



Rep. Mary E. Flowers

Filed: 4/13/2007

09500HB1322ham002

LRB095 09303 DRJ 34966 a

1 AMENDMENT TO HOUSE BILL 1322

2 AMENDMENT NO. _____. Amend House Bill 1322 on page 30,
3 line 5, by replacing "Section 2-23" with "Sections 2-23 and
4 2-28"; and

5 on page 34, after line 26, by inserting the following:

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

1 appoint another in his stead or restore the minor to the
2 custody of his parents or former guardian or custodian.
3 However, custody of the minor shall not be restored to any
4 parent, guardian or legal custodian in any case in which the
5 minor is found to be neglected or abused under Section 2-3 or
6 dependent under Section 2-4 of this Act, unless the minor can
7 be cared for at home without endangering the minor's health or
8 safety and it is in the best interests of the minor, and if
9 such neglect, abuse, or dependency is found by the court under
10 paragraph (1) of Section 2-21 of this Act to have come about
11 due to the acts or omissions or both of such parent, guardian
12 or legal custodian, until such time as an investigation is made
13 as provided in paragraph (5) and a hearing is held on the issue
14 of the fitness of such parent, guardian or legal custodian to
15 care for the minor and the court enters an order that such
16 parent, guardian or legal custodian is fit to care for the
17 minor.

18 (2) The first permanency hearing shall be conducted by the
19 judge. Subsequent permanency hearings may be heard by a judge
20 or by hearing officers appointed or approved by the court in
21 the manner set forth in Section 2-28.1 of this Act. The initial
22 hearing shall be held (a) within 12 months from the date
23 temporary custody was taken, (b) if the parental rights of both
24 parents have been terminated in accordance with the procedure
25 described in subsection (5) of Section 2-21, within 30 days of
26 the order for termination of parental rights and appointment of

1 a guardian with power to consent to adoption, or (c) in
2 accordance with subsection (2) of Section 2-13.1. Subsequent
3 permanency hearings shall be held every 6 months or more
4 frequently if necessary in the court's determination following
5 the initial permanency hearing, in accordance with the
6 standards set forth in this Section, until the court determines
7 that the plan and goal have been achieved. Once the plan and
8 goal have been achieved, if the minor remains in substitute
9 care, the case shall be reviewed at least every 6 months
10 thereafter, subject to the provisions of this Section, unless
11 the minor is placed in the guardianship of a suitable relative
12 or other person and the court determines that further
13 monitoring by the court does not further the health, safety or
14 best interest of the child and that this is a stable permanent
15 placement. The permanency hearings must occur within the time
16 frames set forth in this subsection and may not be delayed in
17 anticipation of a report from any source or due to the agency's
18 failure to timely file its written report (this written report
19 means the one required under the next paragraph and does not
20 mean the service plan also referred to in that paragraph).

21 The public agency that is the custodian or guardian of the
22 minor, or another agency responsible for the minor's care,
23 shall ensure that all parties to the permanency hearings are
24 provided a copy of the most recent service plan prepared within
25 the prior 6 months at least 14 days in advance of the hearing.
26 If not contained in the plan, the agency shall also include a

1 report setting forth (i) any special physical, psychological,
2 educational, medical, emotional, or other needs of the minor or
3 his or her family that are relevant to a permanency or
4 placement determination and (ii) for any minor age 16 or over,
5 a written description of the programs and services that will
6 enable the minor to prepare for independent living. The
7 agency's written report must detail what progress or lack of
8 progress the parent has made in correcting the conditions
9 requiring the child to be in care; whether the child can be
10 returned home without jeopardizing the child's health, safety,
11 and welfare, and if not, what permanency goal is recommended to
12 be in the best interests of the child, and why the other
13 permanency goals are not appropriate. The caseworker must
14 appear and testify at the permanency hearing. If a permanency
15 hearing has not previously been scheduled by the court, the
16 moving party shall move for the setting of a permanency hearing
17 and the entry of an order within the time frames set forth in
18 this subsection.

19 At the permanency hearing, the court shall determine the
20 future status of the child. The court shall set one of the
21 following permanency goals:

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

24 (B) The minor will be in short-term care with a
25 continued goal to return home within a period not to exceed
26 one year, where the progress of the parent or parents is

1 substantial giving particular consideration to the age and
2 individual needs of the minor.

