



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3706

Introduced 2/25/2009, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-28

from Ch. 37, par. 802-28

705 ILCS 405/2-34 new

Amends the Juvenile Court Act of 1987 relating to abused, neglected, and dependent minors. Provides that when parental rights have been terminated for a minimum of 3 years and the child who is the subject of the permanency hearing is 13 years old or older and is not currently placed in a placement likely to achieve permanency, the Department of Children and Family Services shall make reasonable efforts to locate parents whose rights have been terminated, except when the Court determines that those efforts would be futile or inconsistent with the subject child's best interests. Provides that the Department shall assess the appropriateness of the parent whose rights have been terminated, and shall, as appropriate foster and support connections between the parent whose rights have been terminated and the youth. The Department shall document its determinations and efforts to foster connections in the child's case plan. Establishes procedures for a parent whose parental rights were terminated to file a motion to reinstate parental rights. Provides that the burden of proof shall be on the movant.

LRB096 09109 RLC 21888 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by
5 changing Section 2-28 and by adding Section 2-34 as follows:

6 (705 ILCS 405/2-28) (from Ch. 37, par. 802-28)
7 Sec. 2-28. Court review.

8 (1) The court may require any legal custodian or guardian
9 of the person appointed under this Act to report periodically
10 to the court or may cite him into court and require him or his
11 agency, to make a full and accurate report of his or its doings
12 in behalf of the minor. The custodian or guardian, within 10
13 days after such citation, shall make the report, either in
14 writing verified by affidavit or orally under oath in open
15 court, or otherwise as the court directs. Upon the hearing of
16 the report the court may remove the custodian or guardian and
17 appoint another in his stead or restore the minor to the
18 custody of his parents or former guardian or custodian.
19 However, custody of the minor shall not be restored to any
20 parent, guardian or legal custodian in any case in which the
21 minor is found to be neglected or abused under Section 2-3 or
22 dependent under Section 2-4 of this Act, unless the minor can
23 be cared for at home without endangering the minor's health or

1 safety and it is in the best interests of the minor, and if
2 such neglect, abuse, or dependency is found by the court under
3 paragraph (1) of Section 2-21 of this Act to have come about
4 due to the acts or omissions or both of such parent, guardian
5 or legal custodian, until such time as an investigation is made
6 as provided in paragraph (5) and a hearing is held on the issue
7 of the fitness of such parent, guardian or legal custodian to
8 care for the minor and the court enters an order that such
9 parent, guardian or legal custodian is fit to care for the
10 minor.

11 (2) The first permanency hearing shall be conducted by the
12 judge. Subsequent permanency hearings may be heard by a judge
13 or by hearing officers appointed or approved by the court in
14 the manner set forth in Section 2-28.1 of this Act. The initial
15 hearing shall be held (a) within 12 months from the date
16 temporary custody was taken, (b) if the parental rights of both
17 parents have been terminated in accordance with the procedure
18 described in subsection (5) of Section 2-21, within 30 days of
19 the order for termination of parental rights and appointment of
20 a guardian with power to consent to adoption, or (c) in
21 accordance with subsection (2) of Section 2-13.1. Subsequent
22 permanency hearings shall be held every 6 months or more
23 frequently if necessary in the court's determination following
24 the initial permanency hearing, in accordance with the
25 standards set forth in this Section, until the court determines
26 that the plan and goal have been achieved. Once the plan and

1 goal have been achieved, if the minor remains in substitute
2 care, the case shall be reviewed at least every 6 months
3 thereafter, subject to the provisions of this Section, unless
4 the minor is placed in the guardianship of a suitable relative
5 or other person and the court determines that further
6 monitoring by the court does not further the health, safety or
7 best interest of the child and that this is a stable permanent
8 placement. The permanency hearings must occur within the time
9 frames set forth in this subsection and may not be delayed in
10 anticipation of a report from any source or due to the agency's
11 failure to timely file its written report (this written report
12 means the one required under the next paragraph and does not
13 mean the service plan also referred to in that paragraph).

