



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4825

Introduced 1/12/2010, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-28
705 ILCS 405/2-34

from Ch. 37, par. 802-28

Amends the Juvenile Court Act of 1987. Provides that the permanency plan shall include a finding by the court whether conditions that gave rise to a finding of parental abuse or neglect or of the minor's dependency have been remedied prior to returning the child home. Changes the conditions under which a motion to reinstate parental rights may be filed by the Department of Children and Family Services regarding any minor who is a ward of the court because of abuse, neglect, or dependency. Effective immediately.

LRB096 16457 RLC 31727 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 Sections 2-28 and 2-34 as follows:

6 (705 ILCS 405/2-28) (from Ch. 37, par. 802-28)

7 Sec. 2-28. Court review.

8 (1) The court may require any legal custodian or guardian
9 of the person appointed under this Act to report periodically
10 to the court or may cite him into court and require him or his
11 agency, to make a full and accurate report of his or its doings
12 in behalf of the minor. The custodian or guardian, within 10
13 days after such citation, shall make the report, either in
14 writing verified by affidavit or orally under oath in open
15 court, or otherwise as the court directs. Upon the hearing of
16 the report the court may remove the custodian or guardian and
17 appoint another in his stead or restore the minor to the
18 custody of his parents or former guardian or custodian.
19 However, custody of the minor shall not be restored to any
20 parent, guardian or legal custodian in any case in which the
21 minor is found to be neglected or abused under Section 2-3 or
22 dependent under Section 2-4 of this Act, unless the minor can
23 be cared for at home without endangering the minor's health or

1 safety and it is in the best interests of the minor, and if
2 such neglect, abuse, or dependency is found by the court under
3 paragraph (1) of Section 2-21 of this Act to have come about
4 due to the acts or omissions or both of such parent, guardian
5 or legal custodian, until such time as an investigation is made
6 as provided in paragraph (5) and a hearing is held on the issue
7 of the fitness of such parent, guardian or legal custodian to
8 care for the minor and the court enters an order that such
9 parent, guardian or legal custodian is fit to care for the
10 minor.

11 (2) The first permanency hearing shall be conducted by the
12 judge. Subsequent permanency hearings may be heard by a judge
13 or by hearing officers appointed or approved by the court in
14 the manner set forth in Section 2-28.1 of this Act. The initial
15 hearing shall be held (a) within 12 months from the date
16 temporary custody was taken, (b) if the parental rights of both
17 parents have been terminated in accordance with the procedure
18 described in subsection (5) of Section 2-21, within 30 days of
19 the order for termination of parental rights and appointment of
20 a guardian with power to consent to adoption, or (c) in
21 accordance with subsection (2) of Section 2-13.1. Subsequent
22 permanency hearings shall be held every 6 months or more
23 frequently if necessary in the court's determination following
24 the initial permanency hearing, in accordance with the
25 standards set forth in this Section, until the court determines
26 that the plan and goal have been achieved. Once the plan and

1 goal have been achieved, if the minor remains in substitute
2 care, the case shall be reviewed at least every 6 months
3 thereafter, subject to the provisions of this Section, unless
4 the minor is placed in the guardianship of a suitable relative
5 or other person and the court determines that further
6 monitoring by the court does not further the health, safety or
7 best interest of the child and that this is a stable permanent
8 placement. The permanency hearings must occur within the time
9 frames set forth in this subsection and may not be delayed in
10 anticipation of a report from any source or due to the agency's
11 failure to timely file its written report (this written report
12 means the one required under the next paragraph and does not
13 mean the service plan also referred to in that paragraph).

14 The public agency that is the custodian or guardian of the
15 minor, or another agency responsible for the minor's care,
16 shall ensure that all parties to the permanency hearings are
17 provided a copy of the most recent service plan prepared within
18 the prior 6 months at least 14 days in advance of the hearing.
19 If not contained in the plan, the agency shall also include a
20 report setting forth (i) any special physical, psychological,
21 educational, medical, emotional, or other needs of the minor or
22 his or her family that are relevant to a permanency or
23 placement determination and (ii) for any minor age 16 or over,
24 a written description of the programs and services that will
25 enable the minor to prepare for independent living. The
26 agency's written report must detail what progress or lack of

1 progress the parent has made in correcting the conditions
2 requiring the child to be in care; whether the child can be
3 returned home without jeopardizing the child's health, safety,
4 and welfare, and if not, what permanency goal is recommended to
5 be in the best interests of the child, and why the other
6 permanency goals are not appropriate. The caseworker must
7 appear and testify at the permanency hearing. If a permanency
8 hearing has not previously been scheduled by the court, the
9 moving party shall move for the setting of a permanency hearing
10 and the entry of an order within the time frames set forth in
11 this subsection.

