



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

HB3970

Introduced 3/4/2021, by Rep. Natalie A. Manley

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-28

from Ch. 37, par. 802-28

Amends the Juvenile Court Act of 1987. Provides that at the permanency hearing, the permanency goals shall include that the guardianship of the minor will be transferred to an individual or couple on a permanent basis provided that the permanency goals have been deemed inappropriate and not in the child's best interests (rather than ruled out). Provides that adoption and guardianship must be discussed with the current caregiver prior to selecting the guardianship goal. Effective immediately.

LRB102 05107 RLC 15127 b

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 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, or earlier if the court determines  
14 it to be necessary to protect the health, safety, or welfare of  
15 the minor, shall make the report, either in writing verified  
16 by affidavit or orally under oath in open court, or otherwise  
17 as the court directs. Upon the hearing of the report the court  
18 may remove the custodian or guardian and appoint another in  
19 his stead or restore the minor to the custody of his parents or  
20 former guardian or custodian. However, custody of the minor  
21 shall not be restored to any parent, guardian or legal  
22 custodian in any case in which the minor is found to be  
23 neglected or abused under Section 2-3 or dependent under

1 Section 2-4 of this Act, unless the minor can be cared for at  
2 home without endangering the minor's health or safety and it  
3 is in the best interests of the minor, and if such neglect,  
4 abuse, or dependency is found by the court under paragraph (1)  
5 of Section 2-21 of this Act to have come about due to the acts  
6 or omissions or both of such parent, guardian or legal  
7 custodian, until such time as an investigation is made as  
8 provided in paragraph (5) and a hearing is held on the issue of  
9 the fitness of such parent, guardian or legal custodian to  
10 care for the minor and the court enters an order that such  
11 parent, guardian or legal custodian is fit to care for the  
12 minor.

13 (1.5) The public agency that is the custodian or guardian  
14 of the minor shall file a written report with the court no  
15 later than 15 days after a minor in the agency's care remains:

16 (1) in a shelter placement beyond 30 days;

17 (2) in a psychiatric hospital past the time when the  
18 minor is clinically ready for discharge or beyond medical  
19 necessity for the minor's health; or

20 (3) in a detention center or Department of Juvenile  
21 Justice facility solely because the public agency cannot  
22 find an appropriate placement for the minor.

23 The report shall explain the steps the agency is taking to  
24 ensure the minor is placed appropriately, how the minor's  
25 needs are being met in the minor's shelter placement, and if a  
26 future placement has been identified by the Department, why

1 the anticipated placement is appropriate for the needs of the  
2 minor and the anticipated placement date.

3 (1.6) Within 35 days after placing a child in its care in a  
4 qualified residential treatment program, as defined by the  
5 federal Social Security Act, the Department of Children and  
6 Family Services shall file a written report with the court and  
7 send copies of the report to all parties. Within 20 days of the  
8 filing of the report, the court shall hold a hearing to  
9 consider the Department's report and determine whether  
10 placement of the child in a qualified residential treatment  
11 program provides the most effective and appropriate level of  
12 care for the child in the least restrictive environment and if  
13 the placement is consistent with the short-term and long-term  
14 goals for the child, as specified in the permanency plan for  
15 the child. The court shall approve or disapprove the  
16 placement. If applicable, the requirements of Sections 2-27.1  
17 and 2-27.2 must also be met. The Department's written report  
18 and the court's written determination shall be included in and  
19 made part of the case plan for the child. If the child remains  
20 placed in a qualified residential treatment program, the  
21 Department shall submit evidence at each status and permanency  
22 hearing:

23 (1) demonstrating that on-going assessment of the  
24 strengths and needs of the child continues to support the  
25 determination that the child's needs cannot be met through  
26 placement in a foster family home, that the placement

1 provides the most effective and appropriate level of care  
2 for the child in the least restrictive, appropriate  
3 environment, and that the placement is consistent with the  
4 short-term and long-term permanency goal for the child, as  
5 specified in the permanency plan for the child;

6 (2) documenting the specific treatment or service  
7 needs that should be met for the child in the placement and  
8 the length of time the child is expected to need the  
9 treatment or services; and

10 (3) the efforts made by the agency to prepare the  
11 child to return home or to be placed with a fit and willing  
12 relative, a legal guardian, or an adoptive parent, or in a  
13 foster family home.

