

# HB3621



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB3621**

Introduced 2/28/2007, by Rep. Dennis M. Reboletti

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-28

from Ch. 37, par. 802-28

Amends the Juvenile Court Act of 1987. Deletes provision that an order of the court relating to permanency goals following a permanency hearing shall be immediately appealable as a matter of right under Supreme Court Rule 304(b)(1). Effective immediately.

LRB095 08703 RLC 28886 b

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 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. The court's determination shall include  
4 the following factors:

5 (1) Age of the child.

6 (2) Options available for permanence.

7 (3) Current placement of the child and the intent of  
8 the family regarding adoption.

9 (4) Emotional, physical, and mental status or  
10 condition of the child.

11 (5) Types of services previously offered and whether or  
12 not the services were successful and, if not successful,  
13 the reasons the services failed.

14 (6) Availability of services currently needed and  
15 whether the services exist.

16 (7) Status of siblings of the minor.

17 The court shall consider (i) the permanency goal contained  
18 in the service plan, (ii) the appropriateness of the services  
19 contained in the plan and whether those services have been  
20 provided, (iii) whether reasonable efforts have been made by  
21 all the parties to the service plan to achieve the goal, and  
22 (iv) whether the plan and goal have been achieved. All evidence  
23 relevant to determining these questions, including oral and  
24 written reports, may be admitted and may be relied on to the  
25 extent of their probative value.

26 If the goal has been achieved, the court shall enter orders

1 that are necessary to conform the minor's legal custody and  
2 status to those findings.

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

18 A guardian or custodian appointed by the court pursuant to  
19 this Act shall file updated case plans with the court every 6  
20 months.

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

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



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

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

9           (i) (Blank).

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

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

26           (iv) (Blank).

1 (v) (Blank).

2 ~~Any order entered pursuant to this subsection (3) shall be~~  
3 ~~immediately appealable as a matter of right under Supreme Court~~  
4 ~~Rule 304(b)(1).~~

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

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

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

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

25 Custody of the minor shall not be restored to any parent,  
26 guardian or legal custodian in any case in which the minor is

1 found to be neglected or abused under Section 2-3 or dependent  
2 under Section 2-4 of this Act, unless the minor can be cared  
3 for at home without endangering his or her health or safety and  
4 it is in the best interest of the minor, and if such neglect,  
5 abuse, or dependency is found by the court under paragraph (1)  
6 of Section 2-21 of this Act to have come about due to the acts  
7 or omissions or both of such parent, guardian or legal  
8 custodian, until such time as an investigation is made as  
9 provided in paragraph (5) and a hearing is held on the issue of  
10 the health, safety and best interest of the minor and the  
11 fitness of such parent, guardian or legal custodian to care for  
12 the minor and the court enters an order that such parent,  
13 guardian or legal custodian is fit to care for the minor. In  
14 the event that the minor has attained 18 years of age and the  
15 guardian or custodian petitions the court for an order  
16 terminating his guardianship or custody, guardianship or  
17 custody shall terminate automatically 30 days after the receipt  
18 of the petition unless the court orders otherwise. No legal  
19 custodian or guardian of the person may be removed without his  
20 consent until given notice and an opportunity to be heard by  
21 the court.

22 When the court orders a child restored to the custody of  
23 the parent or parents, the court shall order the parent or  
24 parents to cooperate with the Department of Children and Family  
25 Services and comply with the terms of an after-care plan, or  
26 risk the loss of custody of the child and possible termination

1 of their parental rights. The court may also enter an order of  
2 protective supervision in accordance with Section 2-24.

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

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

17 (b) The information derived from the investigation and  
18 any conclusions or recommendations derived from the  
19 information shall be provided to the parent, guardian, or  
20 legal custodian seeking restoration of custody prior to the  
21 hearing on fitness and the movant shall have an opportunity  
22 at the hearing to refute the information or contest its  
23 significance.

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

1 (Source: P.A. 91-357, eff. 7-29-99; 92-320, eff. 1-1-02.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.