



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB0394**

Introduced 1/26/2007, by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-18  
705 ILCS 405/2-34 new

from Ch. 37, par. 802-18

Amends the Juvenile Court Act of 1987. Provides that in unfitness proceedings alleging that a minor is abused, neglected, or dependent, if documents, assessments, and evaluations are directly used to prove an unfitness ground as alleged in the petition or at the best interest portion, relating to parent child bonding, and a party objects to the introduction of the documents into evidence, the author of those documents shall testify, if available, as to the recommendations and findings. Provides that if the author is unavailable, the documents are admissible without such testimony. Provides that the court shall determine the proper weight accorded to the documents. Provides that a supplemental petition to reinstate parentage may be filed regarding any minor who is presently a ward of the court under the Abused, Neglected, or Dependent Minors Article of the Act. Establishes procedures for filing such supplemental petition. Effective August 1, 2007.

LRB095 05280 RLC 25358 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 2-18 and by adding Section 2-34 as follows:

6 (705 ILCS 405/2-18) (from Ch. 37, par. 802-18)  
7 Sec. 2-18. Evidence.

8 (1) At the adjudicatory hearing, the court shall first  
9 consider only the question whether the minor is abused,  
10 neglected or dependent. The standard of proof and the rules of  
11 evidence in the nature of civil proceedings in this State are  
12 applicable to proceedings under this Article. If the petition  
13 also seeks the appointment of a guardian of the person with  
14 power to consent to adoption of the minor under Section 2-29,  
15 the court may also consider legally admissible evidence at the  
16 adjudicatory hearing that one or more grounds of unfitness  
17 exists under subdivision D of Section 1 of the Adoption Act.

18 (2) In any hearing under this Act, the following shall  
19 constitute prima facie evidence of abuse or neglect, as the  
20 case may be:

21 (a) proof that a minor has a medical diagnosis of  
22 battered child syndrome is prima facie evidence of abuse;

23 (b) proof that a minor has a medical diagnosis of

1 failure to thrive syndrome is prima facie evidence of  
2 neglect;

3 (c) proof that a minor has a medical diagnosis of fetal  
4 alcohol syndrome is prima facie evidence of neglect;

5 (d) proof that a minor has a medical diagnosis at birth  
6 of withdrawal symptoms from narcotics or barbiturates is  
7 prima facie evidence of neglect;

8 (e) proof of injuries sustained by a minor or of the  
9 condition of a minor of such a nature as would ordinarily  
10 not be sustained or exist except by reason of the acts or  
11 omissions of the parent, custodian or guardian of such  
12 minor shall be prima facie evidence of abuse or neglect, as  
13 the case may be;

14 (f) proof that a parent, custodian or guardian of a  
15 minor repeatedly used a drug, to the extent that it has or  
16 would ordinarily have the effect of producing in the user a  
17 substantial state of stupor, unconsciousness,  
18 intoxication, hallucination, disorientation or  
19 incompetence, or a substantial impairment of judgment, or a  
20 substantial manifestation of irrationality, shall be prima  
21 facie evidence of neglect;

22 (g) proof that a parent, custodian, or guardian of a  
23 minor repeatedly used a controlled substance, as defined in  
24 subsection (f) of Section 102 of the Illinois Controlled  
25 Substances Act, in the presence of the minor or a sibling  
26 of the minor is prima facie evidence of neglect. "Repeated

1 use", for the purpose of this subsection, means more than  
2 one use of a controlled substance as defined in subsection  
3 (f) of Section 102 of the Illinois Controlled Substances  
4 Act;

5 (h) proof that a newborn infant's blood, urine, or  
6 meconium contains any amount of a controlled substance as  
7 defined in subsection (f) of Section 102 of the Illinois  
8 Controlled Substances Act, or a metabolite of a controlled  
9 substance, with the exception of controlled substances or  
10 metabolites of those substances, the presence of which is  
11 the result of medical treatment administered to the mother  
12 or the newborn, is prime facie evidence of neglect;

13 (i) proof that a minor was present in a structure or  
14 vehicle in which the minor's parent, custodian, or guardian  
15 was involved in the manufacture of methamphetamine  
16 constitutes prima facie evidence of abuse and neglect.

