



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 02/04/04, by Kevin Joyce, James D. Brosnahan

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-10	from Ch. 37, par. 802-10
705 ILCS 405/2-27	from Ch. 37, par. 802-27
705 ILCS 405/2-28	from Ch. 37, par. 802-28
750 ILCS 5/602	from Ch. 40, par. 602
750 ILCS 45/14	from Ch. 40, par. 2514

Amends the Illinois Marriage and Dissolution of Marriage Act, the Illinois Parentage Act of 1984, and the Juvenile Court Act of 1987. Provides that the court shall not make a custody determination in any custody proceeding in favor of any party against whom there are pending domestic violence charges, either under the Illinois Domestic Violence Act of 1986 or under the Criminal Code of 1961, until those pending charges have been resolved.

LRB093 19027 LCB 44762 b

1 AN ACT concerning child custody.

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 Sections 2-10, 2-27, and 2-28 as follows:

6 (705 ILCS 405/2-10) (from Ch. 37, par. 802-10)

7 Sec. 2-10. Temporary custody hearing. At the appearance of
8 the minor before the court at the temporary custody hearing,
9 all witnesses present shall be examined before the court in
10 relation to any matter connected with the allegations made in
11 the petition.

12 (1) If the court finds that there is not probable cause to
13 believe that the minor is abused, neglected or dependent it
14 shall release the minor and dismiss the petition.

15 (2) If the court finds that there is probable cause to
16 believe that the minor is abused, neglected or dependent, the
17 court shall state in writing the factual basis supporting its
18 finding and the minor, his or her parent, guardian, custodian
19 and other persons able to give relevant testimony shall be
20 examined before the court. The Department of Children and
21 Family Services shall give testimony concerning indicated
22 reports of abuse and neglect, of which they are aware of
23 through the central registry, involving the minor's parent,
24 guardian or custodian. After such testimony, the court may,
25 consistent with the health, safety and best interests of the
26 minor, enter an order that the minor shall be released upon the
27 request of parent, guardian or custodian if the parent,
28 guardian or custodian appears to take custody. The court shall
29 not release a minor to a parent, guardian, or custodian against
30 whom there is any pending domestic violence charge, either
31 under the Illinois Domestic Violence Act of 1986 or under the
32 Criminal Code of 1961, until that pending charge has been

1 resolved. Custodian shall include any agency of the State which
2 has been given custody or wardship of the child. If it is
3 consistent with the health, safety and best interests of the
4 minor, the court may also prescribe shelter care and order that
5 the minor be kept in a suitable place designated by the court
6 or in a shelter care facility designated by the Department of
7 Children and Family Services or a licensed child welfare
8 agency; however, a minor charged with a criminal offense under
9 the Criminal Code of 1961 or adjudicated delinquent shall not
10 be placed in the custody of or committed to the Department of
11 Children and Family Services by any court, except a minor less
12 than 13 years of age and committed to the Department of
13 Children and Family Services under Section 5-710 of this Act or
14 a minor for whom an independent basis of abuse, neglect, or
15 dependency exists, which must be defined by departmental rule.
16 In placing the minor, the Department or other agency shall, to
17 the extent compatible with the court's order, comply with
18 Section 7 of the Children and Family Services Act. In
19 determining the health, safety and best interests of the minor
20 to prescribe shelter care, the court must find that it is a
21 matter of immediate and urgent necessity for the safety and
22 protection of the minor or of the person or property of another
23 that the minor be placed in a shelter care facility or that he
24 or she is likely to flee the jurisdiction of the court, and
25 must further find that reasonable efforts have been made or
26 that, consistent with the health, safety and best interests of
27 the minor, no efforts reasonably can be made to prevent or
28 eliminate the necessity of removal of the minor from his or her
29 home. The court shall require documentation from the Department
30 of Children and Family Services as to the reasonable efforts
31 that were made to prevent or eliminate the necessity of removal
32 of the minor from his or her home or the reasons why no efforts
33 reasonably could be made to prevent or eliminate the necessity
34 of removal. When a minor is placed in the home of a relative,
35 the Department of Children and Family Services shall complete a
36 preliminary background review of the members of the minor's

1 custodian's household in accordance with Section 4.3 of the
2 Child Care Act of 1969 within 90 days of that placement. If the
3 minor is ordered placed in a shelter care facility of the
4 Department of Children and Family Services or a licensed child
5 welfare agency, the court shall, upon request of the
6 appropriate Department or other agency, appoint the Department
7 of Children and Family Services Guardianship Administrator or
8 other appropriate agency executive temporary custodian of the
9 minor and the court may enter such other orders related to the
10 temporary custody as it deems fit and proper, including the
11 provision of services to the minor or his family to ameliorate
12 the causes contributing to the finding of probable cause or to
13 the finding of the existence of immediate and urgent necessity.
14 Acceptance of services shall not be considered an admission of
15 any allegation in a petition made pursuant to this Act, nor may
16 a referral of services be considered as evidence in any
17 proceeding pursuant to this Act, except where the issue is
18 whether the Department has made reasonable efforts to reunite
19 the family. In making its findings that it is consistent with
20 the health, safety and best interests of the minor to prescribe
21 shelter care, the court shall state in writing (i) the factual
22 basis supporting its findings concerning the immediate and
23 urgent necessity for the protection of the minor or of the
24 person or property of another and (ii) the factual basis
25 supporting its findings that reasonable efforts were made to
26 prevent or eliminate the removal of the minor from his or her
27 home or that no efforts reasonably could be made to prevent or
28 eliminate the removal of the minor from his or her home. The
29 parents, guardian, custodian, temporary custodian and minor
30 shall each be furnished a copy of such written findings. The
31 temporary custodian shall maintain a copy of the court order
32 and written findings in the case record for the child. The
33 order together with the court's findings of fact in support
34 thereof shall be entered of record in the court.