14 The public agency that is the custodian or guardian of the
15 minor, or another agency responsible for the minor's care,
16 shall ensure that all parties to the permanency hearings are
17 provided a copy of the most recent service plan prepared within
18 the prior 6 months at least 14 days in advance of the hearing.
19 If not contained in the plan, the agency shall also include a
20 report setting forth (i) any special physical, psychological,
21 educational, medical, emotional, or other needs of the minor or
22 his or her family that are relevant to a permanency or
23 placement determination and (ii) for any minor age 16 or over,
24 a written description of the programs and services that will
25 enable the minor to prepare for independent living. The
26 agency's written report must detail what progress or lack of

1 progress the parent has made in correcting the conditions
2 requiring the child to be in care; whether the child can be
3 returned home without jeopardizing the child's health, safety,
4 and welfare, and if not, what permanency goal is recommended to
5 be in the best interests of the child, and why the other
6 permanency goals are not appropriate. The caseworker must
7 appear and testify at the permanency hearing. If a permanency
8 hearing has not previously been scheduled by the court, the
9 moving party shall move for the setting of a permanency hearing
10 and the entry of an order within the time frames set forth in
11 this subsection.

12 At the permanency hearing, the court shall determine the
13 future status of the child. The court shall set one of the
14 following permanency goals:

15 (A) The minor will be returned home by a specific date
16 within 5 months.

17 (B) The minor will be in short-term care with a
18 continued goal to return home within a period not to exceed
19 one year, where the progress of the parent or parents is
20 substantial giving particular consideration to the age and
21 individual needs of the minor.

22 (B-1) The minor will be in short-term care with a
23 continued goal to return home pending a status hearing.
24 When the court finds that a parent has not made reasonable
25 efforts or reasonable progress to date, the court shall
26 identify what actions the parent and the Department must

1 take in order to justify a finding of reasonable efforts or
2 reasonable progress and shall set a status hearing to be
3 held not earlier than 9 months from the date of
4 adjudication nor later than 11 months from the date of
5 adjudication during which the parent's progress will again
6 be reviewed.

7 (C) The minor will be in substitute care pending court
8 determination on termination of parental rights.

9 (D) Adoption, provided that parental rights have been
10 terminated or relinquished.

11 (E) The guardianship of the minor will be transferred
12 to an individual or couple on a permanent basis provided
13 that goals (A) through (D) have been ruled out.

14 (F) The minor over age 15 will be in substitute care
15 pending independence.

16 (G) The minor will be in substitute care because he or
17 she cannot be provided for in a home environment due to
18 developmental disabilities or mental illness or because he
19 or she is a danger to self or others, provided that goals
20 (A) through (D) have been ruled out.

21 In selecting any permanency goal, the court shall indicate
22 in writing the reasons the goal was selected and why the
23 preceding goals were ruled out. Where the court has selected a
24 permanency goal other than (A), (B), or (B-1), the Department
25 of Children and Family Services shall not provide further
26 reunification services, but shall provide services consistent

1 with the goal selected.

2 The court shall set a permanency goal that is in the best
3 interest of the child. In determining that goal, the court
4 shall consult with the minor in an age-appropriate manner
5 regarding the proposed permanency or transition plan for the
6 minor. The court's determination shall include the following
7 factors:

8 (1) Age of the child.

9 (2) Options available for permanence, including both
10 out-of-State and in-State placement options.

11 (3) Current placement of the child and the intent of
12 the family regarding adoption.

13 (4) Emotional, physical, and mental status or
14 condition of the child.

15 (5) Types of services previously offered and whether or
16 not the services were successful and, if not successful,
17 the reasons the services failed.

18 (6) Availability of services currently needed and
19 whether the services exist.

20 (7) Status of siblings of the minor.

21 The court shall consider (i) the permanency goal contained
22 in the service plan, (ii) the appropriateness of the services
23 contained in the plan and whether those services have been
24 provided, (iii) whether reasonable efforts have been made by
25 all the parties to the service plan to achieve the goal, and
26 (iv) whether the plan and goal have been achieved. All evidence

1 relevant to determining these questions, including oral and
2 written reports, may be admitted and may be relied on to the
3 extent of their probative value.

4 If the goal has been achieved, the court shall enter orders
5 that are necessary to conform the minor's legal custody and
6 status to those findings.

