



Rep. Delia C. Ramirez

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LRB102 17050 KMF 23976 a

1 AMENDMENT TO HOUSE BILL 3793

2 AMENDMENT NO. _____. Amend House Bill 3793 by replacing
3 everything after the enacting clause with the following:

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

1 court shall state in writing the factual basis supporting its
2 finding and the minor, his or her parent, guardian, custodian
3 and other persons able to give relevant testimony shall be
4 examined before the court. The Department of Children and
5 Family Services shall give testimony concerning indicated
6 reports of abuse and neglect, of which they are aware through
7 the central registry, involving the minor's parent, guardian
8 or custodian. After such testimony, the court may, consistent
9 with the health, safety and best interests of the minor, enter
10 an order that the minor shall be released upon the request of
11 parent, guardian or custodian if the parent, guardian or
12 custodian appears to take custody. If it is determined that a
13 parent's, guardian's, or custodian's compliance with critical
14 services mitigates the necessity for removal of the minor from
15 his or her home, the court may enter an Order of Protection
16 setting forth reasonable conditions of behavior that a parent,
17 guardian, or custodian must observe for a specified period of
18 time, not to exceed 12 months, without a violation; provided,
19 however, that the 12-month period shall begin anew after any
20 violation. "Custodian" includes the Department of Children and
21 Family Services, if it has been given custody of the child, or
22 any other agency of the State which has been given custody or
23 wardship of the child. If it is consistent with the health,
24 safety and best interests of the minor, the court may also
25 prescribe shelter care and order that the minor be kept in a
26 suitable place designated by the court or in a shelter care

1 facility designated by the Department of Children and Family
2 Services or a licensed child welfare agency; however, on and
3 after January 1, 2015 (the effective date of Public Act
4 98-803) and before January 1, 2017, a minor charged with a
5 criminal offense under the Criminal Code of 1961 or the
6 Criminal Code of 2012 or adjudicated delinquent shall not be
7 placed in the custody of or committed to the Department of
8 Children and Family Services by any court, except a minor less
9 than 16 years of age and committed to the Department of
10 Children and Family Services under Section 5-710 of this Act
11 or a minor for whom an independent basis of abuse, neglect, or
12 dependency exists; and on and after January 1, 2017, a minor
13 charged with a criminal offense under the Criminal Code of
14 1961 or the Criminal Code of 2012 or adjudicated delinquent
15 shall not be placed in the custody of or committed to the
16 Department of Children and Family Services by any court,
17 except a minor less than 15 years of age and committed to the
18 Department of Children and Family Services under Section 5-710
19 of this Act or a minor for whom an independent basis of abuse,
20 neglect, or dependency exists. An independent basis exists
21 when the allegations or adjudication of abuse, neglect, or
22 dependency do not arise from the same facts, incident, or
23 circumstances which give rise to a charge or adjudication of
24 delinquency.

25 In placing the minor, the Department or other agency
26 shall, to the extent compatible with the court's order, comply

1 with Section 7 of the Children and Family Services Act. In
2 determining the health, safety and best interests of the minor
3 to prescribe shelter care, the court must find that it is a
4 matter of immediate and urgent necessity for the safety and
5 protection of the minor or of the person or property of another
6 that the minor be placed in a shelter care facility or that he
7 or she is likely to flee the jurisdiction of the court, and
8 must further find that reasonable efforts have been made or
9 that, consistent with the health, safety and best interests of
10 the minor, no efforts reasonably can be made to prevent or
11 eliminate the necessity of removal of the minor from his or her
12 home. The court shall require documentation from the
13 Department of Children and Family Services as to the
14 reasonable efforts that were made to prevent or eliminate the
15 necessity of removal of the minor from his or her home or the
16 reasons why no efforts reasonably could be made to prevent or
17 eliminate the necessity of removal. When a minor is placed in
18 the home of a relative, the Department of Children and Family
19 Services shall complete a preliminary background review of the
20 members of the minor's custodian's household in accordance
21 with Section 4.3 of the Child Care Act of 1969 within 90 days
22 of that placement. If the minor is ordered placed in a shelter
23 care facility of the Department of Children and Family
24 Services or a licensed child welfare agency, the court shall,
25 upon request of the appropriate Department or other agency,
26 appoint the Department of Children and Family Services

1 Guardianship Administrator or other appropriate agency
2 executive temporary custodian of the minor and the court may
3 enter such other orders related to the temporary custody as it
4 deems fit and proper, including the provision of services to
5 the minor or his family to ameliorate the causes contributing
6 to the finding of probable cause or to the finding of the
7 existence of immediate and urgent necessity.