35 Once the court finds that it is a matter of immediate and
36 urgent necessity for the protection of the minor that the minor

1 be placed in a shelter care facility, the minor shall not be
2 returned to the parent, custodian or guardian until the court
3 finds that such placement is no longer necessary for the
4 protection of the minor.

5 If the child is placed in the temporary custody of the
6 Department of Children and Family Services for his or her
7 protection, the court shall admonish the parents, guardian,
8 custodian or responsible relative that the parents must
9 cooperate with the Department of Children and Family Services,
10 comply with the terms of the service plans, and correct the
11 conditions which require the child to be in care, or risk
12 termination of their parental rights.

13 (3) If prior to the shelter care hearing for a minor
14 described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is
15 unable to serve notice on the party respondent, the shelter
16 care hearing may proceed ex-parte. A shelter care order from an
17 ex-parte hearing shall be endorsed with the date and hour of
18 issuance and shall be filed with the clerk's office and entered
19 of record. The order shall expire after 10 days from the time
20 it is issued unless before its expiration it is renewed, at a
21 hearing upon appearance of the party respondent, or upon an
22 affidavit of the moving party as to all diligent efforts to
23 notify the party respondent by notice as herein prescribed. The
24 notice prescribed shall be in writing and shall be personally
25 delivered to the minor or the minor's attorney and to the last
26 known address of the other person or persons entitled to
27 notice. The notice shall also state the nature of the
28 allegations, the nature of the order sought by the State,
29 including whether temporary custody is sought, and the
30 consequences of failure to appear and shall contain a notice
31 that the parties will not be entitled to further written
32 notices or publication notices of proceedings in this case,
33 including the filing of an amended petition or a motion to
34 terminate parental rights, except as required by Supreme Court
35 Rule 11; and shall explain the right of the parties and the
36 procedures to vacate or modify a shelter care order as provided

1 in this Section. The notice for a shelter care hearing shall be
2 substantially as follows:

3 NOTICE TO PARENTS AND CHILDREN
4 OF SHELTER CARE HEARING

5 On at, before the Honorable
6, (address:), the State
7 of Illinois will present evidence (1) that (name of child
8 or children) are abused, neglected
9 or dependent for the following reasons:

10 and (2)
11 that there is "immediate and urgent necessity" to remove
12 the child or children from the responsible relative.

13 YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN
14 PLACEMENT of the child or children in foster care until a
15 trial can be held. A trial may not be held for up to 90
16 days. You will not be entitled to further notices of
17 proceedings in this case, including the filing of an
18 amended petition or a motion to terminate parental rights.

19 At the shelter care hearing, parents have the following
20 rights:

21 1. To ask the court to appoint a lawyer if they
22 cannot afford one.

23 2. To ask the court to continue the hearing to
24 allow them time to prepare.

25 3. To present evidence concerning:

26 a. Whether or not the child or children were
27 abused, neglected or dependent.

28 b. Whether or not there is "immediate and
29 urgent necessity" to remove the child from home
30 (including: their ability to care for the child,
31 conditions in the home, alternative means of
32 protecting the child other than removal).

33 c. The best interests of the child.

34 4. To cross examine the State's witnesses.

35 The Notice for rehearings shall be substantially as

1 follows:

2 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
3 TO REHEARING ON TEMPORARY CUSTODY

4 If you were not present at and did not have adequate
5 notice of the Shelter Care Hearing at which temporary
6 custody of was awarded to
7, you have the right to request a full
8 rehearing on whether the State should have temporary
9 custody of To request this rehearing,
10 you must file with the Clerk of the Juvenile Court
11 (address):, in person or by
12 mailing a statement (affidavit) setting forth the
13 following:

- 14 1. That you were not present at the shelter care
- 15 hearing.
- 16 2. That you did not get adequate notice (explaining
- 17 how the notice was inadequate).
- 18 3. Your signature.
- 19 4. Signature must be notarized.

20 The rehearing should be scheduled within 48 hours of
21 your filing this affidavit.

22 At the rehearing, your rights are the same as at the
23 initial shelter care hearing. The enclosed notice explains
24 those rights.