14 (2) The first permanency hearing shall be conducted by the  
15 judge. Subsequent permanency hearings may be heard by a judge  
16 or by hearing officers appointed or approved by the court in  
17 the manner set forth in Section 2-28.1 of this Act. The initial  
18 hearing shall be held (a) within 12 months from the date  
19 temporary custody was taken, regardless of whether an  
20 adjudication or dispositional hearing has been completed  
21 within that time frame, (b) if the parental rights of both  
22 parents have been terminated in accordance with the procedure  
23 described in subsection (5) of Section 2-21, within 30 days of  
24 the order for termination of parental rights and appointment  
25 of a guardian with power to consent to adoption, or (c) in  
26 accordance with subsection (2) of Section 2-13.1. Subsequent

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

19 The public agency that is the custodian or guardian of the  
20 minor, or another agency responsible for the minor's care,  
21 shall ensure that all parties to the permanency hearings are  
22 provided a copy of the most recent service plan prepared  
23 within the prior 6 months at least 14 days in advance of the  
24 hearing. If not contained in the agency's service plan, the  
25 agency shall also include a report setting forth (i) any  
26 special physical, psychological, educational, medical,

1 emotional, or other needs of the minor or his or her family  
2 that are relevant to a permanency or placement determination  
3 and (ii) for any minor age 16 or over, a written description of  
4 the programs and services that will enable the minor to  
5 prepare for independent living. If not contained in the  
6 agency's service plan, the agency's report shall specify if a  
7 minor is placed in a licensed child care facility under a  
8 corrective plan by the Department due to concerns impacting  
9 the minor's safety and well-being. The report shall explain  
10 the steps the Department is taking to ensure the safety and  
11 well-being of the minor and that the minor's needs are met in  
12 the facility. The agency's written report must detail what  
13 progress or lack of progress the parent has made in correcting  
14 the conditions requiring the child to be in care; whether the  
15 child can be returned home without jeopardizing the child's  
16 health, safety, and welfare, and if not, what permanency goal  
17 is recommended to be in the best interests of the child, and  
18 why the other permanency goals are not appropriate. The  
19 caseworker must appear and testify at the permanency hearing.  
20 If a permanency hearing has not previously been scheduled by  
21 the court, the moving party shall move for the setting of a  
22 permanency hearing and the entry of an order within the time  
23 frames set forth in this subsection.

24 At the permanency hearing, the court shall determine the  
25 future status of the child. The court shall set one of the  
26 following permanency goals:

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

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

8           (B-1) The minor will be in short-term care with a  
9           continued goal to return home pending a status hearing.  
10          When the court finds that a parent has not made reasonable  
11          efforts or reasonable progress to date, the court shall  
12          identify what actions the parent and the Department must  
13          take in order to justify a finding of reasonable efforts  
14          or reasonable progress and shall set a status hearing to  
15          be held not earlier than 9 months from the date of  
16          adjudication nor later than 11 months from the date of  
17          adjudication during which the parent's progress will again  
18          be reviewed.

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

21          (D) Adoption, provided that parental rights have been  
22          terminated or relinquished.

23          (E) The guardianship of the minor will be transferred  
24          to an individual or couple on a permanent basis provided  
25          that goals (A) through (D) have been deemed inappropriate  
26          and not in the child's best interests. Adoption and



1 guardianship must be discussed with the current caregiver  
2 prior to selecting the guardianship goal ~~ruled out.~~

3 (F) The minor over age 15 will be in substitute care  
4 pending independence. In selecting this permanency goal,  
5 the Department of Children and Family Services may provide  
6 services to enable reunification and to strengthen the  
7 minor's connections with family, fictive kin, and other  
8 responsible adults, provided the services are in the  
9 minor's best interest. The services shall be documented in  
10 the service plan.

