



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5965

Introduced 2/10/2010, by Rep. Chapin Rose

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-13
705 ILCS 405/2-27

from Ch. 37, par. 802-13
from Ch. 37, par. 802-27

Amends the Juvenile Court Act of 1987. Provides that if a petition has been filed under the Abused, Neglected, or Dependent Minors Article of the Act alleging that the minor has been subjected to the abuse of a custodial parent or guardian, the petition may be granted for relief, including change of custody, if the court finds that there is probable cause based on the facts asserted that the minor is the victim of ongoing abuse of a custodial parent or guardian or has a history of abuse or a significant incident of abuse by a custodial parent, guardian, or other household member.

LRB096 20262 RLC 36409 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 2-13 and 2-27 as follows:

6 (705 ILCS 405/2-13) (from Ch. 37, par. 802-13)

7 Sec. 2-13. Petition.

8 (1) Any adult person, any agency or association by its
9 representative may file, or the court on its own motion,
10 consistent with the health, safety and best interests of the
11 minor may direct the filing through the State's Attorney of a
12 petition in respect of a minor under this Act. The petition and
13 all subsequent court documents shall be entitled "In the
14 interest of, a minor".

15 (2) The petition shall be verified but the statements may
16 be made upon information and belief. It shall allege that the
17 minor is abused, neglected, or dependent, with citations to the
18 appropriate provisions of this Act, and set forth (a) facts
19 sufficient to bring the minor under Section 2-3 or 2-4, or to
20 indicate that the minor has been subjected to the abuse of a
21 custodial parent or guardian, and to inform respondents of the
22 cause of action, including, but not limited to, a plain and
23 concise statement of the factual allegations that form the

1 basis for the filing of the petition; (b) the name, age and
2 residence of the minor; (c) the names and residences of his
3 parents; (d) the name and residence of his legal guardian or
4 the person or persons having custody or control of the minor,
5 or of the nearest known relative if no parent or guardian can
6 be found; and (e) if the minor upon whose behalf the petition
7 is brought is sheltered in custody, the date on which such
8 temporary custody was ordered by the court or the date set for
9 a temporary custody hearing. If any of the facts herein
10 required are not known by the petitioner, the petition shall so
11 state.

12 (3) The petition must allege that it is in the best
13 interests of the minor and of the public that he be adjudged a
14 ward of the court and may pray generally for relief available
15 under this Act. The petition need not specify any proposed
16 disposition following adjudication of wardship. The petition
17 may request that the minor remain in the custody of the parent,
18 guardian, or custodian under an Order of Protection.

19 (4) If termination of parental rights and appointment of a
20 guardian of the person with power to consent to adoption of the
21 minor under Section 2-29 is sought, the petition shall so
22 state. If the petition includes this request, the prayer for
23 relief shall clearly and obviously state that the parents could
24 permanently lose their rights as a parent at this hearing.

25 In addition to the foregoing, the petitioner, by motion,
26 may request the termination of parental rights and appointment

1 of a guardian of the person with power to consent to adoption
2 of the minor under Section 2-29 at any time after the entry of
3 a dispositional order under Section 2-22.

4 (4.5) (a) With respect to any minors committed to its care
5 pursuant to this Act, the Department of Children and Family
6 Services shall request the State's Attorney to file a petition
7 or motion for termination of parental rights and appointment of
8 guardian of the person with power to consent to adoption of the
9 minor under Section 2-29 if:

10 (i) a minor has been in foster care, as described in
11 subsection (b), for 15 months of the most recent 22 months;
12 or

13 (ii) a minor under the age of 2 years has been
14 previously determined to be abandoned at an adjudicatory
15 hearing; or

16 (iii) the parent is criminally convicted of (A) first
17 degree murder or second degree murder of any child, (B)
18 attempt or conspiracy to commit first degree murder or
19 second degree murder of any child, (C) solicitation to
20 commit murder of any child, solicitation to commit murder
21 for hire of any child, or solicitation to commit second
22 degree murder of any child, (D) aggravated battery,
23 aggravated battery of a child, or felony domestic battery,
24 any of which has resulted in serious injury to the minor or
25 a sibling of the minor, (E) aggravated criminal sexual
26 assault in violation of subdivision (b) (1) of Section 12-14

1 of the Criminal Code of 1961, or (F) an offense in any
2 other state the elements of which are similar and bear a
3 substantial relationship to any of the foregoing offenses
4 unless:

5 (i) the child is being cared for by a relative,

6 (ii) the Department has documented in the case plan a
7 compelling reason for determining that filing such
8 petition would not be in the best interests of the child,

9 (iii) the court has found within the preceding 12
10 months that the Department has failed to make reasonable
11 efforts to reunify the child and family, or

12 (iv) paragraph (c) of this subsection (4.5) provides
13 otherwise.

