



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1414

by Rep. John D. Cavaletto

SYNOPSIS AS INTRODUCED:

750 ILCS 5/607

from Ch. 40, par. 607

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a grandparent may file a petition for reasonable visitation rights to a minor child living in a dual-parent household if there is an unreasonable denial of visitation by a parent and the grandparent has maintained a significant beneficial relationship with the child for a period of 12 months or more immediately preceding the severance of that relationship by the parent. Provides that the relationship must have been unreasonably severed by the parent or parents for reasons other than abuse or presence of a danger of substantial harm to the child. Provides that a presumption of a significant beneficial relationship arises when: (A) the child resided with the petitioner grandparent for at least 6 consecutive months with or without the current custodian present during the 12-month period; (B) the petitioner grandparent had frequent or regular contact or visitation with the child throughout the 12-month period; or (C) the petitioner grandparent was the primary caretaker of the child for a period or not less than 6 consecutive months within the 12-month period.

LRB099 03641 HEP 23649 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 607 as follows:

6 (750 ILCS 5/607) (from Ch. 40, par. 607)

7 Sec. 607. Visitation.

8 (a) A parent not granted custody of the child is entitled
9 to reasonable visitation rights unless the court finds, after a
10 hearing, that visitation would endanger seriously the child's
11 physical, mental, moral or emotional health. If the custodian's
12 street address is not identified, pursuant to Section 708, the
13 court shall require the parties to identify reasonable
14 alternative arrangements for visitation by a non-custodial
15 parent, including but not limited to visitation of the minor
16 child at the residence of another person or at a local public
17 or private facility.

18 (1) "Visitation" means in-person time spent between a
19 child and the child's parent. In appropriate
20 circumstances, it may include electronic communication
21 under conditions and at times determined by the court.

22 (2) "Electronic communication" means time that a
23 parent spends with his or her child during which the child

1 is not in the parent's actual physical custody, but which
2 is facilitated by the use of communication tools such as
3 the telephone, electronic mail, instant messaging, video
4 conferencing or other wired or wireless technologies via
5 the Internet, or another medium of communication.

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

24 (a-5) (1) Except as otherwise provided in this subsection
25 (a-5), any grandparent, great-grandparent, or sibling may file
26 a petition for visitation rights to a minor child if there is

1 an unreasonable denial of visitation by a parent and at least
2 one of the following conditions exists:

3 (A) (Blank);

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

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

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

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

26 (C) (Blank);

1 (D) the child is born out of wedlock, the parents are
2 not living together, and the petitioner is a maternal
3 grandparent, great-grandparent, or sibling of the child
4 born out of wedlock; or

5 (E) the child is born out of wedlock, the parents are
6 not living together, the petitioner is a paternal
7 grandparent, great-grandparent, or sibling, and the
8 paternity has been established by a court of competent
9 jurisdiction.

10 (1.5) A grandparent may file a petition for reasonable
11 visitation rights to a minor child living in a dual-parent
12 household if there is an unreasonable denial of visitation by a
13 parent and the grandparent has maintained a significant
14 beneficial relationship with the child for a period of 12
15 months or more immediately preceding the severance of that
16 relationship by the parent. The relationship must have been
17 unreasonably severed by the parent or parents for reasons other
18 than abuse or presence of a danger of substantial harm to the
19 child. A presumption of a significant beneficial relationship
20 arises when:

21 (A) the child resided with the petitioner grandparent
22 for at least 6 consecutive months with or without the
23 current custodian present during the 12-month period;

24 (B) the petitioner grandparent had frequent or regular
25 contact or visitation with the child throughout the
26 12-month period; or

1 (C) the petitioner grandparent was the primary
2 caretaker of the child for a period or not less than 6
3 consecutive months within the 12-month period.