25 At the Shelter Care Hearing, children have the
26 following rights:

- 27 1. To have a guardian ad litem appointed.
- 28 2. To be declared competent as a witness and to
- 29 present testimony concerning:
 - 30 a. Whether they are abused, neglected or
 - 31 dependent.
 - 32 b. Whether there is "immediate and urgent
 - 33 necessity" to be removed from home.
 - 34 c. Their best interests.
- 35 3. To cross examine witnesses for other parties.
- 36 4. To obtain an explanation of any proceedings and

1 orders of the court.

2 (4) If the parent, guardian, legal custodian, responsible
3 relative, minor age 8 or over, or counsel of the minor did not
4 have actual notice of or was not present at the shelter care
5 hearing, he or she may file an affidavit setting forth these
6 facts, and the clerk shall set the matter for rehearing not
7 later than 48 hours, excluding Sundays and legal holidays,
8 after the filing of the affidavit. At the rehearing, the court
9 shall proceed in the same manner as upon the original hearing.

10 (5) Only when there is reasonable cause to believe that the
11 minor taken into custody is a person described in subsection
12 (3) of Section 5-105 may the minor be kept or detained in a
13 detention home or county or municipal jail. This Section shall
14 in no way be construed to limit subsection (6).

15 (6) No minor under 16 years of age may be confined in a
16 jail or place ordinarily used for the confinement of prisoners
17 in a police station. Minors under 17 years of age must be kept
18 separate from confined adults and may not at any time be kept
19 in the same cell, room, or yard with adults confined pursuant
20 to the criminal law.

21 (7) If the minor is not brought before a judicial officer
22 within the time period as specified in Section 2-9, the minor
23 must immediately be released from custody.

24 (8) If neither the parent, guardian or custodian appears
25 within 24 hours to take custody of a minor released upon
26 request pursuant to subsection (2) of this Section, then the
27 clerk of the court shall set the matter for rehearing not later
28 than 7 days after the original order and shall issue a summons
29 directed to the parent, guardian or custodian to appear. At the
30 same time the probation department shall prepare a report on
31 the minor. If a parent, guardian or custodian does not appear
32 at such rehearing, the judge may enter an order prescribing
33 that the minor be kept in a suitable place designated by the
34 Department of Children and Family Services or a licensed child
35 welfare agency.

36 (9) Notwithstanding any other provision of this Section any

1 interested party, including the State, the temporary
2 custodian, an agency providing services to the minor or family
3 under a service plan pursuant to Section 8.2 of the Abused and
4 Neglected Child Reporting Act, foster parent, or any of their
5 representatives, on notice to all parties entitled to notice,
6 may file a motion that it is in the best interests of the minor
7 to modify or vacate a temporary custody order on any of the
8 following grounds:

9 (a) It is no longer a matter of immediate and urgent
10 necessity that the minor remain in shelter care; or

11 (b) There is a material change in the circumstances of
12 the natural family from which the minor was removed and the
13 child can be cared for at home without endangering the
14 child's health or safety; or

15 (c) A person not a party to the alleged abuse, neglect
16 or dependency, including a parent, relative or legal
17 guardian, is capable of assuming temporary custody of the
18 minor; or

19 (d) Services provided by the Department of Children and
20 Family Services or a child welfare agency or other service
21 provider have been successful in eliminating the need for
22 temporary custody and the child can be cared for at home
23 without endangering the child's health or safety.

24 In ruling on the motion, the court shall determine whether
25 it is consistent with the health, safety and best interests of
26 the minor to modify or vacate a temporary custody order.

27 The clerk shall set the matter for hearing not later than
28 14 days after such motion is filed. In the event that the court
29 modifies or vacates a temporary custody order but does not
30 vacate its finding of probable cause, the court may order that
31 appropriate services be continued or initiated in behalf of the
32 minor and his or her family.

33 (10) When the court finds or has found that there is
34 probable cause to believe a minor is an abused minor as
35 described in subsection (2) of Section 2-3 and that there is an
36 immediate and urgent necessity for the abused minor to be

1 placed in shelter care, immediate and urgent necessity shall be
2 presumed for any other minor residing in the same household as
3 the abused minor provided:

4 (a) Such other minor is the subject of an abuse or
5 neglect petition pending before the court; and

6 (b) A party to the petition is seeking shelter care for
7 such other minor.

8 Once the presumption of immediate and urgent necessity has
9 been raised, the burden of demonstrating the lack of immediate
10 and urgent necessity shall be on any party that is opposing
11 shelter care for the other minor.

12 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;
13 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;
14 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

15 (705 ILCS 405/2-27) (from Ch. 37, par. 802-27)

16 Sec. 2-27. Placement; legal custody or guardianship.

17 (1) If the court determines and puts in writing the factual
18 basis supporting the determination of whether the parents,
19 guardian, or legal custodian of a minor adjudged a ward of the
20 court are unfit or are unable, for some reason other than
21 financial circumstances alone, to care for, protect, train or
22 discipline the minor or are unwilling to do so, and that the
23 health, safety, and best interest of the minor will be
24 jeopardized if the minor remains in the custody of his or her
25 parents, guardian or custodian, the court may at this hearing
26 and at any later point:

27 (a) place the minor in the custody of a suitable
28 relative or other person as legal custodian or guardian;

