

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 2-10 as follows:

6 (705 ILCS 405/2-10) (from Ch. 37, par. 802-10)

7 Sec. 2-10. Temporary custody hearing. At the appearance of
8 the minor before the court at the temporary custody hearing,
9 all witnesses present shall be examined before the court in
10 relation to any matter connected with the allegations made in
11 the petition.

12 (1) If the court finds that there is not probable cause to
13 believe that the minor is abused, neglected or dependent it
14 shall release the minor and dismiss the petition.

15 (2) If the court finds that there is probable cause to
16 believe that the minor is abused, neglected or dependent, the
17 court shall state in writing the factual basis supporting its
18 finding and the minor, his or her parent, guardian, custodian
19 and other persons able to give relevant testimony shall be
20 examined before the court. The Department of Children and
21 Family Services shall give testimony concerning indicated
22 reports of abuse and neglect, of which they are aware through
23 the central registry, involving the minor's parent, guardian

1 or custodian. After such testimony, the court may, consistent
2 with the health, safety and best interests of the minor, enter
3 an order that the minor shall be released upon the request of
4 parent, guardian or custodian if the parent, guardian or
5 custodian appears to take custody. If it is determined that a
6 parent's, guardian's, or custodian's compliance with critical
7 services mitigates the necessity for removal of the minor from
8 his or her home, the court may enter an Order of Protection
9 setting forth reasonable conditions of behavior that a parent,
10 guardian, or custodian must observe for a specified period of
11 time, not to exceed 12 months, without a violation; provided,
12 however, that the 12-month period shall begin anew after any
13 violation. "Custodian" includes the Department of Children and
14 Family Services, if it has been given custody of the child, or
15 any other agency of the State which has been given custody or
16 wardship of the child. If it is consistent with the health,
17 safety and best interests of the minor, the court may also
18 prescribe shelter care and order that the minor be kept in a
19 suitable place designated by the court or in a shelter care
20 facility designated by the Department of Children and Family
21 Services or a licensed child welfare agency; however, on and
22 after January 1, 2015 (the effective date of Public Act
23 98-803) and before January 1, 2017, a minor charged with a
24 criminal offense under the Criminal Code of 1961 or the
25 Criminal Code of 2012 or adjudicated delinquent shall not be
26 placed in the custody of or committed to the Department of

1 Children and Family Services by any court, except a minor less
2 than 16 years of age and committed to the Department of
3 Children and Family Services under Section 5-710 of this Act
4 or a minor for whom an independent basis of abuse, neglect, or
5 dependency exists; and on and after January 1, 2017, a minor
6 charged with a criminal offense under the Criminal Code of
7 1961 or the Criminal Code of 2012 or adjudicated delinquent
8 shall not be placed in the custody of or committed to the
9 Department of Children and Family Services by any court,
10 except a minor less than 15 years of age and committed to the
11 Department of Children and Family Services under Section 5-710
12 of this Act or a minor for whom an independent basis of abuse,
13 neglect, or dependency exists. An independent basis exists
14 when the allegations or adjudication of abuse, neglect, or
15 dependency do not arise from the same facts, incident, or
16 circumstances which give rise to a charge or adjudication of
17 delinquency.

18 In placing the minor, the Department or other agency
19 shall, to the extent compatible with the court's order, comply
20 with Section 7 of the Children and Family Services Act. In
21 determining the health, safety and best interests of the minor
22 to prescribe shelter care, the court must find that it is a
23 matter of immediate and urgent necessity for the safety and
24 protection of the minor or of the person or property of another
25 that the minor be placed in a shelter care facility or that he
26 or she is likely to flee the jurisdiction of the court, and

