



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB0248

Introduced 1/14/2005, by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

325 ILCS 5/5	from Ch. 23, par. 2055
325 ILCS 5/6	from Ch. 23, par. 2056
325 ILCS 5/7.5	from Ch. 23, par. 2057.5
705 ILCS 405/2-5	from Ch. 37, par. 802-5

Amends the Abused and Neglected Child Reporting Act and the Juvenile Court Act of 1987. Provides that a law enforcement officer, DCFS employee, or physician may take or retain temporary protective custody of a child without the consent of the person responsible for the child's welfare if he or she has reason to believe that the child is in imminent danger of injury or death (instead of if he or she has reason to believe that the child cannot be cared for at home or in the custody of the person responsible for the child's welfare and there is not time to apply for a temporary custody order). If there is no such imminent danger, requires a warrant to take the child into temporary protective custody. Provides that the DCFS Guardianship Administrator has no authority to consent to an HIV test for a child or obtain and disclose HIV test information if the child has not been taken into temporary protective custody as provided by law. Provides that a person seeking to take photographs or x-rays of a child must first obtain the consent of the parent, guardian, or other person responsible for the child's welfare, unless the person has reason to believe that the child is in imminent danger of injury or death. Provides that if DCFS is denied reasonable access to a child, it shall seek law enforcement intervention for the purpose of examining and interviewing the child if it has reason to believe that the child is in imminent danger of injury or death; otherwise, it must seek a court order. Authorizes a law enforcement officer to take custody of a minor without a warrant under the Juvenile Court Act of 1987 if the officer has reasonable cause to believe the minor is an abused, neglected, or dependent minor, but only if the officer also has reasonable cause to believe that the minor is in imminent danger of injury or death.

LRB094 04962 DRJ 34992 b

1 AN ACT in relation to children.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Abused and Neglected Child Reporting Act is  
5 amended by changing Sections 5, 6, and 7.5 as follows:

6 (325 ILCS 5/5) (from Ch. 23, par. 2055)

7 Sec. 5. An officer of a local law enforcement agency,  
8 designated employee of the Department, or a physician treating  
9 a child may take or retain temporary protective custody of the  
10 child without the consent of the person responsible for the  
11 child's welfare, if ~~(1)~~ he has reason to believe that the child  
12 is in imminent danger of injury or death if left ~~cannot be~~  
13 ~~cared for~~ at home or in the custody of the person responsible  
14 for the child's welfare ~~without endangering the child's health~~  
15 ~~or safety; and (2) there is not time to apply for a court order~~  
16 ~~under the Juvenile Court Act of 1987 for temporary custody of~~  
17 ~~the child.~~ The person taking or retaining a child in temporary  
18 protective custody shall immediately make every reasonable  
19 effort to notify the person responsible for the child's welfare  
20 and shall immediately notify the Department. If the officer,  
21 employee, or physician does not have the consent of the person  
22 responsible for the child's welfare and does not have reason to  
23 believe that the child is in imminent danger of injury or death  
24 if left at home or in the custody of the person responsible for  
25 the child's welfare, then the officer, employee, or physician  
26 may take or retain temporary protective custody of the child  
27 only if (i) a court issues a warrant to take the child into  
28 custody based on the officer's, employee's, or physician's  
29 belief and evidence that the child cannot be cared for at home  
30 or in the custody of the person responsible for the child's  
31 welfare without endangering the child's health or safety and  
32 (ii) there is not time to apply for a court order for temporary

1 custody of the child under the Juvenile Court Act of 1987.

2 The Department shall provide to the temporary caretaker of  
3 a child any information in the Department's possession  
4 concerning the positive results of a test performed on the  
5 child to determine the presence of the antibody or antigen to  
6 Human Immunodeficiency Virus (HIV), or of HIV infection, as  
7 well as any communicable diseases or communicable infections  
8 that the child has. The temporary caretaker of a child shall  
9 not disclose to another person any information received by the  
10 temporary caretaker from the Department concerning the results  
11 of a test performed on the child to determine the presence of  
12 the antibody or antigen to HIV, or of HIV infection, except  
13 pursuant to Section 9 of the AIDS Confidentiality Act, as now  
14 or hereafter amended. The Department shall promptly initiate  
15 proceedings under the Juvenile Court Act of 1987 for the  
16 continued temporary custody of the child.

17 Where the physician keeping a child in his custody does so  
18 in his capacity as a member of the staff of a hospital or  
19 similar institution, he shall notify the person in charge of  
20 the institution or his designated agent, who shall then become  
21 responsible for the further care of such child in the hospital  
22 or similar institution under the direction of the Department.

23 Said care includes, but is not limited to the granting of  
24 permission to perform emergency medical treatment to a minor  
25 where the treatment itself does not involve a substantial risk  
26 of harm to the minor and the failure to render such treatment  
27 will likely result in death or permanent harm to the minor, and  
28 there is not time to apply for a court order under the Juvenile  
29 Court Act of 1987.