17 (3) In any hearing under this Act, proof of the abuse,  
18 neglect or dependency of one minor shall be admissible evidence  
19 on the issue of the abuse, neglect or dependency of any other  
20 minor for whom the respondent is responsible.

21 (4) (a) Any writing, record, photograph or x-ray of any  
22 hospital or public or private agency, whether in the form of an  
23 entry in a book or otherwise, made as a memorandum or record of  
24 any condition, act, transaction, occurrence or event relating  
25 to a minor in an abuse, neglect or dependency proceeding, shall  
26 be admissible in evidence as proof of that condition, act,

1 transaction, occurrence or event, if the court finds that the  
2 document was made in the regular course of the business of the  
3 hospital or agency and that it was in the regular course of  
4 such business to make it, at the time of the act, transaction,  
5 occurrence or event, or within a reasonable time thereafter.

6 (a-5) In unfitness proceedings under Section 2-29 of this  
7 Act, if documents, assessments, and evaluations are directly  
8 used to prove an unfitness ground as alleged in the petition,  
9 and a party objects to the introduction of the documents into  
10 evidence, the author of those documents shall testify, if  
11 available, as to the recommendations and findings. If the  
12 author is unavailable, the documents are admissible without  
13 such testimony. The court shall determine the proper weight  
14 accorded to the documents.

15 (a-10) In unfitness proceedings under Section 2-29 of this  
16 Act, if documents, assessments, or evaluations are used at the  
17 best interest portion, relating to parent child bonding, and a  
18 party objects to the introduction of the documents into  
19 evidence, the author of those documents shall testify, if  
20 available, as to the recommendations and findings. If the  
21 author is unavailable, the documents are admissible without  
22 such testimony. The court shall determine the proper weight  
23 accorded to the documents.

24 (a-15) For purposes of paragraphs (a-5) and (a-10) of this  
25 subsection (4), "unavailable" means: the author is absent from  
26 the hearing and the party wishing to introduce the document has

1 been unable to procure the author's attendance by process or  
2 other reasonable means; or the author persists in refusing to  
3 testify concerning the document despite an order of the court  
4 to do so; or the author is unable to be present or to testify at  
5 the hearing because of health, or then existing physical or  
6 mental illness or infirmity, or death.

7 (a-20) A certification by the head or responsible employee  
8 of the hospital or agency that the writing, record, photograph  
9 or x-ray is the full and complete record of the condition, act,  
10 transaction, occurrence or event and that it satisfies the  
11 conditions of this paragraph shall be prima facie evidence of  
12 the facts contained in such certification. A certification by  
13 someone other than the head of the hospital or agency shall be  
14 accompanied by a photocopy of a delegation of authority signed  
15 by both the head of the hospital or agency and by such other  
16 employee. All other circumstances of the making of the  
17 memorandum, record, photograph or x-ray, including lack of  
18 personal knowledge of the maker, may be proved to affect the  
19 weight to be accorded such evidence, but shall not affect its  
20 admissibility.

21 (b) Any indicated report filed pursuant to the Abused and  
22 Neglected Child Reporting Act shall be admissible in evidence.

23 (c) Previous statements made by the minor relating to any  
24 allegations of abuse or neglect shall be admissible in  
25 evidence. However, no such statement, if uncorroborated and not  
26 subject to cross-examination, shall be sufficient in itself to

1 support a finding of abuse or neglect.

2 (d) There shall be a rebuttable presumption that a minor is  
3 competent to testify in abuse or neglect proceedings. The court  
4 shall determine how much weight to give to the minor's  
5 testimony, and may allow the minor to testify in chambers with  
6 only the court, the court reporter and attorneys for the  
7 parties present.

8 (e) The privileged character of communication between any  
9 professional person and patient or client, except privilege  
10 between attorney and client, shall not apply to proceedings  
11 subject to this Article.

12 (f) Proof of the impairment of emotional health or  
13 impairment of mental or emotional condition as a result of the  
14 failure of the respondent to exercise a minimum degree of care  
15 toward a minor may include competent opinion or expert  
16 testimony, and may include proof that such impairment lessened  
17 during a period when the minor was in the care, custody or  
18 supervision of a person or agency other than the respondent.