7 If, after receiving evidence, the court determines that the
8 services contained in the plan are not reasonably calculated to
9 facilitate achievement of the permanency goal, the court shall
10 put in writing the factual basis supporting the determination
11 and enter specific findings based on the evidence. The court
12 also shall enter an order for the Department to develop and
13 implement a new service plan or to implement changes to the
14 current service plan consistent with the court's findings. The
15 new service plan shall be filed with the court and served on
16 all parties within 45 days of the date of the order. The court
17 shall continue the matter until the new service plan is filed.
18 Unless otherwise specifically authorized by law, the court is
19 not empowered under this subsection (2) or under subsection (3)
20 to order specific placements, specific services, or specific
21 service providers to be included in the plan.

22 A guardian or custodian appointed by the court pursuant to
23 this Act shall file updated case plans with the court every 6
24 months.

25 Rights of wards of the court under this Act are enforceable
26 against any public agency by complaints for relief by mandamus

1 filed in any proceedings brought under this Act.

2 (3) Following the permanency hearing, the court shall enter
3 a written order that includes the determinations required under
4 subsection (2) of this Section and sets forth the following:

5 (a) The future status of the minor, including the
6 permanency goal, and any order necessary to conform the
7 minor's legal custody and status to such determination; or

8 (b) If the permanency goal of the minor cannot be
9 achieved immediately, the specific reasons for continuing
10 the minor in the care of the Department of Children and
11 Family Services or other agency for short term placement,
12 and the following determinations:

13 (i) (Blank).

14 (ii) Whether the services required by the court and
15 by any service plan prepared within the prior 6 months
16 have been provided and (A) if so, whether the services
17 were reasonably calculated to facilitate the
18 achievement of the permanency goal or (B) if not
19 provided, why the services were not provided.

20 (iii) Whether the minor's placement is necessary,
21 and appropriate to the plan and goal, recognizing the
22 right of minors to the least restrictive (most
23 family-like) setting available and in close proximity
24 to the parents' home consistent with the health,
25 safety, best interest and special needs of the minor
26 and, if the minor is placed out-of-State, whether the

1 out-of-State placement continues to be appropriate and
2 consistent with the health, safety, and best interest
3 of the minor.

4 (iv) (Blank).

5 (v) (Blank).

6 (4) The minor or any person interested in the minor may
7 apply to the court for a change in custody of the minor and the
8 appointment of a new custodian or guardian of the person or for
9 the restoration of the minor to the custody of his parents or
10 former guardian or custodian.

11 When return home is not selected as the permanency goal:

12 (a) The Department, the minor, or the current foster
13 parent or relative caregiver seeking private guardianship
14 may file a motion for private guardianship of the minor.
15 Appointment of a guardian under this Section requires
16 approval of the court.

17 (b) The State's Attorney may file a motion to terminate
18 parental rights of any parent who has failed to make
19 reasonable efforts to correct the conditions which led to
20 the removal of the child or reasonable progress toward the
21 return of the child, as defined in subdivision (D)(m) of
22 Section 1 of the Adoption Act or for whom any other
23 unfitness ground for terminating parental rights as
24 defined in subdivision (D) of Section 1 of the Adoption Act
25 exists.

26 When parental rights have been terminated for a minimum of

1 3 years and the child who is the subject of the permanency
2 hearing is 13 years old or older and is not currently placed in
3 a placement likely to achieve permanency, the Department of
4 Children and Family Services shall make reasonable efforts to
5 locate parents whose rights have been terminated, except when
6 the Court determines that those efforts would be futile or
7 inconsistent with the subject child's best interests. The
8 Department of Children and Family Services shall assess the
9 appropriateness of the parent whose rights have been
10 terminated, and shall, as appropriate, foster and support
11 connections between the parent whose rights have been
12 terminated and the youth. The Department of Children and Family
13 Services shall document its determinations and efforts to
14 foster connections in the child's case plan.