11 (G) The minor will be in substitute care because he or  
12 she cannot be provided for in a home environment due to  
13 developmental disabilities or mental illness or because he  
14 or she is a danger to self or others, provided that goals  
15 (A) through (D) have been deemed inappropriate and not in  
16 the child's best interests ~~ruled out.~~

17 In selecting any permanency goal, the court shall indicate  
18 in writing the reasons the goal was selected and why the  
19 preceding goals were deemed inappropriate and not in the  
20 child's best interest ~~ruled out.~~ Where the court has selected  
21 a permanency goal other than (A), (B), or (B-1), the  
22 Department of Children and Family Services shall not provide  
23 further reunification services, except as provided in  
24 paragraph (F) of this subsection (2), but shall provide  
25 services consistent with the goal selected.

26 (H) Notwithstanding any other provision in this

1 Section, the court may select the goal of continuing  
2 foster care as a permanency goal if:

3 (1) The Department of Children and Family Services  
4 has custody and guardianship of the minor;

5 (2) The court has deemed ~~ruled-out~~ all other  
6 permanency goals inappropriate based on the child's  
7 best interest;

8 (3) The court has found compelling reasons, based  
9 on written documentation reviewed by the court, to  
10 place the minor in continuing foster care. Compelling  
11 reasons include:

12 (a) the child does not wish to be adopted or to  
13 be placed in the guardianship of his or her  
14 relative or foster care placement;

15 (b) the child exhibits an extreme level of  
16 need such that the removal of the child from his or  
17 her placement would be detrimental to the child;  
18 or

19 (c) the child who is the subject of the  
20 permanency hearing has existing close and strong  
21 bonds with a sibling, and achievement of another  
22 permanency goal would substantially interfere with  
23 the subject child's sibling relationship, taking  
24 into consideration the nature and extent of the  
25 relationship, and whether ongoing contact is in  
26 the subject child's best interest, including

1 long-term emotional interest, as compared with the  
2 legal and emotional benefit of permanence;

3 (4) The child has lived with the relative or  
4 foster parent for at least one year; and

5 (5) The relative or foster parent currently caring  
6 for the child is willing and capable of providing the  
7 child with a stable and permanent environment.

8 The court shall set a permanency goal that is in the best  
9 interest of the child. In determining that goal, the court  
10 shall consult with the minor in an age-appropriate manner  
11 regarding the proposed permanency or transition plan for the  
12 minor. The court's determination shall include the following  
13 factors:

14 (1) Age of the child.

15 (2) Options available for permanence, including both  
16 out-of-state and in-state placement options.

17 (3) Current placement of the child and the intent of  
18 the family regarding adoption.

19 (4) Emotional, physical, and mental status or  
20 condition of the child.

21 (5) Types of services previously offered and whether  
22 or not the services were successful and, if not  
23 successful, the reasons the services failed.

24 (6) Availability of services currently needed and  
25 whether the services exist.

26 (7) Status of siblings of the minor.

1           The court shall consider (i) the permanency goal contained  
2 in the service plan, (ii) the appropriateness of the services  
3 contained in the plan and whether those services have been  
4 provided, (iii) whether reasonable efforts have been made by  
5 all the parties to the service plan to achieve the goal, and  
6 (iv) whether the plan and goal have been achieved. All  
7 evidence relevant to determining these questions, including  
8 oral and written reports, may be admitted and may be relied on  
9 to the extent of their probative value.

10           The court shall make findings as to whether, in violation  
11 of Section 8.2 of the Abused and Neglected Child Reporting  
12 Act, any portion of the service plan compels a child or parent  
13 to engage in any activity or refrain from any activity that is  
14 not reasonably related to remedying a condition or conditions  
15 that gave rise or which could give rise to any finding of child  
16 abuse or neglect. The services contained in the service plan  
17 shall include services reasonably related to remedy the  
18 conditions that gave rise to removal of the child from the home  
19 of his or her parents, guardian, or legal custodian or that the  
20 court has found must be remedied prior to returning the child  
21 home. Any tasks the court requires of the parents, guardian,  
22 or legal custodian or child prior to returning the child home,  
23 must be reasonably related to remedying a condition or  
24 conditions that gave rise to or which could give rise to any  
25 finding of child abuse or neglect.

26           If the permanency goal is to return home, the court shall

1 make findings that identify any problems that are causing  
2 continued placement of the children away from the home and  
3 identify what outcomes would be considered a resolution to  
4 these problems. The court shall explain to the parents that  
5 these findings are based on the information that the court has  
6 at that time and may be revised, should additional evidence be  
7 presented to the court.