19 (5) In any hearing under this Act alleging neglect for  
20 failure to provide education as required by law under  
21 subsection (1) of Section 2-3, proof that a minor under 13  
22 years of age who is subject to compulsory school attendance  
23 under the School Code is a chronic truant as defined under the  
24 School Code shall be prima facie evidence of neglect by the  
25 parent or guardian in any hearing under this Act and proof that  
26 a minor who is 13 years of age or older who is subject to

1 compulsory school attendance under the School Code is a chronic  
2 truant shall raise a rebuttable presumption of neglect by the  
3 parent or guardian. This subsection (5) shall not apply in  
4 counties with 2,000,000 or more inhabitants.

5 (6) In any hearing under this Act, the court may take  
6 judicial notice of prior sworn testimony or evidence admitted  
7 in prior proceedings involving the same minor if (a) the  
8 parties were either represented by counsel at such prior  
9 proceedings or the right to counsel was knowingly waived and  
10 (b) the taking of judicial notice would not result in admitting  
11 hearsay evidence at a hearing where it would otherwise be  
12 prohibited.

13 (Source: P.A. 93-884, eff. 1-1-05.)

14 (705 ILCS 405/2-34 new)

15 Sec. 2-34. Supplemental petition to reinstate parentage.

16 (1) A supplemental petition to reinstate parentage may be  
17 filed regarding any minor who is presently a ward of the court  
18 under this Article II when:

19 (a) one or more of the following situations exist:

20 (i) the minor's parent or parents surrendered the  
21 minor for adoption to the Department of Children and  
22 Family Services; or

23 (ii) the minor's parent or parents consented to his  
24 or her adoption; or

25 (iii) the minor's parent or parents consented to



1 his or her adoption by a specified person or persons;

2 or

3 (iv) the guardianship administrator of the  
4 Department or a guardian was appointed with the power  
5 to consent to adoption after the parents' rights were  
6 terminated pursuant to a finding of unfitness pursuant  
7 to Section 2-29 of this Act; and

8 (b) the minor is without a legally recognized parent;

9 and

10 (c) the court finds that it is in the minor's best  
11 interest that parentage be reinstated; if the finding is  
12 being made subsequent to a finding of unfitness pursuant to  
13 Section 2-29 of this Act having been entered, the court in  
14 determining the minor's best interest shall also consider,  
15 in addition to the factors set forth in paragraph (4.05) of  
16 Section 1-3 of this Act, the specific grounds upon which  
17 the unfitness findings were made; and

18 (d) the court finds that the parent named in the  
19 supplemental petition wishes parentage to be reinstated;

20 and

21 (e) more than 3 years have elapsed since the signing of  
22 the consent or surrender, or the entry of the order  
23 appointing a guardian with the power to consent to  
24 adoption; or where the minor is at least 14 years of age,  
25 more than 2 years have elapsed since the signing of the  
26 consent or surrender, or the entry of the order appointing

1 a guardian with the power to consent to adoption.

2 (2) The supplemental petition may be filed by the  
3 Department, the minor's guardian ad litem, the State's  
4 Attorney, any party, or by the individual seeking reinstatement  
5 of parentage. Unless excused by the court for good cause shown,  
6 the petitioner shall give notice of the time and place of the  
7 hearing on the supplemental petition, in person or by mail, to  
8 the parties to the juvenile court proceeding and the person  
9 whose parentage would be restored if the petition were granted.  
10 Notice shall be provided at least 14 days in advance of the  
11 hearing date.

12 (3) Upon the entry of an order granting a supplemental  
13 petition to reinstate parentage, parentage of the parent named  
14 in the order shall be reinstated, any previous order appointing  
15 a guardian with the power to consent to adoption shall be void  
16 and with respect to the parent named in the order, any consent  
17 shall be void.

18 (4) If the case is post-disposition, the court, upon the  
19 entry of an order granting a supplemental petition to reinstate  
20 parentage, shall schedule the matter for a permanency hearing  
21 pursuant to Section 2-28 of this Act within 45 days.

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

25 Section 99. Effective date. This Act takes effect August 1,  
26 2007.