14 (b) For purposes of this subsection, the date of entering
15 foster care is defined as the earlier of:

16 (1) The date of a judicial finding at an adjudicatory
17 hearing that the child is an abused, neglected, or
18 dependent minor; or

19 (2) 60 days after the date on which the child is
20 removed from his or her parent, guardian, or legal
21 custodian.

22 (c) With respect to paragraph (a)(i), the following
23 transition rules shall apply:

24 (1) If the child entered foster care after November 19,
25 1997 and this amendatory Act of 1998 takes effect before
26 the child has been in foster care for 15 months of the

1 preceding 22 months, then the Department shall comply with
2 the requirements of paragraph (a) of this subsection (4.5)
3 for that child as soon as the child has been in foster care
4 for 15 of the preceding 22 months.

5 (2) If the child entered foster care after November 19,
6 1997 and this amendatory Act of 1998 takes effect after the
7 child has been in foster care for 15 of the preceding 22
8 months, then the Department shall comply with the
9 requirements of paragraph (a) of this subsection (4.5) for
10 that child within 3 months after the end of the next
11 regular session of the General Assembly.

12 (3) If the child entered foster care prior to November
13 19, 1997, then the Department shall comply with the
14 requirements of paragraph (a) of this subsection (4.5) for
15 that child in accordance with Department policy or rule.

16 (d) If the State's Attorney determines that the
17 Department's request for filing of a petition or motion
18 conforms to the requirements set forth in subdivisions (a),
19 (b), and (c) of this subsection (4.5), then the State's
20 Attorney shall file the petition or motion as requested.

21 (5) The court shall liberally allow the petitioner to amend
22 the petition to set forth a cause of action or to add, amend,
23 or supplement factual allegations that form the basis for a
24 cause of action up until 14 days before the adjudicatory
25 hearing. The petitioner may amend the petition after that date
26 and prior to the adjudicatory hearing if the court grants leave

1 to amend upon a showing of good cause. The court may allow
2 amendment of the petition to conform with the evidence at any
3 time prior to ruling. In all cases in which the court has
4 granted leave to amend based on new evidence or new
5 allegations, the court shall permit the respondent an adequate
6 opportunity to prepare a defense to the amended petition.

7 (6) At any time before dismissal of the petition or before
8 final closing and discharge under Section 2-31, one or more
9 motions in the best interests of the minor may be filed. The
10 motion shall specify sufficient facts in support of the relief
11 requested.

12 (Source: P.A. 95-405, eff. 6-1-08.)

13 (705 ILCS 405/2-27) (from Ch. 37, par. 802-27)

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

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

25 (a) place the minor in the custody of a suitable

1 relative or other person as legal custodian or guardian;

2 (a-5) with the approval of the Department of Children
3 and Family Services, place the minor in the subsidized
4 guardianship of a suitable relative or other person as
5 legal guardian; "subsidized guardianship" means a private
6 guardianship arrangement for children for whom the
7 permanency goals of return home and adoption have been
8 ruled out and who meet the qualifications for subsidized
9 guardianship as defined by the Department of Children and
10 Family Services in administrative rules;

11 (b) place the minor under the guardianship of a
12 probation officer;

13 (c) commit the minor to an agency for care or
14 placement, except an institution under the authority of the
15 Department of Corrections or of the Department of Children
16 and Family Services;

17 (d) commit the minor to the Department of Children and
18 Family Services for care and service; however, a minor
19 charged with a criminal offense under the Criminal Code of
20 1961 or adjudicated delinquent shall not be placed in the
21 custody of or committed to the Department of Children and
22 Family Services by any court, except (i) a minor less than
23 15 years of age and committed to the Department of Children
24 and Family Services under Section 5-710 of this Act, (ii) a
25 minor for whom an independent basis of abuse, neglect, or
26 dependency exists, or (iii) a minor for whom the court has