12 At the permanency hearing, the court shall determine the
13 future status of the child. The court shall set one of the
14 following permanency goals:

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

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

22 (B-1) The minor will be in short-term care with a
23 continued goal to return home pending a status hearing.
24 When the court finds that a parent has not made reasonable
25 efforts or reasonable progress to date, the court shall
26 identify what actions the parent and the Department must

1 take in order to justify a finding of reasonable efforts or
2 reasonable progress and shall set a status hearing to be
3 held not earlier than 9 months from the date of
4 adjudication nor later than 11 months from the date of
5 adjudication during which the parent's progress will again
6 be reviewed.

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

9 (D) Adoption, provided that parental rights have been
10 terminated or relinquished.

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

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

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

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

1 with the goal selected.

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

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

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

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

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

16 (b) the child exhibits an extreme level of need
17 such that the removal of the child from his or her
18 placement would be detrimental to the child; or

19 (c) the child who is the subject of the
20 permanency hearing has existing close and strong
21 bonds with a sibling, and achievement of another
22 permanency goal would substantially interfere with
23 the subject child's sibling relationship, taking
24 into consideration the nature and extent of the
25 relationship, and whether ongoing contact is in
26 the subject child's best interest, including

1 long-term emotional interest, as compared with the
2 legal and emotional benefit of permanence;

3 (4) The child has lived with the relative or foster
4 parent for at least one year; and

5 (5) The relative or foster parent currently caring
6 for the child is willing and capable of providing the
7 child with a stable and permanent environment.

8 The court shall set a permanency goal that is in the best
9 interest of the child. In determining that goal, the court
10 shall consult with the minor in an age-appropriate manner
11 regarding the proposed permanency or transition plan for the
12 minor. The court's determination shall include the following
13 factors:

14 (1) Age of the child.

15 (2) Options available for permanence, including both
16 out-of-State and in-State placement options.

17 (3) Current placement of the child and the intent of
18 the family regarding adoption.

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

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

24 (6) Availability of services currently needed and
25 whether the services exist.

26 (7) Status of siblings of the minor.

1 The court shall consider (i) the permanency goal contained
2 in the service plan, (ii) the appropriateness of the services
3 contained in the plan and whether those services have been
4 provided, (iii) whether reasonable efforts have been made by
5 all the parties to the service plan to achieve the goal, and
6 (iv) whether the plan and goal have been achieved. All evidence
7 relevant to determining these questions, including oral and
8 written reports, may be admitted and may be relied on to the
9 extent of their probative value.

10 The court shall make findings as to whether, in violation
11 of Section 8.2 of the Abused and Neglected Child Reporting Act,
12 any portion of the service plan compels a child or parent to
13 engage in any activity or refrain from any activity that is not
14 reasonably related to remedying a condition or conditions that
15 gave rise or which could give rise to any finding of child
16 abuse or neglect, or the court has found must be remedied prior
17 to returning the child home.

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

26 If the goal has been achieved, the court shall enter orders

1 that are necessary to conform the minor's legal custody and
2 status to those findings.

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

18 A guardian or custodian appointed by the court pursuant to
19 this Act shall file updated case plans with the court every 6
20 months.

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

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

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

4 (b) If the permanency goal of the minor cannot be
5 achieved immediately, the specific reasons for continuing
6 the minor in the care of the Department of Children and
7 Family Services or other agency for short term placement,
8 and the following determinations:

9 (i) (Blank).

10 (ii) Whether the services required by the court and
11 by any service plan prepared within the prior 6 months
12 have been provided and (A) if so, whether the services
13 were reasonably calculated to facilitate the
14 achievement of the permanency goal or (B) if not
15 provided, why the services were not provided.

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

26 (iv) (Blank).

1 (v) (Blank).

2 (4) The minor or any person interested in the minor may
3 apply to the court for a change in custody of the minor and the
4 appointment of a new custodian or guardian of the person or for
5 the restoration of the minor to the custody of his parents or
6 former guardian or custodian.

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

8 (a) The Department, the minor, or the current foster
9 parent or relative caregiver seeking private guardianship
10 may file a motion for private guardianship of the minor.
11 Appointment of a guardian under this Section requires
12 approval of the court.