1 must further find that reasonable efforts have been made or
2 that, consistent with the health, safety and best interests of
3 the minor, no efforts reasonably can be made to prevent or
4 eliminate the necessity of removal of the minor from his or her
5 home. The court shall require documentation from the
6 Department of Children and Family Services as to the
7 reasonable efforts that were made to prevent or eliminate the
8 necessity of removal of the minor from his or her home or the
9 reasons why no efforts reasonably could be made to prevent or
10 eliminate the necessity of removal. When a minor is placed in
11 the home of a relative, the Department of Children and Family
12 Services shall complete a preliminary background review of the
13 members of the minor's custodian's household in accordance
14 with Section 4.3 of the Child Care Act of 1969 within 90 days
15 of that placement. If the minor is ordered placed in a shelter
16 care facility of the Department of Children and Family
17 Services or a licensed child welfare agency, the court shall,
18 upon request of the appropriate Department or other agency,
19 appoint the Department of Children and Family Services
20 Guardianship Administrator or other appropriate agency
21 executive temporary custodian of the minor and the court may
22 enter such other orders related to the temporary custody as it
23 deems fit and proper, including the provision of services to
24 the minor or his family to ameliorate the causes contributing
25 to the finding of probable cause or to the finding of the
26 existence of immediate and urgent necessity.

1 Where the Department of Children and Family Services
2 Guardianship Administrator is appointed as the executive
3 temporary custodian, the Department of Children and Family
4 Services shall file with the court and serve on the parties a
5 parent-child visiting plan, within 10 days, excluding weekends
6 and holidays, after the appointment. The parent-child visiting
7 plan shall set out the time and place of visits, the frequency
8 of visits, the length of visits, who shall be present at the
9 visits, and where appropriate, the minor's opportunities to
10 have telephone and mail communication with the parents.

11 Where the Department of Children and Family Services
12 Guardianship Administrator is appointed as the executive
13 temporary custodian, and when the child has siblings in care,
14 the Department of Children and Family Services shall file with
15 the court and serve on the parties a sibling placement and
16 contact plan within 10 days, excluding weekends and holidays,
17 after the appointment. The sibling placement and contact plan
18 shall set forth whether the siblings are placed together, and
19 if they are not placed together, what, if any, efforts are
20 being made to place them together. If the Department has
21 determined that it is not in a child's best interest to be
22 placed with a sibling, the Department shall document in the
23 sibling placement and contact plan the basis for its
24 determination. For siblings placed separately, the sibling
25 placement and contact plan shall set the time and place for
26 visits, the frequency of the visits, the length of visits, who

1 shall be present for the visits, and where appropriate, the
2 child's opportunities to have contact with their siblings in
3 addition to in person contact. If the Department determines it
4 is not in the best interest of a sibling to have contact with a
5 sibling, the Department shall document in the sibling
6 placement and contact plan the basis for its determination.
7 The sibling placement and contact plan shall specify a date
8 for development of the Sibling Contact Support Plan, under
9 subsection (f) of Section 7.4 of the Children and Family
10 Services Act, and shall remain in effect until the Sibling
11 Contact Support Plan is developed.

12 For good cause, the court may waive the requirement to
13 file the parent-child visiting plan or the sibling placement
14 and contact plan, or extend the time for filing either plan.
15 Any party may, by motion, request the court to review the
16 parent-child visiting plan to determine whether it is
17 reasonably calculated to expeditiously facilitate the
18 achievement of the permanency goal. A party may, by motion,
19 request the court to review the parent-child visiting plan or
20 the sibling placement and contact plan to determine whether it
21 is consistent with the minor's best interest. The court may
22 refer the parties to mediation where available. The frequency,
23 duration, and locations of visitation shall be measured by the
24 needs of the child and family, and not by the convenience of
25 Department personnel. Child development principles shall be
26 considered by the court in its analysis of how frequent

1 visitation should be, how long it should last, where it should
2 take place, and who should be present. If upon motion of the
3 party to review either plan and after receiving evidence, the
4 court determines that the parent-child visiting plan is not
5 reasonably calculated to expeditiously facilitate the
6 achievement of the permanency goal or that the restrictions
7 placed on parent-child contact or sibling placement or contact
8 are contrary to the child's best interests, the court shall
9 put in writing the factual basis supporting the determination
10 and enter specific findings based on the evidence. The court
11 shall enter an order for the Department to implement changes
12 to the parent-child visiting plan or sibling placement or
13 contact plan, consistent with the court's findings. At any
14 stage of proceeding, any party may by motion request the court
15 to enter any orders necessary to implement the parent-child
16 visiting plan, sibling placement or contact plan or
17 subsequently developed Sibling Contact Support Plan. Nothing
18 under this subsection (2) shall restrict the court from
19 granting discretionary authority to the Department to increase
20 opportunities for additional parent-child contacts or sibling
21 contacts, without further court orders. Nothing in this
22 subsection (2) shall restrict the Department from immediately
23 restricting or terminating parent-child contact or sibling
24 contacts, without either amending the parent-child visiting
25 plan or the sibling contact plan or obtaining a court order,
26 where the Department or its assigns reasonably believe there

