

# SB1949



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1949

Introduced 2/10/2011, by Sen. William Delgado

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-28

from Ch. 37, par. 802-28

Amends the Juvenile Court Act of 1987 relating to abused, neglected, and dependent minors. Provides that the initial permanency hearing shall be held within 12 months from the date temporary custody of the minor was taken, regardless of whether an adjudication or dispositional hearing has been completed within that timeframe. Effective immediately.

LRB097 00167 RLC 40182 b

A BILL FOR

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 2-28 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, regardless of whether an  
17 adjudication or dispositional hearing has been completed  
18 within that timeframe, (b) if the parental rights of both  
19 parents have been terminated in accordance with the procedure  
20 described in subsection (5) of Section 2-21, within 30 days of  
21 the order for termination of parental rights and appointment of  
22 a guardian with power to consent to adoption, or (c) in  
23 accordance with subsection (2) of Section 2-13.1. Subsequent  
24 permanency hearings shall be held every 6 months or more  
25 frequently if necessary in the court's determination following  
26 the initial permanency hearing, in accordance with the

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

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

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

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

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

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

24 (B-1) The minor will be in short-term care with a  
25 continued goal to return home pending a status hearing.  
26 When the court finds that a parent has not made reasonable

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

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

11 (D) Adoption, provided that parental rights have been  
12 terminated or relinquished.

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

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

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

23 In selecting any permanency goal, the court shall indicate  
24 in writing the reasons the goal was selected and why the  
25 preceding goals were ruled out. Where the court has selected a  
26 permanency goal other than (A), (B), or (B-1), the Department

1 of Children and Family Services shall not provide further  
2 reunification services, but shall provide services consistent  
3 with the goal selected.

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

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

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

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

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

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

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

1 relationship, and whether ongoing contact is in  
2 the subject child's best interest, including  
3 long-term emotional interest, as compared with the  
4 legal and emotional benefit of permanence;

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

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

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

16 (1) Age of the child.

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

19 (3) Current placement of the child and the intent of  
20 the family regarding adoption.

21 (4) Emotional, physical, and mental status or  
22 condition of the child.

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

26 (6) Availability of services currently needed and



1           whether the services exist.

2           (7) Status of siblings of the minor.

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

12          The court shall make findings as to whether, in violation  
13          of Section 8.2 of the Abused and Neglected Child Reporting Act,  
14          any portion of the service plan compels a child or parent to  
15          engage in any activity or refrain from any activity that is not  
16          reasonably related to remedying a condition or conditions that  
17          gave rise or which could give rise to any finding of child  
18          abuse or neglect. The services contained in the service plan  
19          shall include services reasonably related to remedy the  
20          conditions that gave rise to removal of the child from the home  
21          of his or her parents, guardian, or legal custodian or that the  
22          court has found must be remedied prior to returning the child  
23          home. Any tasks the court requires of the parents, guardian, or  
24          legal custodian or child prior to returning the child home,  
25          must be reasonably related to remedying a condition or  
26          conditions that gave rise to or which could give rise to any

1 finding of child abuse or neglect.

2 If the permanency goal is to return home, the court shall  
3 make findings that identify any problems that are causing  
4 continued placement of the children away from the home and  
5 identify what outcomes would be considered a resolution to  
6 these problems. The court shall explain to the parents that  
7 these findings are based on the information that the court has  
8 at that time and may be revised, should additional evidence be  
9 presented to the court.

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

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

1 service providers to be included in the plan.

2 A guardian or custodian appointed by the court pursuant to  
3 this Act shall file updated case plans with the court every 6  
4 months.

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

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

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

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

19 (i) (Blank).

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

26 (iii) Whether the minor's placement is necessary,

1 and appropriate to the plan and goal, recognizing the  
2 right of minors to the least restrictive (most  
3 family-like) setting available and in close proximity  
4 to the parents' home consistent with the health,  
5 safety, best interest and special needs of the minor  
6 and, if the minor is placed out-of-State, whether the  
7 out-of-State placement continues to be appropriate and  
8 consistent with the health, safety, and best interest  
9 of the minor.