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

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

16 (D) Adoption, provided that parental rights have been
17 terminated or relinquished.

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

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

23 (G) The minor will be in substitute care because he or
24 she cannot be provided for in a home environment due to
25 developmental disabilities or mental illness or because he
26 or she is a danger to self or others, provided that goals

1 (A) through (D) have been ruled out.

2 In selecting any permanency goal, the court shall indicate
3 in writing the reasons the goal was selected and why the
4 preceding goals were ruled out. Where the court has selected a
5 permanency goal other than (A), (B), or (B-1), the Department
6 of Children and Family Services shall not provide further
7 reunification services, but shall provide services consistent
8 with the goal selected.

9 Notwithstanding any other provision in this Section, the
10 court may select the goal of long-term foster care as a
11 permanency goal if:

12 (H) the Department of Children and Family Services is
13 the custodian or guardian of the minor; and

14 (I) the court has ruled out return home as a permanency
15 goal; and

16 (J) the court, after receiving evidence, makes written
17 findings that (i) the child is living with a relative or
18 foster parent who is unable or unwilling to adopt the child
19 or be named the child's guardian because of exceptional
20 circumstances, but who is willing and capable of providing
21 the child with a stable and permanent environment, and the
22 removal of the child from the physical custody of his or
23 her relative or foster parent would be detrimental to the
24 emotional well-being of the child or (ii) there would be
25 substantial interference with a child's sibling
26 relationship, taking into consideration the nature and

1 extent of the relationship, including, but not limited to,
2 whether the child was raised with a sibling in the same
3 home, whether the child shared significant common
4 experiences or has existing close and strong bonds with a
5 sibling, and whether ongoing contact is in the child's best
6 interest, including the child's long-term emotional
7 interest, as compared to the benefit of legal permanence
8 through adoption.

9 The court shall set a permanency goal that is in the best
10 interest of the child. The court's determination shall include
11 the following factors:

12 (1) Age of the child.

13 (2) Options available for permanence.

14 (3) Current placement of the child and the intent of
15 the family regarding adoption.

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

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

21 (6) Availability of services currently needed and
22 whether the services exist.

23 (7) Status of siblings of the minor.

24 The court shall consider (i) the permanency goal contained
25 in the service plan, (ii) the appropriateness of the services
26 contained in the plan and whether those services have been

1 provided, (iii) whether reasonable efforts have been made by
2 all the parties to the service plan to achieve the goal, and
3 (iv) whether the plan and goal have been achieved. All evidence
4 relevant to determining these questions, including oral and
5 written reports, may be admitted and may be relied on to the
6 extent of their probative value.

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

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

25 A guardian or custodian appointed by the court pursuant to
26 this Act shall file updated case plans with the court every 6

1 months.

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

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

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

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

16 (i) (Blank).

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

23 (iii) Whether the minor's placement is necessary,
24 and appropriate to the plan and goal, recognizing the
25 right of minors to the least restrictive (most
26 family-like) setting available and in close proximity

1 to the parents' home consistent with the health,
2 safety, best interest and special needs of the minor
3 and, if the minor is placed out-of-State, whether the
4 out-of-State placement continues to be appropriate and
5 consistent with the health, safety, and best interest
6 of the minor.

7 (iv) (Blank).

8 (v) (Blank).

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

12 (4) The minor or any person interested in the minor may
13 apply to the court for a change in custody of the minor and the
14 appointment of a new custodian or guardian of the person or for
15 the restoration of the minor to the custody of his parents or
16 former guardian or custodian.

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

18 (a) The Department, the minor, or the current foster
19 parent or relative caregiver seeking private guardianship
20 may file a motion for private guardianship of the minor.
21 Appointment of a guardian under this Section requires
22 approval of the court.

23 (b) The State's Attorney may file a motion to terminate
24 parental rights of any parent who has failed to make
25 reasonable efforts to correct the conditions which led to
26 the removal of the child or reasonable progress toward the

1 return of the child, as defined in subdivision (D) (m) of
2 Section 1 of the Adoption Act or for whom any other
3 unfitness ground for terminating parental rights as
4 defined in subdivision (D) of Section 1 of the Adoption Act
5 exists.

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. 91-357, eff. 7-29-99; 92-320, eff. 1-1-02.)".