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LRB094 04962 DRJ 42953 a

1 AMENDMENT TO HOUSE BILL 248

2 AMENDMENT NO. _____. Amend House Bill 248 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 Sections 2-10 and 2-18 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 of
23 through the central registry, involving the minor's parent,
24 guardian or custodian. After such testimony, the court may,

1 consistent with the health, safety and best interests of the
2 minor, enter an order that the minor shall be released upon the
3 request of parent, guardian or custodian if the parent,
4 guardian or custodian appears to take custody. Custodian shall
5 include any agency of the State which has been given custody or
6 wardship of the child. If it is consistent with the health,
7 safety and best interests of the minor, the court may also
8 prescribe shelter care and order that the minor be kept in a
9 suitable place designated by the court or in a shelter care
10 facility designated by the Department of Children and Family
11 Services or a licensed child welfare agency; however, a minor
12 charged with a criminal offense under the Criminal Code of 1961
13 or adjudicated delinquent shall not be placed in the custody of
14 or committed to the Department of Children and Family Services
15 by any court, except a minor less than 13 years of age and
16 committed to the Department of Children and Family Services
17 under Section 5-710 of this Act or a minor for whom an
18 independent basis of abuse, neglect, or dependency exists,
19 which must be defined by departmental rule. In placing the
20 minor, the Department or other agency shall, to the extent
21 compatible with the court's order, comply with Section 7 of the
22 Children and Family Services Act. In determining the health,
23 safety and best interests of the minor to prescribe shelter
24 care, the court must find that it is a matter of immediate and
25 urgent necessity for the safety and protection of the minor or
26 of the person or property of another that the minor be placed
27 in a shelter care facility or that he or she is likely to flee
28 the jurisdiction of the court, and must further find that
29 reasonable efforts have been made or that, consistent with the
30 health, safety and best interests of the minor, no efforts
31 reasonably can be made to prevent or eliminate the necessity of
32 removal of the minor from his or her home. The court shall
33 require documentation from the Department of Children and
34 Family Services as to the reasonable efforts that were made to

1 prevent or eliminate the necessity of removal of the minor from
2 his or her home or the reasons why no efforts reasonably could
3 be made to prevent or eliminate the necessity of removal. When
4 a minor is placed in the home of a relative, the Department of
5 Children and Family Services shall complete a preliminary
6 background review of the members of the minor's custodian's
7 household in accordance with Section 4.3 of the Child Care Act
8 of 1969 within 90 days of that placement. If the minor is
9 ordered placed in a shelter care facility of the Department of
10 Children and Family Services or a licensed child welfare
11 agency, the court shall, upon request of the appropriate
12 Department or other agency, appoint the Department of Children
13 and Family Services Guardianship Administrator or other
14 appropriate agency executive temporary custodian of the minor
15 and the court may enter such other orders related to the
16 temporary custody as it deems fit and proper, including the
17 provision of services to the minor or his family to ameliorate
18 the causes contributing to the finding of probable cause or to
19 the finding of the existence of immediate and urgent necessity.
20 Acceptance of services shall not be considered an admission of
21 any allegation in a petition made pursuant to this Act, nor may
22 a referral of services be considered as evidence in any
23 proceeding pursuant to this Act, except where the issue is
24 whether the Department has made reasonable efforts to reunite
25 the family. In making its findings that it is consistent with
26 the health, safety and best interests of the minor to prescribe
27 shelter care, the court shall state in writing (i) the factual
28 basis supporting its findings concerning the immediate and
29 urgent necessity for the protection of the minor or of the
30 person or property of another and (ii) the factual basis
31 supporting its findings that reasonable efforts were made to
32 prevent or eliminate the removal of the minor from his or her
33 home or that no efforts reasonably could be made to prevent or
34 eliminate the removal of the minor from his or her home. The

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

7 If the Department of Children and Family Services
8 Guardianship Administrator is appointed the executive
9 temporary custodian of a minor, the Department has the
10 authority to authorize appropriate physical and mental health
11 evaluations of the minor and any emergency treatment the minor
12 may require unless otherwise ordered by the court. The minor's
13 custodial parents retain their rights to make all other medical
14 decisions and all education decisions relating to the minor,
15 unless the court finds that the parents' retention of these
16 rights is not in the minor's best interests.

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

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

31 (3) If prior to the shelter care hearing for a minor
32 described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is
33 unable to serve notice on the party respondent, the shelter
34 care hearing may proceed ex-parte. A shelter care order from an

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

23 NOTICE TO PARENTS AND CHILDREN
 24 OF SHELTER CARE HEARING

25 On at, before the Honorable
 26, (address:), the State
 27 of Illinois will present evidence (1) that (name of child
 28 or children) are abused, neglected
 29 or dependent for the following reasons:
 30 and (2)
 31 that there is "immediate and urgent necessity" to remove
 32 the child or children from the responsible relative.