8 The court shall review the Sibling Contact Support Plan  
9 developed or modified under subsection (f) of Section 7.4 of  
10 the Children and Family Services Act, if applicable. If the  
11 Department has not convened a meeting to develop or modify a  
12 Sibling Contact Support Plan, or if the court finds that the  
13 existing Plan is not in the child's best interest, the court  
14 may enter an order requiring the Department to develop, modify  
15 or implement a Sibling Contact Support Plan, or order  
16 mediation.

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

20 If, after receiving evidence, the court determines that  
21 the services contained in the plan are not reasonably  
22 calculated to facilitate achievement of the permanency goal,  
23 the court shall put in writing the factual basis supporting  
24 the determination and enter specific findings based on the  
25 evidence. The court also shall enter an order for the  
26 Department to develop and implement a new service plan or to

1 implement changes to the current service plan consistent with  
2 the court's findings. The new service plan shall be filed with  
3 the court and served on all parties within 45 days of the date  
4 of the order. The court shall continue the matter until the new  
5 service plan is filed. Except as authorized by subsection  
6 (2.5) of this Section and as otherwise specifically authorized  
7 by law, the court is not empowered under this Section to order  
8 specific placements, specific services, or specific service  
9 providers to be included in the service plan.

10 A guardian or custodian appointed by the court pursuant to  
11 this Act shall file updated case plans with the court every 6  
12 months.

13 Rights of wards of the court under this Act are  
14 enforceable against any public agency by complaints for relief  
15 by mandamus filed in any proceedings brought under this Act.

16 (2.5) If, after reviewing the evidence, including evidence  
17 from the Department, the court determines that the minor's  
18 current or planned placement is not necessary or appropriate  
19 to facilitate achievement of the permanency goal, the court  
20 shall put in writing the factual basis supporting its  
21 determination and enter specific findings based on the  
22 evidence. If the court finds that the minor's current or  
23 planned placement is not necessary or appropriate, the court  
24 may enter an order directing the Department to implement a  
25 recommendation by the minor's treating clinician or a  
26 clinician contracted by the Department to evaluate the minor

1 or a recommendation made by the Department. If the Department  
2 places a minor in a placement under an order entered under this  
3 subsection (2.5), the Department has the authority to remove  
4 the minor from that placement when a change in circumstances  
5 necessitates the removal to protect the minor's health,  
6 safety, and best interest. If the Department determines  
7 removal is necessary, the Department shall notify the parties  
8 of the planned placement change in writing no later than 10  
9 days prior to the implementation of its determination unless  
10 remaining in the placement poses an imminent risk of harm to  
11 the minor, in which case the Department shall notify the  
12 parties of the placement change in writing immediately  
13 following the implementation of its decision. The Department  
14 shall notify others of the decision to change the minor's  
15 placement as required by Department rule.

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

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

23 (b) If the permanency goal of the minor cannot be  
24 achieved immediately, the specific reasons for continuing  
25 the minor in the care of the Department of Children and  
26 Family Services or other agency for short term placement,

1 and the following determinations:

2 (i) (Blank).

3 (ii) Whether the services required by the court  
4 and by any service plan prepared within the prior 6  
5 months have been provided and (A) if so, whether the  
6 services were reasonably calculated to facilitate the  
7 achievement of the permanency goal or (B) if not  
8 provided, why the services were not provided.

9 (iii) Whether the minor's current or planned  
10 placement is necessary, and appropriate to the plan  
11 and goal, recognizing the right of minors to the least  
12 restrictive (most family-like) setting available and  
13 in close proximity to the parents' home consistent  
14 with the health, safety, best interest and special  
15 needs of the minor and, if the minor is placed  
16 out-of-state, whether the out-of-state placement  
17 continues to be appropriate and consistent with the  
18 health, safety, and best interest of the minor.

19 (iv) (Blank).

20 (v) (Blank).

21 (4) The minor or any person interested in the minor may  
22 apply to the court for a change in custody of the minor and the  
23 appointment of a new custodian or guardian of the person or for  
24 the restoration of the minor to the custody of his parents or  
25 former guardian or custodian.