29 (a-5) with the approval of the Department of Children
30 and Family Services, place the minor in the subsidized
31 guardianship of a suitable relative or other person as
32 legal guardian; "subsidized guardianship" means a private
33 guardianship arrangement for children for whom the
34 permanency goals of return home and adoption have been
35 ruled out and who meet the qualifications for subsidized

1 guardianship as defined by the Department of Children and
2 Family Services in administrative rules;

3 (b) place the minor under the guardianship of a
4 probation officer;

5 (c) commit the minor to an agency for care or
6 placement, except an institution under the authority of the
7 Department of Corrections or of the Department of Children
8 and Family Services;

9 (d) commit the minor to the Department of Children and
10 Family Services for care and service; however, a minor
11 charged with a criminal offense under the Criminal Code of
12 1961 or adjudicated delinquent shall not be placed in the
13 custody of or committed to the Department of Children and
14 Family Services by any court, except a minor less than 13
15 years of age and committed to the Department of Children
16 and Family Services under Section 5-710 of this Act. The
17 Department shall be given due notice of the pendency of the
18 action and the Guardianship Administrator of the
19 Department of Children and Family Services shall be
20 appointed guardian of the person of the minor. Whenever the
21 Department seeks to discharge a minor from its care and
22 service, the Guardianship Administrator shall petition the
23 court for an order terminating guardianship. The
24 Guardianship Administrator may designate one or more other
25 officers of the Department, appointed as Department
26 officers by administrative order of the Department
27 Director, authorized to affix the signature of the
28 Guardianship Administrator to documents affecting the
29 guardian-ward relationship of children for whom he or she
30 has been appointed guardian at such times as he or she is
31 unable to perform the duties of his or her office. The
32 signature authorization shall include but not be limited to
33 matters of consent of marriage, enlistment in the armed
34 forces, legal proceedings, adoption, major medical and
35 surgical treatment and application for driver's license.
36 Signature authorizations made pursuant to the provisions

1 of this paragraph shall be filed with the Secretary of
2 State and the Secretary of State shall provide upon payment
3 of the customary fee, certified copies of the authorization
4 to any court or individual who requests a copy.

5 (1.5) In making a determination under this Section, the
6 court shall also consider whether, based on health, safety, and
7 the best interests of the minor,

8 (a) appropriate services aimed at family preservation
9 and family reunification have been unsuccessful in
10 rectifying the conditions that have led to a finding of
11 unfitness or inability to care for, protect, train, or
12 discipline the minor, or

13 (b) no family preservation or family reunification
14 services would be appropriate,

15 and if the petition or amended petition contained an allegation
16 that the parent is an unfit person as defined in subdivision
17 (D) of Section 1 of the Adoption Act, and the order of
18 adjudication recites that parental unfitness was established
19 by clear and convincing evidence, the court shall, when
20 appropriate and in the best interest of the minor, enter an
21 order terminating parental rights and appointing a guardian
22 with power to consent to adoption in accordance with Section
23 2-29.

24 When making a placement, the court, wherever possible,
25 shall require the Department of Children and Family Services to
26 select a person holding the same religious belief as that of
27 the minor or a private agency controlled by persons of like
28 religious faith of the minor and shall require the Department
29 to otherwise comply with Section 7 of the Children and Family
30 Services Act in placing the child. In addition, whenever
31 alternative plans for placement are available, the court shall
32 ascertain and consider, to the extent appropriate in the
33 particular case, the views and preferences of the minor.

34 (2) When a minor is placed with a suitable relative or
35 other person pursuant to item (a) of subsection (1), the court
36 shall appoint him or her the legal custodian or guardian of the

1 person of the minor. When a minor is committed to any agency,
2 the court shall appoint the proper officer or representative
3 thereof as legal custodian or guardian of the person of the
4 minor. Legal custodians and guardians of the person of the
5 minor have the respective rights and duties set forth in
6 subsection (9) of Section 1-3 except as otherwise provided by
7 order of court; but no guardian of the person may consent to
8 adoption of the minor unless that authority is conferred upon
9 him or her in accordance with Section 2-29. An agency whose
10 representative is appointed guardian of the person or legal
11 custodian of the minor may place the minor in any child care
12 facility, but the facility must be licensed under the Child
13 Care Act of 1969 or have been approved by the Department of
14 Children and Family Services as meeting the standards
15 established for such licensing. No agency may place a minor
16 adjudicated under Sections 2-3 or 2-4 in a child care facility
17 unless the placement is in compliance with the rules and
18 regulations for placement under this Section promulgated by the
19 Department of Children and Family Services under Section 5 of
20 the Children and Family Services Act. Like authority and
21 restrictions shall be conferred by the court upon any probation
22 officer who has been appointed guardian of the person of a
23 minor.

24 (2.5) The court shall not make a custody determination in
25 any custody proceeding in favor of a party against whom there
26 is any pending domestic violence charge, either under the
27 Illinois Domestic Violence Act of 1986 or under the Criminal
28 Code of 1961, until that pending charge has been resolved.