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

22 When parental rights have been terminated for a minimum
23 of 3 years and the child who is the subject of the
24 permanency hearing is 13 years old or older and is not
25 currently placed in a placement likely to achieve
26 permanency, the Department of Children and Family Services

1 shall make reasonable efforts to locate parents whose
2 rights have been terminated, except when the Court
3 determines that those efforts would be futile or
4 inconsistent with the subject child's best interests. The
5 Department of Children and Family Services shall assess the
6 appropriateness of the parent whose rights have been
7 terminated, and shall, as appropriate, foster and support
8 connections between the parent whose rights have been
9 terminated and the youth. The Department of Children and
10 Family Services shall document its determinations and
11 efforts to foster connections in the child's case plan.

12 Custody of the minor shall not be restored to any parent,
13 guardian or legal custodian in any case in which the minor is
14 found to be neglected or abused under Section 2-3 or dependent
15 under Section 2-4 of this Act, unless the minor can be cared
16 for at home without endangering his or her health or safety and
17 it is in the best interest of the minor, and if such neglect,
18 abuse, or dependency is found by the court under paragraph (1)
19 of Section 2-21 of this Act to have come about due to the acts
20 or omissions or both of such parent, guardian or legal
21 custodian, until such time as an investigation is made as
22 provided in paragraph (5) and a hearing is held on the issue of
23 the health, safety and best interest of the minor and the
24 fitness of such parent, guardian or legal custodian to care for
25 the minor and the court enters an order that such parent,
26 guardian or legal custodian is fit to care for the minor. In

1 the event that the minor has attained 18 years of age and the
2 guardian or custodian petitions the court for an order
3 terminating his guardianship or custody, guardianship or
4 custody shall terminate automatically 30 days after the receipt
5 of the petition unless the court orders otherwise. No legal
6 custodian or guardian of the person may be removed without his
7 consent until given notice and an opportunity to be heard by
8 the court.

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

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

1 (a) Any agency of this State or any subdivision thereof
2 shall co-operate with the agent of the court in providing
3 any information sought in the investigation.

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

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

14 (Source: P.A. 95-10, eff. 6-30-07; 95-182, eff. 8-14-07;
15 95-876, eff. 8-21-08; 96-600, eff. 8-21-09.)

16 (705 ILCS 405/2-34)

17 (Section scheduled to be repealed on August 21, 2013)

18 Sec. 2-34. Motion to reinstate parental rights.

19 (1) For purposes of this subsection (1), the term "parent"
20 refers to the person or persons whose rights were terminated as
21 described in paragraph (a) of this subsection; and the term
22 "minor" means a person under the age of 21 years subject to
23 this Act for whom the Department of Children and Family
24 Services Guardianship Administrator is appointed the temporary
25 custodian or guardian.

1 A motion to reinstate parental rights may be filed only by
2 the Department of Children and Family Services regarding any
3 minor who is presently a ward of the court under Article II of
4 this Act when all the conditions set out in paragraphs (a),
5 (b), (c), (d), (e), (f), and (g) of this subsection (1) are
6 met:

7 (a) while the minor was under the jurisdiction of the
8 court under Article II of this Act, the minor's parent or
9 parents surrendered the minor for adoption to an agency
10 legally authorized to place children for adoption, or the
11 minor's parent or parents consented to his or her adoption,
12 or the minor's parent or parents consented to his or her
13 adoption by a specified person or persons, or the parent or
14 parents' rights were terminated pursuant to a finding of
15 unfitness pursuant to Section 2-29 of this Act and a
16 guardian was appointed with the power to consent to
17 adoption pursuant to Section 2-29 of this Act; and

18 (b) (i) since the signing of the surrender, the signing
19 of the consent, or the unfitness finding, the minor has
20 remained a ward of the Court under Article II of this Act;
21 or

22 (ii) the minor was made a ward of the Court, the
23 minor was placed in the private guardianship of an
24 individual or individuals, and after the appointment
25 of a private guardian and a new petition alleging
26 abuse, neglect, or dependency pursuant to Section 2-3

1 or 2-4 is filed, and the minor is again found by the
2 court to be abused, neglected or dependent; or a
3 supplemental petition to reinstate wardship is filed
4 pursuant to Section 2-33, and the court reinstates
5 wardship, ~~the minor was again brought to the attention~~
6 ~~of the Juvenile Court and the private guardianship was~~
7 ~~vacated;~~ or

