of  
10 Section 602.7, who was convicted of any offense involving an  
11 illegal sex act perpetrated upon a victim less than 18 years of  
12 age including, but not limited to, offenses for violations of  
13 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70,  
14 or Article 12 of the Criminal Code of 1961 or the Criminal Code  
15 of 2012, is entitled to visitation while incarcerated or while  
16 on parole, probation, conditional discharge, periodic  
17 imprisonment, or mandatory supervised release for that  
18 offense, and upon discharge from incarceration for a  
19 misdemeanor offense or upon discharge from parole, probation,  
20 conditional discharge, periodic imprisonment, or mandatory  
21 supervised release for a felony offense. Visitation shall be  
22 denied until the person successfully completes a treatment  
23 program approved by the court. Upon completion of treatment,  
24 the court may deny visitation based on the factors listed in  
25 subdivision (b) (5) of this Section.

26 (f) No child's grandparent, great-grandparent, sibling, or

1 step-parent, or any person to whom the court is considering  
2 granting visitation privileges pursuant to subsection (d) of  
3 Section 602.7, may be granted visitation if he or she has been  
4 convicted of first degree murder of a parent, grandparent,  
5 great-grandparent, or sibling of the child who is the subject  
6 of the visitation request. Pursuant to a motion to modify  
7 visitation, the court shall revoke visitation rights  
8 previously granted to any person who would otherwise be  
9 entitled to petition for visitation rights under this Section  
10 or granted visitation under subsection (d) of Section 602.7,  
11 if the person has been convicted of first degree murder of a  
12 parent, grandparent, great-grandparent, or sibling of the  
13 child who is the subject of the visitation order. Until an  
14 order is entered pursuant to this subsection, no person may  
15 visit, with the child present, a person who has been convicted  
16 of first degree murder of the parent, grandparent,  
17 great-grandparent, or sibling of the child without the consent  
18 of the child's parent, other than a parent convicted of first  
19 degree murder as set forth herein, or legal guardian.

20 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17;  
21 100-706, eff. 1-1-19.)