

SB0491



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0491

Introduced 2/8/2007, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

750 ILCS 50/13

from Ch. 40, par. 1516

Amends the Adoption Act. Provides that an interim order of custody may be entered for up to 30 days (now, 10 days) if a sworn petition establishes (now, states) there is an immediate danger to the child and that irreparable harm will result if notice is given to the parent or guardian. Provides a description of irreparable harm that includes the inability of a petitioner to obtain medical insurance for the child or the absence of a temporary legal custodian for the child.

LRB095 03622 AJO 23644 b

A BILL FOR

1 AN ACT concerning adoption.

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

4 Section 5. The Adoption Act is amended by changing Section
5 13 as follows:

6 (750 ILCS 50/13) (from Ch. 40, par. 1516)

7 Sec. 13. Interim order. As soon as practicable after the
8 filing of a petition for adoption the court shall hold a
9 hearing for the following purposes:

10 A. In other than an adoption of a related child or an
11 adoption through an agency, or of an adult:

12 (a) To determine the validity of the consent, provided
13 that the execution of a consent pursuant to this Act shall
14 be prima facie evidence of its validity, and provided that
15 the validity of a consent shall not be affected by the
16 omission therefrom of the names of the petitioners or
17 adopting parents at the time the consent is executed or
18 acknowledged, and further provided that the execution of a
19 consent prior to the filing of a petition for adoption
20 shall not affect its validity.

21 (b) To determine whether there is available suitable
22 temporary custodial care for a child sought to be adopted.

23 B. In all cases except standby adoptions:

1 (a) The court shall appoint some licensed attorney
2 other than the State's attorney acting in his or her
3 official capacity as guardian ad litem to represent a child
4 sought to be adopted. Such guardian ad litem shall have
5 power to consent to the adoption of the child, if such
6 consent is required.

7 (b) The court shall appoint a guardian ad litem for all
8 named minors or defendants who are persons under legal
9 disability, if any.

10 (c) If the petition alleges a person to be unfit
11 pursuant to the provisions of subparagraph (p) of paragraph
12 D of Section 1 of this Act, such person shall be
13 represented by counsel. If such person is indigent or an
14 appearance has not been entered on his behalf at the time
15 the matter is set for hearing, the court shall appoint as
16 counsel for him either the Guardianship and Advocacy
17 Commission, the public defender, or, only if no attorney
18 from the Guardianship and Advocacy Commission or the public
19 defender is available, an attorney licensed to practice law
20 in this State.

21 (d) If it is proved to the satisfaction of the court,
22 after such investigation as the court deems necessary, that
23 termination of parental rights and temporary commitment of
24 the child to an agency or to a person deemed competent by
25 the court, including petitioners, will be for the welfare
26 of the child, the court may order the child to be so

1 committed and may terminate the parental rights of the
2 parents and declare the child a ward of the court or, if it
3 is not so proved, the court may enter such other order as
4 it shall deem necessary and advisable.

5 (e) Before an interim custody order is granted under
6 this Section, service of summons shall be had upon the
7 parent or parents whose rights have not been terminated,
8 except as provided in subsection (f). Reasonable notice and
9 opportunity to be heard shall be given to the parent or
10 parents after service of summons when the address of the
11 parent or parents is available. The party seeking an
12 interim custody order shall make all reasonable efforts to
13 locate the parent or parents of the child or children they
14 are seeking to adopt and to notify the parent or parents of
15 the party's request for an interim custody order pursuant
16 to this Section.

17 (f) An interim custody order may be granted without
18 notice upon presentation to the court of a written
19 petition, accompanied by an affidavit, establishing
20 ~~stating~~ that there is an immediate danger to the child and
21 that irreparable harm will result to the child if notice is
22 given to the parent or parents or legal guardian. Upon
23 making a finding that there is an immediate danger to the
24 child if service of process is had upon and notice of
25 hearing is given to the parent or parents or legal guardian
26 prior to the entry of an order granting temporary custody

1 to someone other than a parent or legal guardian, the court
2 may enter an order of temporary custody which shall expire
3 not more than 30 ~~10~~ days after its entry. Every ex parte
4 custody order granted without notice shall state the harm
5 ~~injury~~ which the court sought to avoid by granting the
6 order, the irreparable harm ~~injury~~ that would have occurred
7 had notice been given, and the reason the order was granted
8 without notice. Irreparable harm pursuant to this
9 subsection (f) shall include, but is not limited to, the
10 inability of a petitioner to obtain dependent medical
11 insurance coverage for the child or the absence of a
12 temporary legal custodian for the child. The matter shall
13 be set down for full hearing before the expiration of the
14 ex parte order and will be heard after service of summons
15 is had upon and notice of hearing is given to the parent or
16 parents or legal guardian. At the hearing the burden of
17 proof shall be upon the party seeking to extend the interim
18 custody order to show that the order was properly granted
19 without notice and that custody should remain with the
20 party seeking to adopt during the pendency of the adoption
21 proceeding. If the interim custody order is extended, the
22 reasons for granting the extension shall be stated in the
23 order.

24 C. In the case of a child born outside the United States or
25 a territory thereof, if the petitioners have previously been
26 appointed guardians of such child by a court of competent

1 jurisdiction in a country other than the United States or a
2 territory thereof, the court may order that the petitioners
3 continue as guardians of such child.

4 D. In standby adoption cases:

5 (a) The court shall appoint a licensed attorney other
6 than the State's Attorney acting in his or her official
7 capacity as guardian ad litem to represent a child sought
8 to be adopted. The guardian ad litem shall have power to
9 consent to the adoption of the child, if consent is
10 required.

11 (b) The court shall appoint a guardian ad litem for all
12 named minors or defendants who are persons under legal
13 disability, if any.

14 (c) The court lacks jurisdiction to proceed on the
15 petition for standby adoption if the child has a living
16 parent, adoptive parent, or adjudicated parent whose
17 rights have not been terminated and whose whereabouts are
18 known, unless the parent consents to the standby adoption
19 or, after receiving notice of the hearing on the standby
20 adoption petition, fails to object to the appointment of a
21 standby adoptive parent at the hearing on the petition.

22 (d) The court shall investigate as needed for the
23 welfare of the child and shall determine whether the
24 petitioner or petitioners shall be permitted to adopt.

25 (Source: P.A. 90-14, eff. 7-1-97; 90-349, eff. 1-1-98; 91-572,
26 eff. 1-1-00.)