8 (iii) the minor was made a ward of the Court,
9 wardship was terminated after the minor was adopted,
10 after the adoption a new petition alleging abuse,
11 neglect, or dependency pursuant to Section 2-3 or 2-4
12 is filed, and the minor is again found by the court to
13 be abused, neglected, or dependent ~~the minor was again~~
14 ~~brought to the attention of the Juvenile Court and made~~
15 ~~a ward of the Court under Article II of this Act, and~~
16 either (i) the adoptive parent or parents are deceased,
17 (ii) the adoptive parent or parents signed a surrender
18 of parental rights, or (iii) the parental rights of the
19 adoptive parent or parents were terminated;

20 (c) the minor is not currently in a placement likely to
21 achieve permanency;

22 (d) it is in the minor's best interest that parental
23 rights be reinstated;

24 (e) the parent named in the motion wishes parental
25 rights to be reinstated and is currently appropriate to
26 have rights reinstated;

1 (f) more than 3 years have lapsed since the signing of
2 the consent or surrender, or the entry of the order
3 appointing a guardian with the power to consent to
4 adoption;

5 (g) (i) the child is 13 years of age or older or (ii)
6 the child is the younger sibling of such child, 13 years of
7 age or older, for whom reinstatement of parental rights is
8 being sought and the younger sibling independently meets
9 the criteria set forth in paragraphs (a) through (h) of
10 this subsection; and

11 (h) if the court has previously denied a motion to
12 reinstate parental rights filed by the Department, there
13 has been a substantial change in circumstances following
14 the denial of the earlier motion.

15 (2) The motion may be filed only by the Department of
16 Children and Family Services. Unless excused by the court for
17 good cause shown, the movant shall give notice of the time and
18 place of the hearing on the motion, in person or by mail, to
19 the parties to the juvenile court proceeding. Notice shall be
20 provided at least 14 days in advance of the hearing date. The
21 motion shall include the allegations required in subsection (1)
22 of this Section.

23 (3) Any party may file a motion to dismiss the motion with
24 prejudice on the basis that the parent has intentionally acted
25 to prevent the child from being adopted, after parental rights
26 were terminated or the parent intentionally acted to disrupt

1 the child's adoption. If the court finds by a preponderance of
2 the evidence that the parent has intentionally acted to prevent
3 the child from being adopted, after parental rights were
4 terminated or that the parent intentionally acted to disrupt
5 the child's adoption, the court shall dismiss the petition with
6 prejudice.

7 (4) The court shall not grant a motion for reinstatement of
8 parental rights unless the court finds that the motion is
9 supported by clear and convincing evidence. In ruling on a
10 motion to reinstate parental rights, the court shall make
11 findings consistent with the requirements in subsection (1) of
12 this Section. The court shall consider the reasons why the
13 child was initially brought to the attention of the court, the
14 history of the child's case as it relates to the parent seeking
15 reinstatement, and the current circumstances of the parent for
16 whom reinstatement of rights is sought. If reinstatement is
17 being considered subsequent to a finding of unfitness pursuant
18 to Section 2-29 of this Act having been entered with respect to
19 the parent whose rights are being restored, the court in
20 determining the minor's best interest shall consider, in
21 addition to the factors set forth in paragraph (4.05) of
22 Section 1-3 of this Act, the specific grounds upon which the
23 unfitness findings were made. Upon the entry of an order
24 granting a motion to reinstate parental rights, parental rights
25 of the parent named in the order shall be reinstated, any
26 previous order appointing a guardian with the power to consent

1 to adoption shall be void and with respect to the parent named
2 in the order, any consent shall be void.

3 (5) If the case is post-disposition, the court, upon the
4 entry of an order granting a motion to reinstate parental
5 rights, shall schedule the matter for a permanency hearing
6 pursuant to Section 2-28 of this Act within 45 days.

7 (6) Custody of the minor shall not be restored to the
8 parent, except by order of court pursuant to subsection (4) of
9 Section 2-28 of this Act.

10 (7) In any case involving a child over the age of 13 who
11 meets the criteria established in this Section for
12 reinstatement of parental rights, the Department of Children
13 and Family Services shall conduct an assessment of the child's
14 circumstances to assist in future planning for the child,
15 including, but not limited to a determination regarding the
16 appropriateness of filing a motion to reinstate parental
17 rights.

18 (8) This Section is repealed 4 years after the effective
19 date of this amendatory Act of the 96th General Assembly.

20 (Source: P.A. 96-600, eff. 8-21-09.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.