29 (3) No placement by any probation officer or agency whose
30 representative is appointed guardian of the person or legal
31 custodian of a minor may be made in any out of State child care
32 facility unless it complies with the Interstate Compact on the
33 Placement of Children. Placement with a parent, however, is not
34 subject to that Interstate Compact.

35 (4) The clerk of the court shall issue to the legal
36 custodian or guardian of the person a certified copy of the

1 order of court, as proof of his authority. No other process is
2 necessary as authority for the keeping of the minor.

3 (5) Custody or guardianship granted under this Section
4 continues until the court otherwise directs, but not after the
5 minor reaches the age of 19 years except as set forth in
6 Section 2-31.

7 (6) (Blank).

8 (Source: P.A. 90-27, eff. 1-1-98; 90-28, eff. 1-1-98; 90-512,
9 eff. 8-22-97; 90-590, eff. 1-1-99; 90-608, eff. 6-30-98;
10 90-655, eff. 7-30-98; 91-357, eff. 7-29-99.)

11 (705 ILCS 405/2-28) (from Ch. 37, par. 802-28)

12 Sec. 2-28. Court review.

13 (1) The court may require any legal custodian or guardian
14 of the person appointed under this Act to report periodically
15 to the court or may cite him into court and require him or his
16 agency, to make a full and accurate report of his or its doings
17 in behalf of the minor. The custodian or guardian, within 10
18 days after such citation, shall make the report, either in
19 writing verified by affidavit or orally under oath in open
20 court, or otherwise as the court directs. Upon the hearing of
21 the report the court may remove the custodian or guardian and
22 appoint another in his stead or restore the minor to the
23 custody of his parents or former guardian or custodian.
24 However, custody of the minor shall not be restored to any
25 parent, guardian or legal custodian in any case in which the
26 minor is found to be neglected or abused under Section 2-3 or
27 dependent under Section 2-4 of this Act, unless the minor can
28 be cared for at home without endangering the minor's health or
29 safety and it is in the best interests of the minor, and if
30 such neglect, abuse, or dependency is found by the court under
31 paragraph (1) of Section 2-21 of this Act to have come about
32 due to the acts or omissions or both of such parent, guardian
33 or legal custodian, until such time as an investigation is made
34 as provided in paragraph (5) and a hearing is held on the issue
35 of the fitness of such parent, guardian or legal custodian to

1 care for the minor and the court enters an order that such
2 parent, guardian or legal custodian is fit to care for the
3 minor.

4 (1.5) The court shall not restore custody of a minor to a
5 parent, guardian, or custodian against whom there is any
6 pending domestic violence charge, either under the Illinois
7 Domestic Violence Act of 1986 or under the Criminal Code of
8 1961, until that pending charge has been resolved.

9 (2) The first permanency hearing shall be conducted by the
10 judge. Subsequent permanency hearings may be heard by a judge
11 or by hearing officers appointed or approved by the court in
12 the manner set forth in Section 2-28.1 of this Act. The initial
13 hearing shall be held (a) within 12 months from the date
14 temporary custody was taken, (b) if the parental rights of both
15 parents have been terminated in accordance with the procedure
16 described in subsection (5) of Section 2-21, within 30 days of
17 the order for termination of parental rights and appointment of
18 a guardian with power to consent to adoption, or (c) in
19 accordance with subsection (2) of Section 2-13.1. Subsequent
20 permanency hearings shall be held every 6 months or more
21 frequently if necessary in the court's determination following
22 the initial permanency hearing, in accordance with the
23 standards set forth in this Section, until the court determines
24 that the plan and goal have been achieved. Once the plan and
25 goal have been achieved, if the minor remains in substitute
26 care, the case shall be reviewed at least every 6 months
27 thereafter, subject to the provisions of this Section, unless
28 the minor is placed in the guardianship of a suitable relative
29 or other person and the court determines that further
30 monitoring by the court does not further the health, safety or
31 best interest of the child and that this is a stable permanent
32 placement. The permanency hearings must occur within the time
33 frames set forth in this subsection and may not be delayed in
34 anticipation of a report from any source or due to the agency's
35 failure to timely file its written report (this written report
36 means the one required under the next paragraph and does not

1 mean the service plan also referred to in that paragraph).

2 The public agency that is the custodian or guardian of the
3 minor, or another agency responsible for the minor's care,
4 shall ensure that all parties to the permanency hearings are
5 provided a copy of the most recent service plan prepared within
6 the prior 6 months at least 14 days in advance of the hearing.
7 If not contained in the plan, the agency shall also include a
8 report setting forth (i) any special physical, psychological,
9 educational, medical, emotional, or other needs of the minor or
10 his or her family that are relevant to a permanency or
11 placement determination and (ii) for any minor age 16 or over,
12 a written description of the programs and services that will
13 enable the minor to prepare for independent living. The
14 agency's written report must detail what progress or lack of
15 progress the parent has made in correcting the conditions
16 requiring the child to be in care; whether the child can be
17 returned home without jeopardizing the child's health, safety,
18 and welfare, and if not, what permanency goal is recommended to
19 be in the best interests of the child, and why the other
20 permanency goals are not appropriate. The caseworker must
21 appear and testify at the permanency hearing. If a permanency
22 hearing has not previously been scheduled by the court, the
23 moving party shall move for the setting of a permanency hearing
24 and the entry of an order within the time frames set forth in
25 this subsection.