10 (iv) (Blank).

11 (v) (Blank).

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 When parental rights have been terminated for a minimum  
7 of 3 years and the child who is the subject of the  
8 permanency hearing is 13 years old or older and is not  
9 currently placed in a placement likely to achieve  
10 permanency, the Department of Children and Family Services  
11 shall make reasonable efforts to locate parents whose  
12 rights have been terminated, except when the Court  
13 determines that those efforts would be futile or  
14 inconsistent with the subject child's best interests. The  
15 Department of Children and Family Services shall assess the  
16 appropriateness of the parent whose rights have been  
17 terminated, and shall, as appropriate, foster and support  
18 connections between the parent whose rights have been  
19 terminated and the youth. The Department of Children and  
20 Family Services shall document its determinations and  
21 efforts to foster connections in the child's case plan.

22 Custody of the minor shall not be restored to any parent,  
23 guardian or legal custodian in any case in which the minor is  
24 found to be neglected or abused under Section 2-3 or dependent  
25 under Section 2-4 of this Act, unless the minor can be cared  
26 for at home without endangering his or her health or safety and

1 it is in the best interest of the minor, and if such neglect,  
2 abuse, or dependency is found by the court under paragraph (1)  
3 of Section 2-21 of this Act to have come about due to the acts  
4 or omissions or both of such parent, guardian or legal  
5 custodian, until such time as an investigation is made as  
6 provided in paragraph (5) and a hearing is held on the issue of  
7 the health, safety and best interest of the minor and the  
8 fitness of such parent, guardian or legal custodian to care for  
9 the minor and the court enters an order that such parent,  
10 guardian or legal custodian is fit to care for the minor. In  
11 the event that the minor has attained 18 years of age and the  
12 guardian or custodian petitions the court for an order  
13 terminating his guardianship or custody, guardianship or  
14 custody shall terminate automatically 30 days after the receipt  
15 of the petition unless the court orders otherwise. No legal  
16 custodian or guardian of the person may be removed without his  
17 consent until given notice and an opportunity to be heard by  
18 the court.

19 When the court orders a child restored to the custody of  
20 the parent or parents, the court shall order the parent or  
21 parents to cooperate with the Department of Children and Family  
22 Services and comply with the terms of an after-care plan, or  
23 risk the loss of custody of the child and possible termination  
24 of their parental rights. The court may also enter an order of  
25 protective supervision in accordance with Section 2-24.

26 (5) Whenever a parent, guardian, or legal custodian files a

1 motion for restoration of custody of the minor, and the minor  
2 was adjudicated neglected, abused, or dependent as a result of  
3 physical abuse, the court shall cause to be made an  
4 investigation as to whether the movant has ever been charged  
5 with or convicted of any criminal offense which would indicate  
6 the likelihood of any further physical abuse to the minor.  
7 Evidence of such criminal convictions shall be taken into  
8 account in determining whether the minor can be cared for at  
9 home without endangering his or her health or safety and  
10 fitness of the parent, guardian, or legal custodian.

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

14 (b) The information derived from the investigation and  
15 any conclusions or recommendations derived from the  
16 information shall be provided to the parent, guardian, or  
17 legal custodian seeking restoration of custody prior to the  
18 hearing on fitness and the movant shall have an opportunity  
19 at the hearing to refute the information or contest its  
20 significance.

21 (c) All information obtained from any investigation  
22 shall be confidential as provided in Section 5-150 of this  
23 Act.

24 (Source: P.A. 95-10, eff. 6-30-07; 95-182, eff. 8-14-07;  
25 95-876, eff. 8-21-08; 96-600, eff. 8-21-09; 96-1375, eff.  
26 7-29-10.)

1           Section 99. Effective date. This Act takes effect upon  
2    becoming law.