30 Any person authorized and acting in good faith in the  
31 removal of a child under this Section shall have immunity from  
32 any liability, civil or criminal that might otherwise be  
33 incurred or imposed as a result of such removal. Any physician  
34 authorized and acting in good faith and in accordance with  
35 acceptable medical practice in the treatment of a child under  
36 this Section shall have immunity from any liability, civil or

1 criminal, that might otherwise be incurred or imposed as a  
2 result of granting permission for emergency treatment.

3 With respect to any child taken into temporary protective  
4 custody pursuant to this Section, the Department of Children  
5 and Family Services Guardianship Administrator or his designee  
6 shall be deemed the child's legally authorized representative  
7 for purposes of consenting to an HIV test if deemed necessary  
8 and appropriate by the Department's Guardianship Administrator  
9 or designee and obtaining and disclosing information  
10 concerning such test pursuant to the AIDS Confidentiality Act  
11 if deemed necessary and appropriate by the Department's  
12 Guardianship Administrator or designee and for purposes of  
13 consenting to the release of information pursuant to the  
14 Illinois Sexually Transmissible Disease Control Act if deemed  
15 necessary and appropriate by the Department's Guardianship  
16 Administrator or designee. The Guardianship Administrator has  
17 no such authority to consent to an HIV test or obtain and  
18 disclose information if the child has not been taken into  
19 temporary protective custody as provided in this Section.

20 Any person who administers an HIV test upon the consent of  
21 the Department of Children and Family Services Guardianship  
22 Administrator or his designee, or who discloses the results of  
23 such tests to the Department's Guardianship Administrator or  
24 his designee, shall have immunity from any liability, civil,  
25 criminal or otherwise, that might result by reason of such  
26 actions. For the purpose of any proceedings, civil or criminal,  
27 the good faith of any persons required to administer or  
28 disclose the results of tests, or permitted to take such  
29 actions, shall be presumed.

30 (Source: P.A. 90-28, eff. 1-1-98.)

31 (325 ILCS 5/6) (from Ch. 23, par. 2056)

32 Sec. 6. Any person required to investigate cases of  
33 suspected child abuse or neglect may take or cause to be taken,  
34 at Department expense, color photographs and x-rays of the  
35 child who is the subject of a report, and color photographs of

1 the physical environment in which the alleged abuse or neglect  
2 has taken place. The person seeking to take such photographs or  
3 x-rays must first obtain the consent of the parent, guardian,  
4 or other person responsible for the child's welfare, unless the  
5 person has reason to believe that the child is in imminent  
6 danger of injury or death. If the person has such a reasonable  
7 belief, the person must ~~shall~~ make every reasonable effort to  
8 notify the person responsible for the child's welfare.

9 (Source: P.A. 84-611.)

10 changing

11 (325 ILCS 5/7.5) (from Ch. 23, par. 2057.5)

12 Sec. 7.5. If the Child Protective Service Unit is denied  
13 reasonable access to a child by the parents or other persons  
14 and it deems that the health, safety, and best interests of the  
15 child so require, it shall request the intervention of a local  
16 law enforcement agency for the purpose of examining and  
17 interviewing the child if it has reason to believe that the  
18 child is in imminent danger of injury or death. If the Child  
19 Protective Service Unit does not have reason to believe that  
20 the child is in imminent danger of injury or death, it must ~~or~~  
21 seek an appropriate court order to examine and interview the  
22 child.

23 (Source: P.A. 90-28, eff. 1-1-98.)

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

26 (705 ILCS 405/2-5) (from Ch. 37, par. 802-5)

27 Sec. 2-5. Taking into custody. (1) A law enforcement  
28 officer may, without a warrant, take into temporary custody a  
29 minor (a) whom the officer with reasonable cause believes to be  
30 a person described in Section 2-3 or 2-4, but only if the  
31 officer also has reasonable cause to believe that the minor is  
32 in imminent danger of injury or death; (b) who has been  
33 adjudged a ward of the court and has escaped from any

1 commitment ordered by the court under this Act; or (c) who is  
2 found in any street or public place suffering from any sickness  
3 or injury which requires care, medical treatment or  
4 hospitalization.

5 (2) Whenever a petition has been filed under Section 2-13  
6 and the court finds that the conduct and behavior of the minor  
7 may endanger the health, person, welfare, or property of  
8 himself or others or that the circumstances of his home  
9 environment may endanger his health, person, welfare or  
10 property, a warrant may be issued immediately to take the minor  
11 into custody.

12 (3) The taking of a minor into temporary custody under this  
13 Section is not an arrest nor does it constitute a police  
14 record.

15 (Source: P.A. 85-601.)