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

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

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

36 (B-1) The minor will be in short-term care with a

1 continued goal to return home pending a status hearing.
2 When the court finds that a parent has not made reasonable
3 efforts or reasonable progress to date, the court shall
4 identify what actions the parent and the Department must
5 take in order to justify a finding of reasonable efforts or
6 reasonable progress and shall set a status hearing to be
7 held not earlier than 9 months from the date of
8 adjudication nor later than 11 months from the date of
9 adjudication during which the parent's progress will again
10 be reviewed.

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

13 (D) Adoption, provided that parental rights have been
14 terminated or relinquished.

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

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

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

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

32 The court shall set a permanency goal that is in the best
33 interest of the child. The court's determination shall include
34 the following factors:

35 (1) Age of the child.

36 (2) Options available for permanence.

1 (3) Current placement of the child and the intent of
2 the family regarding adoption.

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

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

8 (6) Availability of services currently needed and
9 whether the services exist.

10 (7) Status of siblings of the minor.

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

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
27 and enter specific findings based on the evidence. The court
28 also shall enter an order for the Department to develop and
29 implement a new service plan or to implement changes to the
30 current service plan consistent with the court's findings. The
31 new service plan shall be filed with the court and served on
32 all parties within 45 days of the date of the order. The court
33 shall continue the matter until the new service plan is filed.
34 Unless otherwise specifically authorized by law, the court is
35 not empowered under this subsection (2) or under subsection (3)
36 to order specific placements, specific services, or specific

1 service providers to be included in the plan.

2 A guardian or custodian appointed by the court pursuant to
3 this Act shall file updated case plans with the court every 6
4 months.

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

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

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

14 (b) If the permanency goal of the minor cannot be
15 achieved immediately, the specific reasons for continuing
16 the minor in the care of the Department of Children and
17 Family Services or other agency for short term placement,
18 and the following determinations:

19 (i) (Blank).

20 (ii) Whether the services required by the court and
21 by any service plan prepared within the prior 6 months
22 have been provided and (A) if so, whether the services
23 were reasonably calculated to facilitate the
24 achievement of the permanency goal or (B) if not
25 provided, why the services were not provided.

26 (iii) Whether the minor's placement is necessary,
27 and appropriate to the plan and goal, recognizing the
28 right of minors to the least restrictive (most
29 family-like) setting available and in close proximity
30 to the parents' home consistent with the health,
31 safety, best interest and special needs of the minor
32 and, if the minor is placed out-of-State, whether the
33 out-of-State placement continues to be appropriate and
34 consistent with the health, safety, and best interest
35 of the minor.

36 (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
27 found to be neglected or abused under Section 2-3 or dependent
28 under Section 2-4 of this Act, unless the minor can be cared
29 for at home without endangering his or her health or safety and
30 it is in the best interest of the minor, and if such neglect,
31 abuse, or dependency is found by the court under paragraph (1)
32 of Section 2-21 of this Act to have come about due to the acts
33 or omissions or both of such parent, guardian or legal
34 custodian, until such time as an investigation is made as
35 provided in paragraph (5) and a hearing is held on the issue of
36 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 The court shall not restore custody of a minor to a parent,
13 guardian, or custodian against whom there is any pending
14 domestic violence charge, either under the Illinois Domestic
15 Violence Act of 1986 or under the Criminal Code of 1961, until
16 that pending charge has been resolved.

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

24 (5) Whenever a parent, guardian, or legal custodian files a
25 motion for restoration of custody of the minor, and the minor
26 was adjudicated neglected, abused, or dependent as a result of
27 physical abuse, the court shall cause to be made an
28 investigation as to whether the movant has ever been charged
29 with or convicted of any criminal offense which would indicate
30 the likelihood of any further physical abuse to the minor.
31 Evidence of such criminal convictions shall be taken into
32 account in determining whether the minor can be cared for at
33 home without endangering his or her health or safety and
34 fitness of the parent, guardian, or legal custodian.

35 (a) Any agency of this State or any subdivision thereof
36 shall co-operate with the agent of the court in providing

1 any information sought in the investigation.

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

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

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

13 Section 10. The Illinois Marriage and Dissolution of
14 Marriage Act is amended by changing Section 602 as follows:

15 (750 ILCS 5/602) (from Ch. 40, par. 602)

16 Sec. 602. Best Interest of Child.

17 (a) The court shall determine custody in accordance with
18 the best interest of the child. The court shall consider all
19 relevant factors including:

20 (1) the wishes of the child's parent or parents as to
21 his custody;

22 (2) the wishes of the child as to his custodian;

23 (3) the interaction and interrelationship of the child
24 with his parent or parents, his siblings and any other
25 person who may significantly affect the child's best
26 interest;

27 (4) the child's adjustment to his home, school and
28 community;

29 (5) the mental and physical health of all individuals
30 involved;

31 (6) the physical violence or threat of physical
32 violence by the child's potential custodian, whether
33 directed against the child or directed against another
34 person;

1 (7) the occurrence of ongoing abuse as defined in
2 Section 103 of the Illinois Domestic Violence Act of 1986,
3 whether directed against the child or directed against
4 another person; and

5 (8) the willingness and ability of each parent to
6 facilitate and encourage a close and continuing
7 relationship between the other parent and the child.