15 Custody of the minor shall not be restored to any parent,
16 guardian or legal custodian in any case in which the minor is
17 found to be neglected or abused under Section 2-3 or dependent
18 under Section 2-4 of this Act, unless the minor can be cared
19 for at home without endangering his or her health or safety and
20 it is in the best interest of the minor, and if such neglect,
21 abuse, or dependency is found by the court under paragraph (1)
22 of Section 2-21 of this Act to have come about due to the acts
23 or omissions or both of such parent, guardian or legal
24 custodian, until such time as an investigation is made as
25 provided in paragraph (5) and a hearing is held on the issue of
26 the health, safety and best interest of the minor and the

1 fitness of such parent, guardian or legal custodian to care for
2 the minor and the court enters an order that such parent,
3 guardian or legal custodian is fit to care for the minor. In
4 the event that the minor has attained 18 years of age and the
5 guardian or custodian petitions the court for an order
6 terminating his guardianship or custody, guardianship or
7 custody shall terminate automatically 30 days after the receipt
8 of the petition unless the court orders otherwise. No legal
9 custodian or guardian of the person may be removed without his
10 consent until given notice and an opportunity to be heard by
11 the court.

12 When the court orders a child restored to the custody of
13 the parent or parents, the court shall order the parent or
14 parents to cooperate with the Department of Children and Family
15 Services and comply with the terms of an after-care plan, or
16 risk the loss of custody of the child and possible termination
17 of their parental rights. The court may also enter an order of
18 protective supervision in accordance with Section 2-24.

19 (5) Whenever a parent, guardian, or legal custodian files a
20 motion for restoration of custody of the minor, and the minor
21 was adjudicated neglected, abused, or dependent as a result of
22 physical abuse, the court shall cause to be made an
23 investigation as to whether the movant has ever been charged
24 with or convicted of any criminal offense which would indicate
25 the likelihood of any further physical abuse to the minor.
26 Evidence of such criminal convictions shall be taken into

1 account in determining whether the minor can be cared for at
2 home without endangering his or her health or safety and
3 fitness of the parent, guardian, or legal custodian.

4 (a) Any agency of this State or any subdivision thereof
5 shall co-operate with the agent of the court in providing
6 any information sought in the investigation.

7 (b) The information derived from the investigation and
8 any conclusions or recommendations derived from the
9 information shall be provided to the parent, guardian, or
10 legal custodian seeking restoration of custody prior to the
11 hearing on fitness and the movant shall have an opportunity
12 at the hearing to refute the information or contest its
13 significance.

14 (c) All information obtained from any investigation
15 shall be confidential as provided in Section 5-150 of this
16 Act.

17 (Source: P.A. 95-10, eff. 6-30-07; 95-182, eff. 8-14-07;
18 95-876, eff. 8-21-08.)

19 (705 ILCS 405/2-34 new)

20 Sec. 2-34. Motion to reinstate parental rights.

21 (1) For purposes of this subsection (1), the term "parent"
22 refers to the person or persons whose rights were terminated as
23 described in paragraph (a) of this subsection; and the term
24 "minor" means a person under the age of 21 years subject to
25 this Act for whom the Department of Children and Family

1 Services Guardianship Administrator is appointed the temporary
2 custodian or guardian.

3 A motion to reinstate parental rights may be filed
4 regarding any minor who is presently a ward of the court under
5 Article II of this Act when all the conditions set out in
6 paragraphs (a), (b), (c), (d), (e), (f), and (g) of this
7 subsection (1) are met:

8 (a) while the minor was under the jurisdiction of the
9 court under Article II of this Act, the minor's parent or
10 parents surrendered the minor for adoption to an agency
11 legally authorized to place children for adoption, or the
12 minor's parent or parents consented to his or her adoption,
13 or the minor's parent or parents consented to his or her
14 adoption by a specified person or persons, or the parent or
15 parents' rights were terminated pursuant to a finding of
16 unfitness pursuant to Section 2-29 of this Act and a
17 guardian was appointed with the power to consent to
18 adoption pursuant to Section 2-29 of this Act; and

19 (b) (i) since the signing of the surrender, the signing
20 of the consent, or the unfitness finding, the minor has
21 remained a ward of the Court under Article II of this Act;
22 or

23 (ii) the minor was made a ward of the Court, the
24 minor was placed in the private guardianship of an
25 individual or individuals, and after the appointment
26 of a private guardian, the minor was again brought to