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

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

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

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

- 1 (B) the mental and physical health of the child;
- 2 (C) the mental and physical health of the grandparent,
3 great-grandparent, or sibling;
- 4 (D) the length and quality of the prior relationship
5 between the child and the grandparent, great-grandparent,
6 or sibling;
- 7 (E) the good faith of the party in filing the petition;
- 8 (F) the good faith of the person denying visitation;
- 9 (G) the quantity of the visitation time requested and
10 the potential adverse impact that visitation would have on
11 the child's customary activities;
- 12 (H) whether the child resided with the petitioner for
13 at least 6 consecutive months with or without the current
14 custodian present;
- 15 (I) whether the petitioner had frequent or regular
16 contact or visitation with the child for at least 12
17 consecutive months;
- 18 (J) any other fact that establishes that the loss of
19 the relationship between the petitioner and the child is
20 likely to harm the child's mental, physical, or emotional
21 health; and
- 22 (K) whether the grandparent, great-grandparent, or
23 sibling was a primary caretaker of the child for a period
24 of not less than 6 consecutive months.
- 25 (5) The court may order visitation rights for the
26 grandparent, great-grandparent, or sibling that include

1 reasonable access without requiring overnight or possessory
2 visitation.

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

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

25 (3) Attorney fees and costs shall be assessed against a
26 party seeking modification of the visitation order if the court

1 finds that the modification action is vexatious and constitutes
2 harassment.

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

5 (b) (1) (Blank.)

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

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

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

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

21 (D) the child wishes to have reasonable visitation with
22 the stepparent; and

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

26 (2) (A) A petition for visitation privileges shall not be

1 filed pursuant to this subsection (b) by the parents or
2 grandparents of a putative father if the paternity of the
3 putative father has not been legally established.

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

14 (3) (Blank).

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

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

25 (1) If an order has been entered granting visitation
26 privileges with the child to a grandparent or

1 great-grandparent who is related to the child through the
2 non-custodial parent, the visitation privileges of the
3 grandparent or great-grandparent may be revoked if:

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

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

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

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

24 "If the (grandparent or great-grandparent, whichever
25 is applicable) who has been granted visitation privileges
26 under this order uses the visitation privileges to

1 facilitate contact between the child and the child's
2 non-custodial parent, the visitation privileges granted
3 under this order shall be permanently revoked."

4 (e) No parent, not granted custody of the child, or
5 grandparent, or great-grandparent, or stepparent, or sibling
6 of any minor child, convicted of any offense involving an
7 illegal sex act perpetrated upon a victim less than 18 years of
8 age including but not limited to offenses for violations of
9 Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60, 11-1.70,
10 or Article 12 of the Criminal Code of 1961 or the Criminal Code
11 of 2012, is entitled to visitation rights while incarcerated or
12 while on parole, probation, conditional discharge, periodic
13 imprisonment, or mandatory supervised release for that
14 offense, and upon discharge from incarceration for a
15 misdemeanor offense or upon discharge from parole, probation,
16 conditional discharge, periodic imprisonment, or mandatory
17 supervised release for a felony offense, visitation shall be
18 denied until the person successfully completes a treatment
19 program approved by the court.

20 (f) Unless the court determines, after considering all
21 relevant factors, including but not limited to those set forth
22 in Section 602(a), that it would be in the best interests of
23 the child to allow visitation, the court shall not enter an
24 order providing visitation rights and pursuant to a motion to
25 modify visitation shall revoke visitation rights previously
26 granted to any person who would otherwise be entitled to

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

11 (g) (Blank).

12 (h) Upon motion, the court may allow a parent who is
13 deployed or who has orders to be deployed as a member of the
14 United States Armed Forces to designate a person known to the
15 child to exercise reasonable substitute visitation on behalf of
16 the deployed parent, if the court determines that substitute
17 visitation is in the best interest of the child. In determining
18 whether substitute visitation is in the best interest of the
19 child, the court shall consider all of the relevant factors
20 listed in subsection (a) of Section 602 and apply those factors
21 to the person designated as a substitute for the deployed
22 parent for visitation purposes.

23 (Source: P.A. 96-331, eff. 1-1-10; 97-659, eff. 6-1-12;
24 97-1150, eff. 1-25-13.)