



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4538

Introduced 1/21/2022, by Rep. David A. Welter

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-10

from Ch. 37, par. 802-10

Amends the Juvenile Court Act of 1987 concerning abused, neglected, and dependent minors. Provides that if the Department of Children and Family Services removes a child from his or her home and determines that a parent or sibling's visitation or contact with the child after removal would present an immediate threat of physical or emotional harm to the child, it shall, within 5 days, petition the court for an order of protection prohibiting that parent or sibling's contact and visitation with the child until the Department determines that the threat no longer exists.

LRB102 23036 RLC 32190 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 1. This Act may be referred to as Trinity's Law.

5 Section 5. The Juvenile Court Act of 1987 is amended by
6 changing Section 2-10 as follows:

7 (705 ILCS 405/2-10) (from Ch. 37, par. 802-10)

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

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

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

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

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

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

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

1 to the finding of probable cause or to the finding of the
2 existence of immediate and urgent necessity.

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

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

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

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

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

1 plan or the sibling contact plan or obtaining a court order,
2 where the Department or its assigns reasonably believe there
3 is an immediate need to protect the child's health, safety,
4 and welfare. Such restrictions or terminations must be based
5 on available facts to the Department and its assigns when
6 viewed in light of the surrounding circumstances and shall
7 only occur on an individual case-by-case basis. The Department
8 shall file with the court and serve on the parties any
9 amendments to the plan within 10 days, excluding weekends and
10 holidays, of the change of the visitation. If the Department
11 removes a child from his or her home and determines that a
12 parent or sibling's visitation or contact with the child after
13 removal would present an immediate threat of physical or
14 emotional harm to the child, it shall, within 5 days, petition
15 the court for an order of protection prohibiting that parent
16 or sibling's contact and visitation with the child until the
17 Department determines that the threat no longer exists.

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. If the
15 minor is being restored to the custody of a parent, legal
16 custodian, or guardian who lives outside of Illinois, and an
17 Interstate Compact has been requested and refused, the court
18 may order the Department of Children and Family Services to
19 arrange for an assessment of the minor's proposed living
20 arrangement and for ongoing monitoring of the health, safety,
21 and best interest of the minor and compliance with any order of
22 protective supervision entered in accordance with Section 2-20
23 or 2-25.

24 The clerk shall set the matter for hearing not later than
25 14 days after such motion is filed. In the event that the court
26 modifies or vacates a temporary custody order but does not

1 vacate its finding of probable cause, the court may order that
2 appropriate services be continued or initiated in behalf of
3 the minor and his or her family.

4 (10) When the court finds or has found that there is
5 probable cause to believe a minor is an abused minor as
6 described in subsection (2) of Section 2-3 and that there is an
7 immediate and urgent necessity for the abused minor to be
8 placed in shelter care, immediate and urgent necessity shall
9 be presumed for any other minor residing in the same household
10 as the abused minor provided:

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

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

15 Once the presumption of immediate and urgent necessity has
16 been raised, the burden of demonstrating the lack of immediate
17 and urgent necessity shall be on any party that is opposing
18 shelter care for the other minor.

19 (11) The changes made to this Section by Public Act 98-61
20 apply to a minor who has been arrested or taken into custody on
21 or after January 1, 2014 (the effective date of Public Act
22 98-61).

23 (12) After the court has placed a minor in the care of a
24 temporary custodian pursuant to this Section, any party may
25 file a motion requesting the court to grant the temporary
26 custodian the authority to serve as a surrogate decision maker

1 for the minor under the Health Care Surrogate Act for purposes
2 of making decisions pursuant to paragraph (1) of subsection
3 (b) of Section 20 of the Health Care Surrogate Act. The court
4 may grant the motion if it determines by clear and convincing
5 evidence that it is in the best interests of the minor to grant
6 the temporary custodian such authority. In making its
7 determination, the court shall weigh the following factors in
8 addition to considering the best interests factors listed in
9 subsection (4.05) of Section 1-3 of this Act:

10 (a) the efforts to identify and locate the respondents
11 and adult family members of the minor and the results of
12 those efforts;

13 (b) the efforts to engage the respondents and adult
14 family members of the minor in decision making on behalf
15 of the minor;

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

18 (d) the relationship between the respondents and adult
19 family members and the minor;

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

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

24 If the Department of Children and Family Services is the
25 temporary custodian of the minor, in addition to the
26 requirements of paragraph (1) of subsection (b) of Section 20

1 of the Health Care Surrogate Act, the Department shall follow
2 its rules and procedures in exercising authority granted under
3 this subsection.

4 (Source: P.A. 102-489, eff. 8-20-21; 102-502, eff. 1-1-22;
5 revised 10-14-21.)