



[HB1604](#)

Problem: Visitation Interference

Popular beliefs regarding the relative unimportance of fathers to the well being of children coupled with lax attitudes regarding legislation and enforcement of court-ordered visitation have resulted in the following conditions:

- Overall, approximately 50% of mothers –see no value in the father’s continued contact with his children (pg. 125) [Surviving the Breakup](#) – Joan B. Kelly and Judith S. Wallerstein, Basic Books 1980
- –Mothers may prevent visits to retaliate against the fathers for problems in their marital or post marital relationship (pg. 1015) [Family Ties after Divorce: The Relationship Between Visiting and Paying Support](#) – Judith A. Seltzer, Nora Shaeffer, Hong-wen Charing, University of Wisconsin, Journal of Marriage & the Family, Vol. 51, No. 4, November 1989.
- –40% of mothers reported that they had interfered with the non-custodial father’s visitation on at least one occasion, to punish their ex-spouse (pg. 449) [Frequency of Visitation by Divorced Fathers: Differences in Reports by Fathers and Mothers](#) – Sanford H. Braver, Ph.D., Sharlene A. Wolchik, Ph.D., Irwin M. Sandler, Ph.D., Bruce S. Fogas, Ph.D., Daria Zvetina, M.Ed., American Journal of Orthopsychiatry, 1991
- There is a significant disparity in remedies and sanctions available in the enforcement of visitation interference ([750 ILCS 5/607.1](#)) as compared to that available in the enforcement of child support ([750 ILCS 5/505\(b\)-\(d\)](#)).
- –The court’s failure to enforce or expand visitation agreements were a frequently mentioned complaint (pg. 281) [Increasing Our Understanding of Fathers Who Have Infrequent Contact With Their Children](#) – James R. Dudley, Professor, University North Carolina, under a grant from Temple University, Family Relations, Vol. 4, No. 3, July 1991

Solution: [HB1604](#) (The Steve Watkins Memorial Bill)

- Steve Watkins was a central Illinois non-custodial parent whose visitation was continuously being blocked by the custodial parent despite repeated legal attempts at seeking remedy. He was murdered while attempting to exercise visitation by a family member of the custodial parent. When visitation was granted to the parents of the deceased, the custodial parent moved to another state refusing to comply with the court order.

What is HB1604?

- HB1604 is a bill addressing the problem of visitation interference.
- It sends a clear and unambiguous message that the psychological wellbeing of children is as important as their physical wellbeing.
- It brings remedies and sanctions for visitation interference closer to that of child support non-compliance
 - Allows for the suspension of driver licenses
 - Allows for the suspension of professional licenses
 - Allows for a maximum fine of \$500
 - Allows for the finding of a change of circumstances leading to the potential of custody reversal
 - Allows for incarceration for each day of denied visitation
 - Allows for the posting of a \$5,000 bond
- HB1604 does not create new law but codifies existing law and practices which can better influence behavior.

How does this bill compare to other states?

- Some states define visitation interference synonymously with custody interference (Idaho, Texas, Washington).
- Visitation interference is grounds for suspending alimony or maintenance (New York).
- Penalty fees up to \$ 500.00 (Minnesota, Pennsylvania)
- Penalty fees can be up to \$ 1,000.00 (Montana, Michigan).
- Suspension of licenses (Michigan, Missouri, Pennsylvania, Tennessee, Utah)
- Incarceration (Iowa, Louisiana, Michigan, Nevada, Pennsylvania, Texas)
- Change in custody (Indiana, Louisiana, Maryland, Mississippi, Vermont, Washington)
- The posting of a bond (Kansas, Michigan, Minnesota, Missouri, Oklahoma)
- Child Support Abatement (Missouri)

Missouri hits the nail on the head (§ 452.340 note 7):

-The general assembly finds and declares that it is the public policy of this state that frequent, continuing and meaningful contact with both parents after the parents have separated or dissolved their marriage is in the best interest of the child...

In order to effectuate this public policy, a court with jurisdiction shall enforce visitation, custody and child support orders in the same manner.¶

Aren't there laws already existing in Illinois that address Visitation Interference?

- Section 607.1 addresses the problem as "both are to blame" offering counseling or mediation as remedy.
- Section 607.1 allows for make-up visitation. But offering additional time is ineffective if the party doesn't allow visitation in the first place.
- A review of these remedies employed by five state courts have shown to be ineffectual. (Jessica Pearson and Jean Anhalt, [-Enforcing Visitation Rights](#), The Judges Journal, volume 33, Spring 1994, pg. 3).
- The state's nonchalant handling of these cases sends the wrong message.
- The state needs to state unequivocally that the psychological well being of the child is as important as the child's physical well being — the two are synonymous.

- Although there are criminal statutes addressing visitation interference ([720 ILCS 5/10-5.5](#)) they are beyond the domain of family court where cases are normally heard. It requires a different venue and set of standards. Cases rarely go to the criminal court from civil court.

Isn't all this a bit harsh?

- The sanctions and remedies proposed are similar to that of child support non-compliance.
- The provisions comport with other states; many have much harsher provisions.
- We need to send a clear message that the contumacious disregard of the court and its laws will not be tolerated.

Aren't we hurting the children by these sanctions and remedies?

- When a parent without good reason denies the love and companionship of the other parent, who is hurting the child?
- All it takes to purge oneself of civil contempt and to have all sanctions and remedies reversed is simply by complying with the court order and the law. Yet the parent contumaciously refuses to comply. Who is hurting the child; the law? The state?

What if the child doesn't want to see the other parent? Why should we punish the custodial parent?

- Children cannot determine if to obey a visitation order ([In the Marriage of Charous \(2006\) citing Gitlin's treatise on Illinois family law](#)). "The ultimate responsibility for compliance rests with the custodial parent.... That parent cannot escape duty to comply by shifting responsibility to the children (IBID).
- Contempt is never to punish but to coerce into compliance which follows standard purging protocols.