1 the attention of the Juvenile Court and the private
2 guardianship was vacated; or

3 (iii) the minor was made a ward of the Court,
4 wardship was terminated after the minor was adopted,
5 after the adoption the minor was again brought to the
6 attention of the Juvenile Court and made a ward of the
7 Court under Article II of this Act, and either (i) the
8 adoptive parent or parents are deceased, (ii) the
9 adoptive parent or parents signed a surrender of
10 parental rights, or (iii) the parental rights of the
11 adoptive parent or parents were terminated;

12 (c) the minor is not currently in a placement likely to
13 achieve permanency;

14 (d) it is in the minor's best interest that parental
15 rights be reinstated;

16 (e) the parent named in the motion wishes parental
17 rights to be reinstated and is currently appropriate to
18 have rights reinstated;

19 (f) more than 3 years have lapsed since the signing of
20 the consent or surrender, or the entry of the order
21 appointing a guardian with the power to consent to
22 adoption;

23 (g) the child is 13 years of age or older or the child
24 is the member of a sibling group for whom reinstatement of
25 the particular parent's rights is being considered and at
26 least one of the siblings is 13 years of age or older; and

1 (h) if the court has previously denied a motion to
2 reinstate parental rights filed by the same person, there
3 has been a substantial change in circumstances following
4 the denial of the earlier motion. This paragraph (h) does
5 not apply to a motion filed by the child through his or her
6 attorney or guardian ad litem.

7 (2) The motion may be filed by any party or by the
8 individual seeking reinstatement of parental rights. Unless
9 excused by the court for good cause shown, the movant shall
10 give notice of the time and place of the hearing on the motion,
11 in person or by mail, to the parties to the juvenile court
12 proceeding. Notice shall be provided at least 14 days in
13 advance of the hearing date. The motion shall include the
14 allegations required in subsection (1) of this Section.

15 (3) Any party may file a motion to dismiss the motion with
16 prejudice on the basis that the parent has intentionally acted
17 to prevent the child from being adopted, after parental rights
18 were terminated or the parent intentionally acted to disrupt
19 the child's adoption. If the court finds by a preponderance of
20 the evidence that the parent has intentionally acted to prevent
21 the child from being adopted, after parental rights were
22 terminated or that the parent intentionally acted to disrupt
23 the child's adoption, the court shall dismiss the petition with
24 prejudice.

25 (4) The burden of proof shall be on the movant. In ruling
26 on a motion to reinstate parental rights, the court shall make

1 findings consistent with the requirements in subsection (1) of
2 this Section. The court shall consider the reasons why the
3 child was initially brought to the attention of the court, the
4 history of the child's case as it relates to the parent seeking
5 reinstatement, and the current circumstances of the parent for
6 whom reinstatement of rights is sought. If reinstatement is
7 being considered subsequent to a finding of unfitness pursuant
8 to Section 2-29 of this Act having been entered with respect to
9 the parent whose rights are being restored, the court in
10 determining the minor's best interest shall consider, in
11 addition to the factors set forth in paragraph (4.05) of
12 Section 1-3 of this Act, the specific grounds upon which the
13 unfitness findings were made. Upon the entry of an order
14 granting a motion to reinstate parental rights, parental rights
15 of the parent named in the order shall be reinstated, any
16 previous order appointing a guardian with the power to consent
17 to adoption shall be void and with respect to the parent named
18 in the order, any consent shall be void.

19 (5) If the case is post-disposition, the court, upon the
20 entry of an order granting a motion to reinstate parental
21 rights, shall schedule the matter for a permanency hearing
22 pursuant to Section 2-28 of this Act within 45 days.

23 (6) Custody of the minor shall not be restored to the
24 parent, except by order of court pursuant to subsection (4) of
25 Section 2-28 of this Act.

26 (7) In any case involving a child over the age of 13 who

1 meets the criteria established in this Section for
2 reinstatement of parental rights, the Department of Children
3 and Family Services shall conduct an assessment of the child's
4 circumstances to assist in future planning for the child,
5 including, but not limited to a determination regarding the
6 appropriateness of filing a motion to reinstate parental
7 rights.