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

18 Where the Department of Children and Family Services
19 Guardianship Administrator is appointed as the executive
20 temporary custodian, and when the child has siblings in care,
21 the Department of Children and Family Services shall file with
22 the court and serve on the parties a sibling placement and
23 contact plan within 10 days, excluding weekends and holidays,
24 after the appointment. The sibling placement and contact plan
25 shall set forth whether the siblings are placed together, and
26 if they are not placed together, what, if any, efforts are

1 being made to place them together. If the Department has
2 determined that it is not in a child's best interest to be
3 placed with a sibling, the Department shall document in the
4 sibling placement and contact plan the basis for its
5 determination. For siblings placed separately, the sibling
6 placement and contact plan shall set the time and place for
7 visits, the frequency of the visits, the length of visits, who
8 shall be present for the visits, and where appropriate, the
9 child's opportunities to have contact with their siblings in
10 addition to in person contact. If the Department determines it
11 is not in the best interest of a sibling to have contact with a
12 sibling, the Department shall document in the sibling
13 placement and contact plan the basis for its determination.
14 The sibling placement and contact plan shall specify a date
15 for development of the Sibling Contact Support Plan, under
16 subsection (f) of Section 7.4 of the Children and Family
17 Services Act, and shall remain in effect until the Sibling
18 Contact Support Plan is developed.

19 For good cause, the court may waive the requirement to
20 file the parent-child visiting plan or the sibling placement
21 and contact plan, or extend the time for filing either plan.
22 Any party may, by motion, request the court to review the
23 parent-child visiting plan to determine whether it is
24 reasonably calculated to expeditiously facilitate the
25 achievement of the permanency goal. A party may, by motion,
26 request the court to review the parent-child visiting plan or

1 the sibling placement and contact plan to determine whether it
2 is consistent with the minor's best interest. The court may
3 refer the parties to mediation where available. The frequency,
4 duration, and locations of visitation shall be measured by the
5 needs of the child and family, and not by the convenience of
6 Department personnel. Child development principles shall be
7 considered by the court in its analysis of how frequent
8 visitation should be, how long it should last, where it should
9 take place, and who should be present. If upon motion of the
10 party to review either plan and after receiving evidence, the
11 court determines that the parent-child visiting plan is not
12 reasonably calculated to expeditiously facilitate the
13 achievement of the permanency goal or that the restrictions
14 placed on parent-child contact or sibling placement or contact
15 are contrary to the child's best interests, 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 shall enter an order for the Department to implement changes
19 to the parent-child visiting plan or sibling placement or
20 contact plan, consistent with the court's findings. At any
21 stage of proceeding, any party may by motion request the court
22 to enter any orders necessary to implement the parent-child
23 visiting plan, sibling placement or contact plan or
24 subsequently developed Sibling Contact Support Plan. Nothing
25 under this subsection (2) shall restrict the court from
26 granting discretionary authority to the Department to increase

1 opportunities for additional parent-child contacts or sibling
2 contacts, without further court orders. Nothing in this
3 subsection (2) shall restrict the Department from immediately
4 restricting or terminating parent-child contact or sibling
5 contacts, without either amending the parent-child visiting
6 plan or the sibling contact plan or obtaining a court order,
7 where the Department or its assigns reasonably believe there
8 is an immediate need to protect the child's health, safety,
9 and welfare. Such restrictions or terminations must be based
10 on available facts to the Department and its assigns when
11 viewed in light of the surrounding circumstances and shall
12 only occur on an individual case-by-case basis ~~that~~
13 ~~continuation of the contact, as set out in the plan, would be~~
14 ~~contrary to the child's health, safety, and welfare.~~ The
15 Department shall file with the court and serve on the parties
16 any amendments to the plan within 10 days, excluding weekends
17 and holidays, of the change of the visitation.

18 Acceptance of services shall not be considered an
19 admission of any allegation in a petition made pursuant to
20 this Act, nor may a referral of services be considered as
21 evidence in any proceeding pursuant to this Act, except where
22 the issue is whether the Department has made reasonable
23 efforts to reunite the family. In making its findings that it
24 is consistent with the health, safety and best interests of
25 the minor to prescribe shelter care, the court shall state in
26 writing (i) the factual basis supporting its findings

1 concerning the immediate and urgent necessity for the
2 protection of the minor or of the person or property of another
3 and (ii) the factual basis supporting its findings that
4 reasonable efforts were made to prevent or eliminate the
5 removal of the minor from his or her home or that no efforts
6 reasonably could be made to prevent or eliminate the removal
7 of the minor from his or her home. The parents, guardian,
8 custodian, temporary custodian and minor shall each be
9 furnished a copy of such written findings. The temporary
10 custodian shall maintain a copy of the court order and written
11 findings in the case record for the child. The order together
12 with the court's findings of fact in support thereof shall be
13 entered of record in the court.