Does suspending licenses further stress our over-burdened state resources?

- The mechanism for suspending licenses is already in place for child support enforcement.
- No additional state funding needed to implement same mechanism for visitation interference.
- Suspension of licenses for visitation interference can only be initiated by judicial action.
- Last year, only 250 licenses were suspended by judicial action for child support non-compliance. (Office of the Secretary of State statistics 2010).
- [Court-ordered suspensions since 1996 to date \(10/13/11\) is 5933](#)
- Cook County only had 156 court-ordered suspensions since beginning of program in 1996.

How will the custodial parent get to work or drive the child to school?

- Bill allows for limited driving privileges for employment and medical purposes (607.1, c-1.1)

Doesn't incarceration present constitutional due process issues?

- Where civil contempt is at issue the 14th Amendment's Due Process Clause allows a State to provide fewer procedural protections than in a criminal case ([US Supreme Court, Turner vs. Rogers, June 2011](#)).
- The power ...for contempt does not depend on constitutional grant ([IL Supreme Court, People vs. Warren \(Dec. 1996\)](#)).

- A court is vested with inherent power to enforce its orders and preserve its dignity by the use of contempt proceedings. (IBID.)
- The legislation may enact laws which govern judicial practices as long as it does not unduly infringe upon the powers of the court (IL Supreme Court, People vs. Bainter, Dec. 1989).
- Civil contempt occurs when the contemnor fails to do that which the court has ordered
- The purpose is to “coerce” the contemnor into future compliance, not punish.
- After a finding of contempt, by agreeing to allow visitation, the contemnor is able to purge himself/herself of contempt.
- Courts have successfully applied two variations to the civil contempt model addressing the particularities of custody and visitation ([Mahoney, Margaret. The Enforcement of Child Custody Orders By Contempt Remedies. Univ. of Pittsburgh Law Review. Vol 68](#)).
 - Probationary contempt model where the sanction is suspended with the provision that after a certain period of time the court reserves the right of implementing the sanction in the event that the court is not satisfied that the contemnor has shown sufficient appreciation of the significance of the civil contempt citations. (Iowa)
 - Good-faith contempt model where the court looks at the intention of the contemnor regarding future compliance. (Nevada)
- A party’s parenting time might become meaningless if a court cannot enforce a visitation schedule through the use of its contempt powers.
- States that use civil contempt with the threat of detention find it a highly effective tool when nothing else works. It also has the power of deterrence.

Who will take care of the child if the custodial parent is incarcerated?

- There are two parents not one.

How can this bill help women who are trying to protect their children from abusers?

- Since the argument goes that these women are generally too afraid to bring charges out of fear of retribution the bill helps since the court will normally seek to see if there is an affirmative defense.
- This can bring abusers to justice without requiring the mother to initially file charges.

What is the Standard of Proof for a finding of Civil Contempt?

- Under controlling federal case law, the elements necessary to prove civil contempt include:
 - The existence of a valid decree of which the alleged contemnor has knowledge
 - A showing that the decree was in the ‘movant’s’ favor
 - A showing that the alleged contemnor by its actions violated the terms of the decree
 - Had knowledge of such violations
 - A showing that the movant suffered harm as a result
- Each of these elements must be shown by ‘**clear and convincing**’ evidence ([Thornton, Laura A.. Fines, Imprisonment or Both: Civil vs. Criminal Contempt. Virginia Lawyer. Feb. 2001. Pg. 35](#))

Wouldn’t HB1604 make it too easy for custody reversal?

- The standard of proof for a finding of civil contempt is the same as that required for a finding of a change of circumstances (Section 610) --- Clear and Convincing Evidence.
- Best Interests of Child is always the overriding concern under all circumstances and can never be trumped. (Pryweller v. Pryweller (1991/1992)).

- Even if after “the court holds a party in contempt and then finds that a party has engaged in visitation abuse” (HB1604, c-1), a “change in circumstances” (sec. 610) is not sufficient for custody reversal but must also be in compliance with section 602, Best Interests (In re M.M.W, 1998).
- The court cannot modify custody without a petition to modify (IBID).

The Watkins incidence is a single unfortunately extreme case. Why should it drive policy?

- This bill applies way beyond a particular case
- Visitation Interference is pervasive.
- Visitation interference effects approximately 6 million children nationwide (Lucy Frank, -Rights For Fathers Are Critical For Child’s Mental Health, 2009-09-30 http://www.ideamarketers.com/?Rights_For_Fathers_Are_Critical_For_Childs_Mental_Health&articleid=733147&from=PROFILE)
- Interviewing more than one hundred children researchers concluded that in most cases it was true that visitation was blocked, and that there was no justification for it. (pg. 495) Cheryl D. Lee, John Shaugessy, and Joel K. Bankes, -[Impact of Expedited Visitation](#)-, Family and Conciliation Courts Review 33:4 October 1995
- It is the result of the confluence of various factors including popular beliefs and inadequate state intervention.

The problem seems intractable. Why even bother?

- The state spends more on child support enforcement than what it receives from its efforts. Are they giving up?
- Law does affect behavior; weak laws send the wrong message.
- A remedy is possible with all multidirectional approach which includes a specified hierarchy of penalties for violating the court order, clearly enumerated dates, times, and conditions of visitation, and precise authorizations to law enforcement officers to execute visitation transfers. (Ira Daniel Turkat, Ph.D., -[Management of Visitation Interference](#)-, The Judges Journal, volume 36, Spring 1997, pgs. 17-47)

HB1604 will go a long way to change popular beliefs, legislative and judicial action, and parental behavior. Your support is essential.