



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4305

Introduced 12/21/05, by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

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

from Ch. 37, par. 802-18

Amends the Juvenile Court Act of 1987. Provides that in unfitness proceedings alleging that a minor is abused, neglected, or dependent, if documents, assessments, and evaluations are directly used to prove an unfitness ground as alleged in the petition or at the best interest portion, relating to parent child bonding, and a party objects to the introduction of the documents into evidence, the author of those documents shall testify, if available, as to the recommendations and findings. Provides that if the author is unavailable, the documents are admissible without such testimony. Provides that the court shall determine the proper weight accorded to the documents. Provides that a supplemental petition to reinstate parentage may be filed regarding any minor who is presently a ward of the court under the Abused, Neglected, or Dependent Minors Article of the Act. Establishes procedures for filing such supplemental petition. Effective August 1, 2006.

LRB094 16256 RLC 51500 b

1 AN ACT concerning courts.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Juvenile Court Act of 1987 is amended by  
5 changing Section 2-18 and by adding Section 2-34 as follows:

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

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

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

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

23 (b) proof that a minor has a medical diagnosis of  
24 failure to thrive syndrome is prima facie evidence of  
25 neglect;

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

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

31 (e) proof of injuries sustained by a minor or of the  
32 condition of a minor of such a nature as would ordinarily

1 not be sustained or exist except by reason of the acts or  
2 omissions of the parent, custodian or guardian of such  
3 minor shall be prima facie evidence of abuse or neglect, as  
4 the case may be;

5 (f) proof that a parent, custodian or guardian of a  
6 minor repeatedly used a drug, to the extent that it has or  
7 would ordinarily have the effect of producing in the user a  
8 substantial state of stupor, unconsciousness,  
9 intoxication, hallucination, disorientation or  
10 incompetence, or a substantial impairment of judgment, or a  
11 substantial manifestation of irrationality, shall be prima  
12 facie evidence of neglect;

13 (g) proof that a parent, custodian, or guardian of a  
14 minor repeatedly used a controlled substance, as defined in  
15 subsection (f) of Section 102 of the Illinois Controlled  
16 Substances Act, in the presence of the minor or a sibling  
17 of the minor is prima facie evidence of neglect. "Repeated  
18 use", for the purpose of this subsection, means more than  
19 one use of a controlled substance as defined in subsection  
20 (f) of Section 102 of the Illinois Controlled Substances  
21 Act;

22 (h) proof that a newborn infant's blood, urine, or  
23 meconium contains any amount of a controlled substance as  
24 defined in subsection (f) of Section 102 of the Illinois  
25 Controlled Substances Act, or a metabolite of a controlled  
26 substance, with the exception of controlled substances or  
27 metabolites of those substances, the presence of which is  
28 the result of medical treatment administered to the mother  
29 or the newborn, is prime facie evidence of neglect;

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

34 (3) In any hearing under this Act, proof of the abuse,  
35 neglect or dependency of one minor shall be admissible evidence  
36 on the issue of the abuse, neglect or dependency of any other

1 minor for whom the respondent is responsible.

2 (4) (a) Any writing, record, photograph or x-ray of any  
3 hospital or public or private agency, whether in the form of an  
4 entry in a book or otherwise, made as a memorandum or record of  
5 any condition, act, transaction, occurrence or event relating  
6 to a minor in an abuse, neglect or dependency proceeding, shall  
7 be admissible in evidence as proof of that condition, act,  
8 transaction, occurrence or event, if the court finds that the  
9 document was made in the regular course of the business of the  
10 hospital or agency and that it was in the regular course of  
11 such business to make it, at the time of the act, transaction,  
12 occurrence or event, or within a reasonable time thereafter.

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

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

31 (a-15) For purposes of paragraphs (a-5) and (a-10) of this  
32 subsection (4), "unavailable" means: the author is absent from  
33 the hearing and the party wishing to introduce the document has  
34 been unable to procure the author's attendance by process or  
35 other reasonable means; or the author persists in refusing to  
36 testify concerning the document despite an order of the court

1 to do so; or the author is unable to be present or to testify at  
2 the hearing because of health, or then existing physical or  
3 mental illness or infirmity, or death.

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

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

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

25 (d) There shall be a rebuttable presumption that a minor is  
26 competent to testify in abuse or neglect proceedings. The court  
27 shall determine how much weight to give to the minor's  
28 testimony, and may allow the minor to testify in chambers with  
29 only the court, the court reporter and attorneys for the  
30 parties present.

31 (e) The privileged character of communication between any  
32 professional person and patient or client, except privilege  
33 between attorney and client, shall not apply to proceedings  
34 subject to this Article.

35 (f) Proof of the impairment of emotional health or  
36 impairment of mental or emotional condition as a result of the

1 failure of the respondent to exercise a minimum degree of care  
2 toward a minor may include competent opinion or expert  
3 testimony, and may include proof that such impairment lessened  
4 during a period when the minor was in the care, custody or  
5 supervision of a person or agency other than the respondent.

6 (5) In any hearing under this Act alleging neglect for  
7 failure to provide education as required by law under  
8 subsection (1) of Section 2-3, proof that a minor under 13  
9 years of age who is subject to compulsory school attendance  
10 under the School Code is a chronic truant as defined under the  
11 School Code shall be prima facie evidence of neglect by the  
12 parent or guardian in any hearing under this Act and proof that  
13 a minor who is 13 years of age or older who is subject to  
14 compulsory school attendance under the School Code is a chronic  
15 truant shall raise a rebuttable presumption of neglect by the  
16 parent or guardian. This subsection (5) shall not apply in  
17 counties with 2,000,000 or more inhabitants.

18 (6) In any hearing under this Act, the court may take  
19 judicial notice of prior sworn testimony or evidence admitted  
20 in prior proceedings involving the same minor if (a) the  
21 parties were either represented by counsel at such prior  
22 proceedings or the right to counsel was knowingly waived and  
23 (b) the taking of judicial notice would not result in admitting  
24 hearsay evidence at a hearing where it would otherwise be  
25 prohibited.

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

27 (705 ILCS 405/2-34 new)

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

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

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

33 (i) the minor's parent or parents surrendered the  
34 minor for adoption to the Department of Children and  
35 Family Services; or

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

3           (iii) the minor's parent or parents consented to  
4           his or her adoption by a specified person or persons;  
5           or

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

11           (b) the minor is without a legally recognized parent;  
12           and

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

21           (d) the court finds that the parent named in the  
22           supplemental petition wishes parentage to be reinstated;  
23           and

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

31           (2) The supplemental petition may be filed by the  
32           Department, the minor's guardian ad litem, the State's  
33           Attorney, any party, or by the individual seeking reinstatement  
34           of parentage. Unless excused by the court for good cause shown,  
35           the petitioner shall give notice of the time and place of the  
36           hearing on the supplemental petition, in person or by mail, to

1 the parties to the juvenile court proceeding and the person  
2 whose parentage would be restored if the petition were granted.  
3 Notice shall be provided at least 14 days in advance of the  
4 hearing date.

5 (3) Upon the entry of an order granting a supplemental  
6 petition to reinstate parentage, parentage of the parent named  
7 in the order shall be reinstated, any previous order appointing  
8 a guardian with the power to consent to adoption shall be void  
9 and with respect to the parent named in the order, any consent  
10 shall be void.

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

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

18 Section 99. Effective date. This Act takes effect August 1,  
19 2006.