14 Once the court finds that it is a matter of immediate and
15 urgent necessity for the protection of the minor that the
16 minor be placed in a shelter care facility, the minor shall not
17 be returned to the parent, custodian or guardian until the
18 court finds that such placement is no longer necessary for the
19 protection of the minor.

20 If the child is placed in the temporary custody of the
21 Department of Children and Family Services for his or her
22 protection, the court shall admonish the parents, guardian,
23 custodian or responsible relative that the parents must
24 cooperate with the Department of Children and Family Services,
25 comply with the terms of the service plans, and correct the
26 conditions which require the child to be in care, or risk

1 termination of their parental rights. The court shall ensure,
2 by inquiring in open court of each parent, guardian, custodian
3 or responsible relative, that the parent, guardian, custodian
4 or responsible relative has had the opportunity to provide the
5 Department with all known names, addresses, and telephone
6 numbers of each of the minor's living maternal and paternal
7 adult relatives, including, but not limited to, grandparents,
8 aunts, uncles, and siblings. The court shall advise the
9 parents, guardian, custodian or responsible relative to inform
10 the Department if additional information regarding the minor's
11 adult relatives becomes available.

12 (3) If prior to the shelter care hearing for a minor
13 described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is
14 unable to serve notice on the party respondent, the shelter
15 care hearing may proceed ex parte. A shelter care order from an
16 ex parte hearing shall be endorsed with the date and hour of
17 issuance and shall be filed with the clerk's office and
18 entered of record. The order shall expire after 10 days from
19 the time it is issued unless before its expiration it is
20 renewed, at a hearing upon appearance of the party respondent,
21 or upon an affidavit of the moving party as to all diligent
22 efforts to notify the party respondent by notice as herein
23 prescribed. The notice prescribed shall be in writing and
24 shall be personally delivered to the minor or the minor's
25 attorney and to the last known address of the other person or
26 persons entitled to notice. The notice shall also state the

1 nature of the allegations, the nature of the order sought by
 2 the State, including whether temporary custody is sought, and
 3 the consequences of failure to appear and shall contain a
 4 notice that the parties will not be entitled to further
 5 written notices or publication notices of proceedings in this
 6 case, including the filing of an amended petition or a motion
 7 to terminate parental rights, except as required by Supreme
 8 Court Rule 11; and shall explain the right of the parties and
 9 the procedures to vacate or modify a shelter care order as
 10 provided in this Section. The notice for a shelter care
 11 hearing shall be substantially as follows:

12 NOTICE TO PARENTS AND CHILDREN
 13 OF SHELTER CARE HEARING

14 On at, before the Honorable
 15, (address:), the State
 16 of Illinois will present evidence (1) that (name of child
 17 or children) are abused, neglected
 18 or dependent for the following reasons:
 19 and (2)
 20 whether there is "immediate and urgent necessity" to
 21 remove the child or children from the responsible
 22 relative.

23 YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN
 24 PLACEMENT of the child or children in foster care until a
 25 trial can be held. A trial may not be held for up to 90
 26 days. You will not be entitled to further notices of

1 proceedings in this case, including the filing of an
2 amended petition or a motion to terminate parental rights.

3 At the shelter care hearing, parents have the
4 following rights:

5 1. To ask the court to appoint a lawyer if they
6 cannot afford one.

7 2. To ask the court to continue the hearing to
8 allow them time to prepare.

9 3. To present evidence concerning:

10 a. Whether or not the child or children were
11 abused, neglected or dependent.

12 b. Whether or not there is "immediate and
13 urgent necessity" to remove the child from home
14 (including: their ability to care for the child,
15 conditions in the home, alternative means of
16 protecting the child other than removal).

17 c. The best interests of the child.

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

19 The Notice for rehearings shall be substantially as
20 follows:

21 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
22 TO REHEARING ON TEMPORARY CUSTODY

23 If you were not present at and did not have adequate
24 notice of the Shelter Care Hearing at which temporary
25 custody of was awarded to

1 , you have the right to request a full
2 rehearing on whether the State should have temporary
3 custody of To request this rehearing,
4 you must file with the Clerk of the Juvenile Court
5 (address): , in person or by
6 mailing a statement (affidavit) setting forth the
7 following:

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

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

12 3. Your signature.