8 In the case of a custody proceeding in which a stepparent
9 has standing under Section 601, it is presumed to be in the
10 best interest of the minor child that the natural parent have
11 the custody of the minor child unless the presumption is
12 rebutted by the stepparent.

13 (b) The court shall not consider conduct of a present or
14 proposed custodian that does not affect his relationship to the
15 child.

16 (c) Unless the court finds the occurrence of ongoing abuse
17 as defined in Section 103 of the Illinois Domestic Violence Act
18 of 1986, the court shall presume that the maximum involvement
19 and cooperation of both parents regarding the physical, mental,
20 moral, and emotional well-being of their child is in the best
21 interest of the child. There shall be no presumption in favor
22 of or against joint custody.

23 (d) The court shall not make a custody determination in any
24 custody proceeding in favor of a party against whom there is
25 any pending domestic violence charge, either under the Illinois
26 Domestic Violence Act of 1986 or under the Criminal Code of
27 1961, until that pending charge has been resolved.

28 (Source: P.A. 90-782, eff. 8-14-98.)

29 Section 15. The Illinois Parentage Act of 1984 is amended
30 by changing Section 14 as follows:

31 (750 ILCS 45/14) (from Ch. 40, par. 2514)

32 Sec. 14. Judgment.

33 (a) (1) The judgment shall contain or explicitly reserve
34 provisions concerning any duty and amount of child support and

1 may contain provisions concerning the custody and guardianship
2 of the child, visitation privileges with the child, the
3 furnishing of bond or other security for the payment of the
4 judgment, which the court shall determine in accordance with
5 the relevant factors set forth in the Illinois Marriage and
6 Dissolution of Marriage Act and any other applicable law of
7 Illinois, to guide the court in a finding in the best interests
8 of the child. In determining custody, joint custody, removal,
9 or visitation, the court shall apply the relevant standards of
10 the Illinois Marriage and Dissolution of Marriage Act,
11 including Section 609. The court shall not make a custody
12 determination in favor of a party against whom there is any
13 pending domestic violence charge, either under the Illinois
14 Domestic Violence Act of 1986 or under the Criminal Code of
15 1961, until that pending charge has been resolved.
16 Specifically, in determining the amount of any child support
17 award, the court shall use the guidelines and standards set
18 forth in subsection (a) of Section 505 and in Section 505.2 of
19 the Illinois Marriage and Dissolution of Marriage Act. For
20 purposes of Section 505 of the Illinois Marriage and
21 Dissolution of Marriage Act, "net income" of the non-custodial
22 parent shall include any benefits available to that person
23 under the Illinois Public Aid Code or from other federal, State
24 or local government-funded programs. The court shall, in any
25 event and regardless of the amount of the non-custodial
26 parent's net income, in its judgment order the non-custodial
27 parent to pay child support to the custodial parent in a
28 minimum amount of not less than \$10 per month. In an action
29 brought within 2 years after a child's birth, the judgment or
30 order may direct either parent to pay the reasonable expenses
31 incurred by either parent related to the mother's pregnancy and
32 the delivery of the child. The judgment or order shall contain
33 the father's social security number, which the father shall
34 disclose to the court; however, failure to include the father's
35 social security number on the judgment or order does not
36 invalidate the judgment or order.

1 (2) If a judgment of parentage contains no explicit award
2 of custody, the establishment of a support obligation or of
3 visitation rights in one parent shall be considered a judgment
4 granting custody to the other parent. If the parentage judgment
5 contains no such provisions, custody shall be presumed to be
6 with the mother; however, the presumption shall not apply if
7 the father has had physical custody for at least 6 months prior
8 to the date that the mother seeks to enforce custodial rights.

9 (b) The court shall order all child support payments,
10 determined in accordance with such guidelines, to commence with
11 the date summons is served. The level of current periodic
12 support payments shall not be reduced because of payments set
13 for the period prior to the date of entry of the support order.
14 The Court may order any child support payments to be made for a
15 period prior to the commencement of the action. In determining
16 whether and the extent to which the payments shall be made for
17 any prior period, the court shall consider all relevant facts,
18 including the factors for determining the amount of support
19 specified in the Illinois Marriage and Dissolution of Marriage
20 Act and other equitable factors including but not limited to:

21 (1) The father's prior knowledge of the fact and
22 circumstances of the child's birth.

23 (2) The father's prior willingness or refusal to help
24 raise or support the child.

25 (3) The extent to which the mother or the public agency
26 bringing the action previously informed the father of the
27 child's needs or attempted to seek or require his help in
28 raising or supporting the child.

29 (4) The reasons the mother or the public agency did not
30 file the action earlier.

31 (5) The extent to which the father would be prejudiced
32 by the delay in bringing the action.