1 is an immediate need to protect the child's health, safety,
2 and welfare. Such restrictions or terminations must be based
3 on available facts to the Department and its assigns when
4 viewed in light of the surrounding circumstances and shall
5 only occur on an individual case-by-case basis ~~that~~
6 ~~continuation of the contact, as set out in the plan, would be~~
7 ~~contrary to the child's health, safety, and welfare.~~ The
8 Department shall file with the court and serve on the parties
9 any amendments to the plan within 10 days, excluding weekends
10 and holidays, of the change of the visitation.

11 Acceptance of services shall not be considered an
12 admission of any allegation in a petition made pursuant to
13 this Act, nor may a referral of services be considered as
14 evidence in any proceeding pursuant to this Act, except where
15 the issue is whether the Department has made reasonable
16 efforts to reunite the family. In making its findings that it
17 is consistent with the health, safety and best interests of
18 the minor to prescribe shelter care, the court shall state in
19 writing (i) the factual basis supporting its findings
20 concerning the immediate and urgent necessity for the
21 protection of the minor or of the person or property of another
22 and (ii) the factual basis supporting its findings that
23 reasonable efforts were made to prevent or eliminate the
24 removal of the minor from his or her home or that no efforts
25 reasonably could be made to prevent or eliminate the removal
26 of the minor from his or her home. The parents, guardian,

1 custodian, temporary custodian and minor shall each be
2 furnished a copy of such written findings. The temporary
3 custodian shall maintain a copy of the court order and written
4 findings in the case record for the child. The order together
5 with the court's findings of fact in support thereof shall be
6 entered of record in the court.

7 Once the court finds that it is a matter of immediate and
8 urgent necessity for the protection of the minor that the
9 minor be placed in a shelter care facility, the minor shall not
10 be returned to the parent, custodian or guardian until the
11 court finds that such placement is no longer necessary for the
12 protection of the minor.

13 If the child is placed in the temporary custody of the
14 Department of Children and Family Services for his or her
15 protection, the court shall admonish the parents, guardian,
16 custodian or responsible relative that the parents must
17 cooperate with the Department of Children and Family Services,
18 comply with the terms of the service plans, and correct the
19 conditions which require the child to be in care, or risk
20 termination of their parental rights. The court shall ensure,
21 by inquiring in open court of each parent, guardian, custodian
22 or responsible relative, that the parent, guardian, custodian
23 or responsible relative has had the opportunity to provide the
24 Department with all known names, addresses, and telephone
25 numbers of each of the minor's living maternal and paternal
26 adult relatives, including, but not limited to, grandparents,

1 aunts, uncles, and siblings. The court shall advise the
2 parents, guardian, custodian or responsible relative to inform
3 the Department if additional information regarding the minor's
4 adult relatives becomes available.

5 (3) If prior to the shelter care hearing for a minor
6 described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is
7 unable to serve notice on the party respondent, the shelter
8 care hearing may proceed ex parte. A shelter care order from an
9 ex parte hearing shall be endorsed with the date and hour of
10 issuance and shall be filed with the clerk's office and
11 entered of record. The order shall expire after 10 days from
12 the time it is issued unless before its expiration it is
13 renewed, at a hearing upon appearance of the party respondent,
14 or upon an affidavit of the moving party as to all diligent
15 efforts to notify the party respondent by notice as herein
16 prescribed. The notice prescribed shall be in writing and
17 shall be personally delivered to the minor or the minor's
18 attorney and to the last known address of the other person or
19 persons entitled to notice. The notice shall also state the
20 nature of the allegations, the nature of the order sought by
21 the State, including whether temporary custody is sought, and
22 the consequences of failure to appear and shall contain a
23 notice that the parties will not be entitled to further
24 written notices or publication notices of proceedings in this
25 case, including the filing of an amended petition or a motion
26 to terminate parental rights, except as required by Supreme

1 Court Rule 11; and shall explain the right of the parties and
2 the procedures to vacate or modify a shelter care order as
3 provided in this Section. The notice for a shelter care
4 hearing shall be substantially as follows:

5 NOTICE TO PARENTS AND CHILDREN
6 OF SHELTER CARE HEARING

7 On at, before the Honorable
8, (address:), the State
9 of Illinois will present evidence (1) that (name of child
10 or children) are abused, neglected
11 or dependent for the following reasons:

12 and (2)
13 whether there is "immediate and urgent necessity" to
14 remove the child or children from the responsible
15 relative.