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



1           (a) The Department, the minor, or the current foster  
2 parent or relative caregiver seeking private guardianship  
3 may file a motion for private guardianship of the minor.  
4 Appointment of a guardian under this Section requires  
5 approval of the court.

6           (b) The State's Attorney may file a motion to  
7 terminate parental rights of any parent who has failed to  
8 make reasonable efforts to correct the conditions which  
9 led to the removal of the child or reasonable progress  
10 toward the return of the child, as defined in subdivision  
11 (D)(m) of Section 1 of the Adoption Act or for whom any  
12 other unfitness ground for terminating parental rights as  
13 defined in subdivision (D) of Section 1 of the Adoption  
14 Act exists.

15           When parental rights have been terminated for a  
16 minimum of 3 years and the child who is the subject of the  
17 permanency hearing is 13 years old or older and is not  
18 currently placed in a placement likely to achieve  
19 permanency, the Department of Children and Family Services  
20 shall make reasonable efforts to locate parents whose  
21 rights have been terminated, except when the Court  
22 determines that those efforts would be futile or  
23 inconsistent with the subject child's best interests. The  
24 Department of Children and Family Services shall assess  
25 the appropriateness of the parent whose rights have been  
26 terminated, and shall, as appropriate, foster and support

1 connections between the parent whose rights have been  
2 terminated and the youth. The Department of Children and  
3 Family Services shall document its determinations and  
4 efforts to foster connections in the child's case plan.

5 Custody of the minor shall not be restored to any parent,  
6 guardian or legal custodian in any case in which the minor is  
7 found to be neglected or abused under Section 2-3 or dependent  
8 under Section 2-4 of this Act, unless the minor can be cared  
9 for at home without endangering his or her health or safety and  
10 it is in the best interest of the minor, and if such neglect,  
11 abuse, or dependency is found by the court under paragraph (1)  
12 of Section 2-21 of this Act to have come about due to the acts  
13 or omissions or both of such parent, guardian or legal  
14 custodian, until such time as an investigation is made as  
15 provided in paragraph (5) and a hearing is held on the issue of  
16 the health, safety and best interest of the minor and the  
17 fitness of such parent, guardian or legal custodian to care  
18 for the minor and the court enters an order that such parent,  
19 guardian or legal custodian is fit to care for the minor. In  
20 the event that the minor has attained 18 years of age and the  
21 guardian or custodian petitions the court for an order  
22 terminating his guardianship or custody, guardianship or  
23 custody shall terminate automatically 30 days after the  
24 receipt of the petition unless the court orders otherwise. No  
25 legal custodian or guardian of the person may be removed  
26 without his consent until given notice and an opportunity to

1 be heard by the court.

2 When the court orders a child restored to the custody of  
3 the parent or parents, the court shall order the parent or  
4 parents to cooperate with the Department of Children and  
5 Family Services and comply with the terms of an after-care  
6 plan, or risk the loss of custody of the child and possible  
7 termination of their parental rights. The court may also enter  
8 an order of protective supervision in accordance with Section  
9 2-24.

10 (5) Whenever a parent, guardian, or legal custodian files  
11 a motion for restoration of custody of the minor, and the minor  
12 was adjudicated neglected, abused, or dependent as a result of  
13 physical abuse, the court shall cause to be made an  
14 investigation as to whether the movant has ever been charged  
15 with or convicted of any criminal offense which would indicate  
16 the likelihood of any further physical abuse to the minor.  
17 Evidence of such criminal convictions shall be taken into  
18 account in determining whether the minor can be cared for at  
19 home without endangering his or her health or safety and  
20 fitness of the parent, guardian, or legal custodian.

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

24 (b) The information derived from the investigation and  
25 any conclusions or recommendations derived from the  
26 information shall be provided to the parent, guardian, or

1           legal custodian seeking restoration of custody prior to  
2           the hearing on fitness and the movant shall have an  
3           opportunity at the hearing to refute the information or  
4           contest its significance.

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

8           (Source: P.A. 100-45, eff. 8-11-17; 100-136, eff. 8-18-17;  
9           100-229, eff. 1-1-18; 100-863, eff. 8-14-18; 100-978, eff.  
10          8-19-18; 101-63, eff. 10-1-19.)

11          Section 99. Effective date. This Act takes effect upon  
12          becoming law.