



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1229

Introduced 02/08/11, by Rep. Rita Mayfield

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-28

from Ch. 37, par. 802-28

Amends the Juvenile Court Act of 1987 relating to abused, neglected, and dependent minors who have been removed from the parent's custody. Provides that the Department of Children and Family Services shall conduct a study every 4 months for the first year that the child has not been reunited with his or her family. Provides that the Department of Children and Family Services shall document in detail why the parent and child have not been reunited and what specific steps are being taken to reunite the family. Provides that the court may appoint an independent third party to review the service plan as to whether the goal has been achieved, including a determination that all necessary steps have been taken to reunite the child with his or her family and that the return of the child home cannot be achieved under the plan. Provides that the appointment may include, but is not limited to, court appointed special advocates.

LRB097 06475 RLC 46557 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 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 (H) Notwithstanding any other provision in this
3 Section, the court may select the goal of continuing foster
4 care as a permanency goal if:

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

7 (2) The court has ruled out all other permanency
8 goals based on the child's best interest;

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

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

16 (b) the child exhibits an extreme level of need
17 such that the removal of the child from his or her
18 placement would be detrimental to the child; 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 foster
4 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 or
22 not the services were successful and, if not successful,
23 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 evidence
7 relevant to determining these questions, including oral and
8 written reports, may be admitted and may be relied on to the
9 extent of their probative value. The Department of Children and
10 Family Services shall conduct a study every 4 months for the
11 first year that the child has not been reunited with his or her
12 family. The Department of Children and Family Services shall
13 document in detail why the parent and child have not been
14 reunited and what specific steps are being taken to reunite the
15 family. The court may appoint an independent third party to
16 review the service plan as to whether the goal has been
17 achieved, including a determination that all necessary steps
18 have been taken to reunite the child with his or her family and
19 that the return of the child home cannot be achieved under the
20 plan. The appointment may include, but is not limited to, court
21 appointed special advocates appointed under Section 2-17.1.

22 The court shall make findings as to whether, in violation
23 of Section 8.2 of the Abused and Neglected Child Reporting Act,
24 any portion of the service plan compels a child or parent to
25 engage in any activity or refrain from any activity that is not
26 reasonably related to remedying a condition or conditions that

1 gave rise or which could give rise to any finding of child
2 abuse or neglect. The services contained in the service plan
3 shall include services reasonably related to remedy the
4 conditions that gave rise to removal of the child from the home
5 of his or her parents, guardian, or legal custodian or that the
6 court has found must be remedied prior to returning the child
7 home. Any tasks the court requires of the parents, guardian, or
8 legal custodian or child prior to returning the child home,
9 must be reasonably related to remedying a condition or
10 conditions that gave rise to or which could give rise to any
11 finding of child abuse or neglect.

12 If the permanency goal is to return home, the court shall
13 make findings that identify any problems that are causing
14 continued placement of the children away from the home and
15 identify what outcomes would be considered a resolution to
16 these problems. The court shall explain to the parents that
17 these findings are based on the information that the court has
18 at that time and may be revised, should additional evidence be
19 presented to the court.

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

23 If, after receiving evidence, the court determines that the
24 services contained in the plan are not reasonably calculated to
25 facilitate achievement of the permanency goal, the court shall
26 put in writing the factual basis supporting the determination

1 and enter specific findings based on the evidence. The court
2 also shall enter an order for the Department to develop and
3 implement a new service plan or to implement changes to the
4 current service plan consistent with the court's findings. The
5 new service plan shall be filed with the court and served on
6 all parties within 45 days of the date of the order. The court
7 shall continue the matter until the new service plan is filed.
8 Unless otherwise specifically authorized by law, the court is
9 not empowered under this subsection (2) or under subsection (3)
10 to order specific placements, specific services, or specific
11 service providers to be included in the plan.

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

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

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

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

24 (b) If the permanency goal of the minor cannot be
25 achieved immediately, the specific reasons for continuing
26 the minor in the care of the Department of Children and

1 Family Services or other agency for short term placement,
2 and the following determinations:

3 (i) (Blank).

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

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

20 (iv) (Blank).

21 (v) (Blank).

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

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

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

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

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

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

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

1 consent until given notice and an opportunity to be heard by
2 the court.

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

10 (5) Whenever a parent, guardian, or legal custodian files a
11 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 thereof
22 shall co-operate with the agent of the court in providing
23 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 the
2 hearing on fitness and the movant shall have an opportunity
3 at the hearing to refute the information or contest its
4 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. 95-10, eff. 6-30-07; 95-182, eff. 8-14-07;
9 95-876, eff. 8-21-08; 96-600, eff. 8-21-09; 96-1375, eff.
10 7-29-10.)