1 granted a supplemental petition to reinstate wardship
2 pursuant to subsection (2) of Section 2-33 of this Act. An
3 independent basis exists when the allegations or
4 adjudication of abuse, neglect, or dependency do not arise
5 from the same facts, incident, or circumstances which give
6 rise to a charge or adjudication of delinquency. The
7 Department shall be given due notice of the pendency of the
8 action and the Guardianship Administrator of the
9 Department of Children and Family Services shall be
10 appointed guardian of the person of the minor. Whenever the
11 Department seeks to discharge a minor from its care and
12 service, the Guardianship Administrator shall petition the
13 court for an order terminating guardianship. The
14 Guardianship Administrator may designate one or more other
15 officers of the Department, appointed as Department
16 officers by administrative order of the Department
17 Director, authorized to affix the signature of the
18 Guardianship Administrator to documents affecting the
19 guardian-ward relationship of children for whom he or she
20 has been appointed guardian at such times as he or she is
21 unable to perform the duties of his or her office. The
22 signature authorization shall include but not be limited to
23 matters of consent of marriage, enlistment in the armed
24 forces, legal proceedings, adoption, major medical and
25 surgical treatment and application for driver's license.
26 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

1 the minor or a private agency controlled by persons of like
2 religious faith of the minor and shall require the Department
3 to otherwise comply with Section 7 of the Children and Family
4 Services Act in placing the child. In addition, whenever
5 alternative plans for placement are available, the court shall
6 ascertain and consider, to the extent appropriate in the
7 particular case, the views and preferences of the minor.

8 (1.6) If a petition has been filed under Section 2-13 of
9 this Act alleging that the minor has been subjected to the
10 abuse of a custodial parent or guardian, the petition may be
11 granted for relief specified in subsection (1), including
12 change of custody, if the court finds that there is probable
13 cause based on the facts asserted that the minor is the victim
14 of ongoing abuse of a custodial parent or guardian or has a
15 history of abuse or a significant incident of abuse by a
16 custodial parent, guardian, or other household member.

17 (2) When a minor is placed with a suitable relative or
18 other person pursuant to item (a) of subsection (1), the court
19 shall appoint him or her the legal custodian or guardian of the
20 person of the minor. When a minor is committed to any agency,
21 the court shall appoint the proper officer or representative
22 thereof as legal custodian or guardian of the person of the
23 minor. Legal custodians and guardians of the person of the
24 minor have the respective rights and duties set forth in
25 subsection (9) of Section 1-3 except as otherwise provided by
26 order of court; but no guardian of the person may consent to

1 adoption of the minor unless that authority is conferred upon
2 him or her in accordance with Section 2-29. An agency whose
3 representative is appointed guardian of the person or legal
4 custodian of the minor may place the minor in any child care
5 facility, but the facility must be licensed under the Child
6 Care Act of 1969 or have been approved by the Department of
7 Children and Family Services as meeting the standards
8 established for such licensing. No agency may place a minor
9 adjudicated under Sections 2-3 or 2-4 in a child care facility
10 unless the placement is in compliance with the rules and
11 regulations for placement under this Section promulgated by the
12 Department of Children and Family Services under Section 5 of
13 the Children and Family Services Act. Like authority and
14 restrictions shall be conferred by the court upon any probation
15 officer who has been appointed guardian of the person of a
16 minor.

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

23 (4) The clerk of the court shall issue to the legal
24 custodian or guardian of the person a certified copy of the
25 order of court, as proof of his authority. No other process is
26 necessary as authority for the keeping of the minor.

1 (5) Custody or guardianship granted under this Section
2 continues until the court otherwise directs, but not after the
3 minor reaches the age of 19 years except as set forth in
4 Section 2-31, or if the minor was previously committed to the
5 Department of Children and Family Services for care and service
6 and the court has granted a supplemental petition to reinstate
7 wardship pursuant to subsection (2) of Section 2-33.

8 (6) (Blank).

9 (Source: P.A. 95-642, eff. 6-1-08; 96-581, eff. 1-1-10.)