13 4. Signature must be notarized.

14 The rehearing should be scheduled within 48 hours of
15 your filing this affidavit.

16 At the rehearing, your rights are the same as at the
17 initial shelter care hearing. The enclosed notice explains
18 those rights.

19 At the Shelter Care Hearing, children have the
20 following rights:

21 1. To have a guardian ad litem appointed.

22 2. To be declared competent as a witness and to
23 present testimony concerning:

24 a. Whether they are abused, neglected or
25 dependent.

26 b. Whether there is "immediate and urgent

1 necessity" to be removed from home.

2 c. Their best interests.

3 3. To cross examine witnesses for other parties.

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

6 (4) If the parent, guardian, legal custodian, responsible
7 relative, minor age 8 or over, or counsel of the minor did not
8 have actual notice of or was not present at the shelter care
9 hearing, he or she may file an affidavit setting forth these
10 facts, and the clerk shall set the matter for rehearing not
11 later than 48 hours, excluding Sundays and legal holidays,
12 after the filing of the affidavit. At the rehearing, the court
13 shall proceed in the same manner as upon the original hearing.

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

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

25 (7) If the minor is not brought before a judicial officer
26 within the time period as specified in Section 2-9, the minor

1 must immediately be released from custody.

2 (8) If neither the parent, guardian or custodian appears
3 within 24 hours to take custody of a minor released upon
4 request pursuant to subsection (2) of this Section, then the
5 clerk of the court shall set the matter for rehearing not later
6 than 7 days after the original order and shall issue a summons
7 directed to the parent, guardian or custodian to appear. At
8 the same time the probation department shall prepare a report
9 on the minor. If a parent, guardian or custodian does not
10 appear at such rehearing, the judge may enter an order
11 prescribing that the minor be kept in a suitable place
12 designated by the Department of Children and Family Services
13 or a licensed child welfare agency.

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

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

25 (b) There is a material change in the circumstances of
26 the natural family from which the minor was removed and

1 the child can be cared for at home without endangering the
2 child's health or safety; or

3 (c) A person not a party to the alleged abuse, neglect
4 or dependency, including a parent, relative or legal
5 guardian, is capable of assuming temporary custody of the
6 minor; or

7 (d) Services provided by the Department of Children
8 and Family Services or a child welfare agency or other
9 service provider have been successful in eliminating the
10 need for temporary custody and the child can be cared for
11 at home without endangering the child's health or safety.

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

15 The clerk shall set the matter for hearing not later than
16 14 days after such motion is filed. In the event that the court
17 modifies or vacates a temporary custody order but does not
18 vacate its finding of probable cause, the court may order that
19 appropriate services be continued or initiated in behalf of
20 the minor and his or her family.

21 (10) When the court finds or has found that there is
22 probable cause to believe a minor is an abused minor as
23 described in subsection (2) of Section 2-3 and that there is an
24 immediate and urgent necessity for the abused minor to be
25 placed in shelter care, immediate and urgent necessity shall
26 be presumed for any other minor residing in the same household

1 as the abused minor provided:

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

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

6 Once the presumption of immediate and urgent necessity has
7 been raised, the burden of demonstrating the lack of immediate
8 and urgent necessity shall be on any party that is opposing
9 shelter care for the other minor.

10 (11) The changes made to this Section by Public Act 98-61
11 apply to a minor who has been arrested or taken into custody on
12 or after January 1, 2014 (the effective date of Public Act
13 98-61).

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

1 (a) the efforts to identify and locate the respondents
2 and adult family members of the minor and the results of
3 those efforts;

4 (b) the efforts to engage the respondents and adult
5 family members of the minor in decision making on behalf
6 of the minor;

7 (c) the length of time the efforts in paragraphs (a)
8 and (b) have been ongoing;

9 (d) the relationship between the respondents and adult
10 family members and the minor;

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

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

15 If the Department of Children and Family Services is the
16 temporary custodian of the minor, in addition to the
17 requirements of paragraph (1) of subsection (b) of Section 20
18 of the Health Care Surrogate Act, the Department shall follow
19 its rules and procedures in exercising authority granted under
20 this subsection.

21 (Source: P.A. 99-625, eff. 1-1-17; 99-642, eff. 7-28-16;
22 100-159, eff. 8-18-17; 100-863, eff. 8-14-18; 100-959, eff.
23 1-1-19.)".