33 YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN
 34 PLACEMENT of the child or children in foster care until a

1 trial can be held. A trial may not be held for up to 90
2 days. You will not be entitled to further notices of
3 proceedings in this case, including the filing of an
4 amended petition or a motion to terminate parental rights.

5 At the shelter care hearing, parents have the following
6 rights:

7 1. To ask the court to appoint a lawyer if they
8 cannot afford one.

9 2. To ask the court to continue the hearing to
10 allow them time to prepare.

11 3. To present evidence concerning:

12 a. Whether or not the child or children were
13 abused, neglected or dependent.

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

19 c. The best interests of the child.

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

21 The Notice for rehearings shall be substantially as
22 follows:

23 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS

24 TO REHEARING ON TEMPORARY CUSTODY

25 If you were not present at and did not have adequate
26 notice of the Shelter Care Hearing at which temporary
27 custody of was awarded to
28, you have the right to request a full
29 rehearing on whether the State should have temporary
30 custody of To request this rehearing,
31 you must file with the Clerk of the Juvenile Court
32 (address):, in person or by
33 mailing a statement (affidavit) setting forth the

1 following:

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

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

6 3. Your signature.

7 4. Signature must be notarized.

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

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

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

15 1. To have a guardian ad litem appointed.

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

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

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

22 c. Their best interests.

23 3. To cross examine witnesses for other parties.

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

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

34 (5) Only when there is reasonable cause to believe that the

1 minor taken into custody is a person described in subsection
2 (3) of Section 5-105 may the minor be kept or detained in a
3 detention home or county or municipal jail. This Section shall
4 in no way be construed to limit subsection (6).

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

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

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

26 (9) Notwithstanding any other provision of this Section any
27 interested party, including the State, the temporary
28 custodian, an agency providing services to the minor or family
29 under a service plan pursuant to Section 8.2 of the Abused and
30 Neglected Child Reporting Act, foster parent, or any of their
31 representatives, on notice to all parties entitled to notice,
32 may file a motion that it is in the best interests of the minor
33 to modify or vacate a temporary custody order on any of the
34 following grounds:

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

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

7 (c) A person not a party to the alleged abuse, neglect
8 or dependency, including a parent, relative or legal
9 guardian, is capable of assuming temporary custody of the
10 minor; or

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

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

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

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

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

34 (b) A party to the petition is seeking shelter care for

1 such other minor.

2 Once the presumption of immediate and urgent necessity has
3 been raised, the burden of demonstrating the lack of immediate
4 and urgent necessity shall be on any party that is opposing
5 shelter care for the other minor.

6 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;
7 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;
8 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

9 (705 ILCS 405/2-18) (from Ch. 37, par. 802-18)

10 Sec. 2-18. Evidence.

11 (1) At the adjudicatory hearing, the court shall first
12 consider only the question whether the minor is abused,
13 neglected or dependent. The standard of proof and the rules of
14 evidence in the nature of civil proceedings in this State are
15 applicable to proceedings under this Article. If the petition
16 also seeks the appointment of a guardian of the person with
17 power to consent to adoption of the minor under Section 2-29,
18 the court may also consider legally admissible evidence at the
19 adjudicatory hearing that one or more grounds of unfitness
20 exists under subdivision D of Section 1 of the Adoption Act.

21 (2) In any hearing under this Act, the following shall
22 constitute prima facie evidence of abuse or neglect, as the
23 case may be:

24 (a) proof that a minor has a medical diagnosis of
25 battered child syndrome is prima facie evidence of abuse;

26 (b) proof that a minor has a medical diagnosis of
27 failure to thrive syndrome is prima facie evidence of
28 neglect;

29 (c) proof that a minor has a medical diagnosis of fetal
30 alcohol syndrome is prima facie evidence of neglect;

31 (d) proof that a minor has a medical diagnosis at birth
32 of withdrawal symptoms from narcotics or barbiturates is
33 prima facie evidence of neglect;

1 (e) proof of injuries sustained by a minor or of the
2 condition of a minor of such a nature as would ordinarily
3 not be sustained or exist except by reason of the acts or
4 omissions of the parent, custodian or guardian of such
5 minor shall be prima facie evidence of abuse or neglect, as
6 the case may be;

7 (f) proof that a parent, custodian or guardian of a
8 minor repeatedly used a drug, to the extent that it has or
9 would ordinarily have the effect of producing in the user a
10 substantial state of stupor, unconsciousness,
11 intoxication, hallucination, disorientation or
12 incompetence, or a substantial impairment of judgment, or a
13 substantial manifestation of irrationality, shall be prima
14 facie evidence of neglect;