16 YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN
17 PLACEMENT of the child or children in foster care until a
18 trial can be held. A trial may not be held for up to 90
19 days. You will not be entitled to further notices of
20 proceedings in this case, including the filing of an
21 amended petition or a motion to terminate parental rights.

22 At the shelter care hearing, parents have the
23 following rights:

24 1. To ask the court to appoint a lawyer if they
25 cannot afford one.

26 2. To ask the court to continue the hearing to

1 allow them time to prepare.

2 3. To present evidence concerning:

3 a. Whether or not the child or children were
4 abused, neglected or dependent.

5 b. Whether or not there is "immediate and
6 urgent necessity" to remove the child from home
7 (including: their ability to care for the child,
8 conditions in the home, alternative means of
9 protecting the child other than removal).

10 c. The best interests of the child.

11 4. To cross examine the State's witnesses.

12 The Notice for rehearings shall be substantially as
13 follows:

14 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
15 TO REHEARING ON TEMPORARY CUSTODY

16 If you were not present at and did not have adequate
17 notice of the Shelter Care Hearing at which temporary
18 custody of was awarded to
19, you have the right to request a full
20 rehearing on whether the State should have temporary
21 custody of To request this rehearing,
22 you must file with the Clerk of the Juvenile Court
23 (address):, in person or by
24 mailing a statement (affidavit) setting forth the
25 following:

1 1. That you were not present at the shelter care
2 hearing.

3 2. That you did not get adequate notice
4 (explaining how the notice was inadequate).

5 3. Your signature.

6 4. Signature must be notarized.

7 The rehearing should be scheduled within 48 hours of
8 your filing this affidavit.

9 At the rehearing, your rights are the same as at the
10 initial shelter care hearing. The enclosed notice explains
11 those rights.

12 At the Shelter Care Hearing, children have the
13 following rights:

14 1. To have a guardian ad litem appointed.

15 2. To be declared competent as a witness and to
16 present testimony concerning:

17 a. Whether they are abused, neglected or
18 dependent.

19 b. Whether there is "immediate and urgent
20 necessity" to be removed from home.

21 c. Their best interests.

22 3. To cross examine witnesses for other parties.

23 4. To obtain an explanation of any proceedings and
24 orders of the court.

25 (4) If the parent, guardian, legal custodian, responsible
26 relative, minor age 8 or over, or counsel of the minor did not

1 have actual notice of or was not present at the shelter care
2 hearing, he or she may file an affidavit setting forth these
3 facts, and the clerk shall set the matter for rehearing not
4 later than 48 hours, excluding Sundays and legal holidays,
5 after the filing of the affidavit. At the rehearing, the court
6 shall proceed in the same manner as upon the original hearing.

7 (5) Only when there is reasonable cause to believe that
8 the minor taken into custody is a person described in
9 subsection (3) of Section 5-105 may the minor be kept or
10 detained in a detention home or county or municipal jail. This
11 Section shall in no way be construed to limit subsection (6).

12 (6) No minor under 16 years of age may be confined in a
13 jail or place ordinarily used for the confinement of prisoners
14 in a police station. Minors under 18 years of age must be kept
15 separate from confined adults and may not at any time be kept
16 in the same cell, room, or yard with adults confined pursuant
17 to the criminal law.

18 (7) If the minor is not brought before a judicial officer
19 within the time period as specified in Section 2-9, the minor
20 must immediately be released from custody.

21 (8) If neither the parent, guardian or custodian appears
22 within 24 hours to take custody of a minor released upon
23 request pursuant to subsection (2) of this Section, then the
24 clerk of the court shall set the matter for rehearing not later
25 than 7 days after the original order and shall issue a summons
26 directed to the parent, guardian or custodian to appear. At

1 the same time the probation department shall prepare a report
2 on the minor. If a parent, guardian or custodian does not
3 appear at such rehearing, the judge may enter an order
4 prescribing that the minor be kept in a suitable place
5 designated by the Department of Children and Family Services
6 or a licensed child welfare agency.