33 For purposes of determining the amount of child support to
34 be paid for any period before the date the order for current
35 child support is entered, there is a rebuttable presumption
36 that the father's net income for the prior period was the same

1 as his net income at the time the order for current child
2 support is entered.

3 If (i) the non-custodial parent was properly served with a
4 request for discovery of financial information relating to the
5 non-custodial parent's ability to provide child support, (ii)
6 the non-custodial parent failed to comply with the request,
7 despite having been ordered to do so by the court, and (iii)
8 the non-custodial parent is not present at the hearing to
9 determine support despite having received proper notice, then
10 any relevant financial information concerning the
11 non-custodial parent's ability to provide child support that
12 was obtained pursuant to subpoena and proper notice shall be
13 admitted into evidence without the need to establish any
14 further foundation for its admission.

15 (c) Any new or existing support order entered by the court
16 under this Section shall be deemed to be a series of judgments
17 against the person obligated to pay support thereunder, each
18 judgment to be in the amount of each payment or installment of
19 support and each such judgment to be deemed entered as of the
20 date the corresponding payment or installment becomes due under
21 the terms of the support order. Each judgment shall have the
22 full force, effect and attributes of any other judgment of this
23 State, including the ability to be enforced. A lien arises by
24 operation of law against the real and personal property of the
25 noncustodial parent for each installment of overdue support
26 owed by the noncustodial parent.

27 (d) If the judgment or order of the court is at variance
28 with the child's birth certificate, the court shall order that
29 a new birth certificate be issued under the Vital Records Act.

30 (e) On request of the mother and the father, the court
31 shall order a change in the child's name. After hearing
32 evidence the court may stay payment of support during the
33 period of the father's minority or period of disability.

34 (f) If, upon a showing of proper service, the father fails
35 to appear in court, or otherwise appear as provided by law, the
36 court may proceed to hear the cause upon testimony of the

1 mother or other parties taken in open court and shall enter a
2 judgment by default. The court may reserve any order as to the
3 amount of child support until the father has received notice,
4 by regular mail, of a hearing on the matter.

5 (g) A one-time charge of 20% is imposable upon the amount
6 of past-due child support owed on July 1, 1988 which has
7 accrued under a support order entered by the court. The charge
8 shall be imposed in accordance with the provisions of Section
9 10-21 of the Illinois Public Aid Code and shall be enforced by
10 the court upon petition.

11 (h) All orders for support, when entered or modified, shall
12 include a provision requiring the non-custodial parent to
13 notify the court and, in cases in which party is receiving
14 child support enforcement services under Article X of the
15 Illinois Public Aid Code, the Illinois Department of Public
16 Aid, within 7 days, (i) of the name and address of any new
17 employer of the non-custodial parent, (ii) whether the
18 non-custodial parent has access to health insurance coverage
19 through the employer or other group coverage and, if so, the
20 policy name and number and the names of persons covered under
21 the policy, and (iii) of any new residential or mailing address
22 or telephone number of the non-custodial parent. In any
23 subsequent action to enforce a support order, upon a sufficient
24 showing that a diligent effort has been made to ascertain the
25 location of the non-custodial parent, service of process or
26 provision of notice necessary in the case may be made at the
27 last known address of the non-custodial parent in any manner
28 expressly provided by the Code of Civil Procedure or this Act,
29 which service shall be sufficient for purposes of due process.

30 (i) An order for support shall include a date on which the
31 current support obligation terminates. The termination date
32 shall be no earlier than the date on which the child covered by
33 the order will attain the age of 18. However, if the child will
34 not graduate from high school until after attaining the age of
35 18, then the termination date shall be no earlier than the
36 earlier of the date on which the child's high school graduation

1 will occur or the date on which the child will attain the age
2 of 19. The order for support shall state that the termination
3 date does not apply to any arrearage that may remain unpaid on
4 that date. Nothing in this subsection shall be construed to
5 prevent the court from modifying the order or terminating the
6 order in the event the child is otherwise emancipated.

7 (j) An order entered under this Section shall include a
8 provision requiring the obligor to report to the obligee and to
9 the clerk of court within 10 days each time the obligor obtains
10 new employment, and each time the obligor's employment is
11 terminated for any reason. The report shall be in writing and
12 shall, in the case of new employment, include the name and
13 address of the new employer. Failure to report new employment
14 or the termination of current employment, if coupled with
15 nonpayment of support for a period in excess of 60 days, is
16 indirect criminal contempt. For any obligor arrested for
17 failure to report new employment bond shall be set in the
18 amount of the child support that should have been paid during
19 the period of unreported employment. An order entered under
20 this Section shall also include a provision requiring the
21 obligor and obligee parents to advise each other of a change in
22 residence within 5 days of the change except when the court
23 finds that the physical, mental, or emotional health of a party
24 or that of a minor child, or both, would be seriously
25 endangered by disclosure of the party's address.

26 (Source: P.A. 92-590, eff. 7-1-02; 92-876, eff. 6-1-03; 93-139,
27 eff. 7-10-03; revised 9-15-03.)