15 (g) proof that a parent, custodian, or guardian of a
16 minor repeatedly used a controlled substance, as defined in
17 subsection (f) of Section 102 of the Illinois Controlled
18 Substances Act, in the presence of the minor or a sibling
19 of the minor is prima facie evidence of neglect. "Repeated
20 use", for the purpose of this subsection, means more than
21 one use of a controlled substance as defined in subsection
22 (f) of Section 102 of the Illinois Controlled Substances
23 Act;

24 (h) proof that a newborn infant's blood, urine, or
25 meconium contains any amount of a controlled substance as
26 defined in subsection (f) of Section 102 of the Illinois
27 Controlled Substances Act, or a metabolite of a controlled
28 substance, with the exception of controlled substances or
29 metabolites of those substances, the presence of which is
30 the result of medical treatment administered to the mother
31 or the newborn, is prime facie evidence of neglect;

32 (i) proof that a minor was present in a structure or
33 vehicle in which the minor's parent, custodian, or guardian
34 was involved in the manufacture of methamphetamine

1 constitutes prima facie evidence of abuse and neglect.

2 (3) In any hearing under this Act, proof of the abuse,
3 neglect or dependency of one minor shall be admissible evidence
4 on the issue of the abuse, neglect or dependency of any other
5 minor for whom the respondent is responsible.

6 (4) (a) Any writing, record, photograph or x-ray of any
7 hospital or public or private agency, whether in the form of an
8 entry in a book or otherwise, made as a memorandum or record of
9 any condition, act, transaction, occurrence or event relating
10 to a minor in an abuse, neglect or dependency proceeding, shall
11 be admissible in evidence as proof of that condition, act,
12 transaction, occurrence or event, if the court finds that the
13 document was made in the regular course of the business of the
14 hospital or agency and that it was in the regular course of
15 such business to make it, at the time of the act, transaction,
16 occurrence or event, or within a reasonable time thereafter.
17 Any portion of a document that contains an opinion as to a
18 respondent's ability to care for a minor or as to a minor's
19 bond to a respondent is not admissible unless the individual
20 who authored the opinion testifies as to that opinion. A
21 certification by the head or responsible employee of the
22 hospital or agency that the writing, record, photograph or
23 x-ray is the full and complete record of the condition, act,
24 transaction, occurrence or event and that it satisfies the
25 conditions of this paragraph shall be prima facie evidence of
26 the facts contained in such certification. A certification by
27 someone other than the head of the hospital or agency shall be
28 accompanied by a photocopy of a delegation of authority signed
29 by both the head of the hospital or agency and by such other
30 employee. All other circumstances of the making of the
31 memorandum, record, photograph or x-ray, including lack of
32 personal knowledge of the maker, may be proved to affect the
33 weight to be accorded such evidence, but shall not affect its
34 admissibility.

1 (b) Any indicated report filed pursuant to the Abused and
2 Neglected Child Reporting Act shall be admissible in evidence.

3 (c) Previous statements made by the minor relating to any
4 allegations of abuse or neglect shall be admissible in
5 evidence. However, no such statement, if uncorroborated and not
6 subject to cross-examination, shall be sufficient in itself to
7 support a finding of abuse or neglect.

8 (d) There shall be a rebuttable presumption that a minor is
9 competent to testify in abuse or neglect proceedings. The court
10 shall determine how much weight to give to the minor's
11 testimony, and may allow the minor to testify in chambers with
12 only the court, the court reporter and attorneys for the
13 parties present.

14 (e) The privileged character of communication between any
15 professional person and patient or client, except privilege
16 between attorney and client, shall not apply to proceedings
17 subject to this Article.

18 (f) Proof of the impairment of emotional health or
19 impairment of mental or emotional condition as a result of the
20 failure of the respondent to exercise a minimum degree of care
21 toward a minor may include competent opinion or expert
22 testimony, and may include proof that such impairment lessened
23 during a period when the minor was in the care, custody or
24 supervision of a person or agency other than the respondent.

25 (5) In any hearing under this Act alleging neglect for
26 failure to provide education as required by law under
27 subsection (1) of Section 2-3, proof that a minor under 13
28 years of age who is subject to compulsory school attendance
29 under the School Code is a chronic truant as defined under the
30 School Code shall be prima facie evidence of neglect by the
31 parent or guardian in any hearing under this Act and proof that
32 a minor who is 13 years of age or older who is subject to
33 compulsory school attendance under the School Code is a chronic
34 truant shall raise a rebuttable presumption of neglect by the

1 parent or guardian. This subsection (5) shall not apply in
2 counties with 2,000,000 or more inhabitants.

3 (6) In any hearing under this Act, the court may take
4 judicial notice of prior sworn testimony or evidence admitted
5 in prior proceedings involving the same minor if (a) the
6 parties were either represented by counsel at such prior
7 proceedings or the right to counsel was knowingly waived and
8 (b) the taking of judicial notice would not result in admitting
9 hearsay evidence at a hearing where it would otherwise be
10 prohibited.

11 (Source: P.A. 93-884, eff. 1-1-05.)".