7 (9) Notwithstanding any other provision of this Section
8 any interested party, including the State, the temporary
9 custodian, an agency providing services to the minor or family
10 under a service plan pursuant to Section 8.2 of the Abused and
11 Neglected Child Reporting Act, foster parent, or any of their
12 representatives, on notice to all parties entitled to notice,
13 may file a motion that it is in the best interests of the minor
14 to modify or vacate a temporary custody order on any of the
15 following grounds:

16 (a) It is no longer a matter of immediate and urgent
17 necessity that the minor remain in shelter care; or

18 (b) There is a material change in the circumstances of
19 the natural family from which the minor was removed and
20 the child can be cared for at home without endangering the
21 child's health or safety; or

22 (c) A person not a party to the alleged abuse, neglect
23 or dependency, including a parent, relative or legal
24 guardian, is capable of assuming temporary custody of the
25 minor; or

26 (d) Services provided by the Department of Children

1 and Family Services or a child welfare agency or other
2 service provider have been successful in eliminating the
3 need for temporary custody and the child can be cared for
4 at home without endangering the child's health or safety.

5 In ruling on the motion, the court shall determine whether
6 it is consistent with the health, safety and best interests of
7 the minor to modify or vacate a temporary custody order.

8 The clerk shall set the matter for hearing not later than
9 14 days after such motion is filed. In the event that the court
10 modifies or vacates a temporary custody order but does not
11 vacate its finding of probable cause, the court may order that
12 appropriate services be continued or initiated in behalf of
13 the minor and his or her family.

14 (10) When the court finds or has found that there is
15 probable cause to believe a minor is an abused minor as
16 described in subsection (2) of Section 2-3 and that there is an
17 immediate and urgent necessity for the abused minor to be
18 placed in shelter care, immediate and urgent necessity shall
19 be presumed for any other minor residing in the same household
20 as the abused minor provided:

21 (a) Such other minor is the subject of an abuse or
22 neglect petition pending before the court; and

23 (b) A party to the petition is seeking shelter care
24 for such other minor.

25 Once the presumption of immediate and urgent necessity has
26 been raised, the burden of demonstrating the lack of immediate

1 and urgent necessity shall be on any party that is opposing
2 shelter care for the other minor.

3 (11) The changes made to this Section by Public Act 98-61
4 apply to a minor who has been arrested or taken into custody on
5 or after January 1, 2014 (the effective date of Public Act
6 98-61).

7 (12) After the court has placed a minor in the care of a
8 temporary custodian pursuant to this Section, any party may
9 file a motion requesting the court to grant the temporary
10 custodian the authority to serve as a surrogate decision maker
11 for the minor under the Health Care Surrogate Act for purposes
12 of making decisions pursuant to paragraph (1) of subsection
13 (b) of Section 20 of the Health Care Surrogate Act. The court
14 may grant the motion if it determines by clear and convincing
15 evidence that it is in the best interests of the minor to grant
16 the temporary custodian such authority. In making its
17 determination, the court shall weigh the following factors in
18 addition to considering the best interests factors listed in
19 subsection (4.05) of Section 1-3 of this Act:

20 (a) the efforts to identify and locate the respondents
21 and adult family members of the minor and the results of
22 those efforts;

23 (b) the efforts to engage the respondents and adult
24 family members of the minor in decision making on behalf
25 of the minor;

26 (c) the length of time the efforts in paragraphs (a)

1 and (b) have been ongoing;

2 (d) the relationship between the respondents and adult
3 family members and the minor;

4 (e) medical testimony regarding the extent to which
5 the minor is suffering and the impact of a delay in
6 decision-making on the minor; and

7 (f) any other factor the court deems relevant.

8 If the Department of Children and Family Services is the
9 temporary custodian of the minor, in addition to the
10 requirements of paragraph (1) of subsection (b) of Section 20
11 of the Health Care Surrogate Act, the Department shall follow
12 its rules and procedures in exercising authority granted under
13 this subsection.

14 (Source: P.A. 99-625, eff. 1-1-17; 99-642, eff. 7-28-16;
15 100-159, eff. 8-18-17; 100-863, eff. 8-14-18; 100-959, eff.
16 1-1-19.)