



Rep. Mary E. Flowers

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LRB094 04962 DRJ 43611 a

1 AMENDMENT TO HOUSE BILL 248

2 AMENDMENT NO. _____. Amend House Bill 248, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Juvenile Court Act of 1987 is amended by
6 changing Sections 2-10 and 2-18 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
23 reports of abuse and neglect, of which they are aware of
24 through the central registry, involving the minor's parent,

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

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

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

8 If the Department of Children and Family Services
9 Guardianship Administrator is appointed the executive
10 temporary custodian of a minor, the Department has the
11 authority to authorize appropriate physical and mental health
12 evaluations of the minor and any emergency medical treatment or
13 surgical procedure the minor may require unless otherwise
14 ordered by the court. "Emergency medical treatment or surgical
15 procedure" means immediate ordinary or major measures
16 necessary to preserve the life, health, or physical well-being
17 of the patient. The minor's parents retain their rights to make
18 all other medical decisions and all education decisions
19 relating to the minor, unless the court finds that the parents'
20 retention of these rights is not in the minor's best interests.

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

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

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

27 NOTICE TO PARENTS AND CHILDREN
 28 OF SHELTER CARE HEARING

29 On at, before the Honorable
 30, (address:), the State
 31 of Illinois will present evidence (1) that (name of child
 32 or children) are abused, neglected
 33 or dependent for the following reasons:
 34 and (2)

1 that there is "immediate and urgent necessity" to remove
2 the child or children from the responsible relative.

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

9 At the shelter care hearing, parents have the following
10 rights:

11 1. To ask the court to appoint a lawyer if they
12 cannot afford one.

13 2. To ask the court to continue the hearing to
14 allow them time to prepare.

15 3. To present evidence concerning:

16 a. Whether or not the child or children were
17 abused, neglected or dependent.

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

23 c. The best interests of the child.

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

25 The Notice for rehearings shall be substantially as
26 follows:

27 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
28 TO REHEARING ON TEMPORARY CUSTODY

29 If you were not present at and did not have adequate
30 notice of the Shelter Care Hearing at which temporary
31 custody of was awarded to
32, you have the right to request a full
33 rehearing on whether the State should have temporary

1 custody of To request this rehearing,
 2 you must file with the Clerk of the Juvenile Court
 3 (address):, in person or by
 4 mailing a statement (affidavit) setting forth the
 5 following:

- 6 1. That you were not present at the shelter care
- 7 hearing.
- 8 2. That you did not get adequate notice (explaining
- 9 how the notice was inadequate).
- 10 3. Your signature.
- 11 4. Signature must be notarized.

12 The rehearing should be scheduled within 48 hours of
 13 your filing this affidavit.

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

17 At the Shelter Care Hearing, children have the
 18 following rights:

- 19 1. To have a guardian ad litem appointed.
- 20 2. To be declared competent as a witness and to
- 21 present testimony concerning:
 - 22 a. Whether they are abused, neglected or
 - 23 dependent.
 - 24 b. Whether there is "immediate and urgent
 - 25 necessity" to be removed from home.
 - 26 c. Their best interests.
- 27 3. To cross examine witnesses for other parties.
- 28 4. To obtain an explanation of any proceedings and
- 29 orders of the court.

30 (4) If the parent, guardian, legal custodian, responsible
 31 relative, minor age 8 or over, or counsel of the minor did not
 32 have actual notice of or was not present at the shelter care
 33 hearing, he or she may file an affidavit setting forth these
 34 facts, and the clerk shall set the matter for rehearing not

1 later than 48 hours, excluding Sundays and legal holidays,
2 after the filing of the affidavit. At the rehearing, the court
3 shall proceed in the same manner as upon the original hearing.

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

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

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

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

30 (9) Notwithstanding any other provision of this Section any
31 interested party, including the State, the temporary
32 custodian, an agency providing services to the minor or family
33 under a service plan pursuant to Section 8.2 of the Abused and
34 Neglected Child Reporting Act, foster parent, or any of their

1 representatives, on notice to all parties entitled to notice,
2 may file a motion that it is in the best interests of the minor
3 to modify or vacate a temporary custody order on any of the
4 following grounds:

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

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

11 (c) A person not a party to the alleged abuse, neglect
12 or dependency, including a parent, relative or legal
13 guardian, is capable of assuming temporary custody of the
14 minor; or

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

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

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

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

1 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 for
5 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 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;
11 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;
12 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

13 (705 ILCS 405/2-18) (from Ch. 37, par. 802-18)

14 Sec. 2-18. Evidence.

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

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

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

30 (b) proof that a minor has a medical diagnosis of
31 failure to thrive syndrome is prima facie evidence of
32 neglect;

33 (c) proof that a minor has a medical diagnosis of fetal

1 alcohol syndrome is prima facie evidence of neglect;

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

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

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

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

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

1 or the newborn, is prime facie evidence of neglect;

2 (i) proof that a minor was present in a structure or
3 vehicle in which the minor's parent, custodian, or guardian
4 was involved in the manufacture of methamphetamine
5 constitutes prima facie evidence of abuse and neglect.

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

10 (4) (a) Any writing, record, photograph or x-ray of any
11 hospital or public or private agency, whether in the form of an
12 entry in a book or otherwise, made as a memorandum or record of
13 any condition, act, transaction, occurrence or event relating
14 to a minor in an abuse, neglect or dependency proceeding, shall
15 be admissible in evidence as proof of that condition, act,
16 transaction, occurrence or event, if the court finds that the
17 document was made in the regular course of the business of the
18 hospital or agency and that it was in the regular course of
19 such business to make it, at the time of the act, transaction,
20 occurrence or event, or within a reasonable time thereafter.

21 (a-5) In unfitness proceedings under Section 2-29 of this
22 Act, if documents, assessments, and evaluations are directly
23 used to prove an unfitness ground as alleged in the petition,
24 the author of those documents shall testify, if available, as
25 to the recommendations and findings. If the author is
26 unavailable, the documents are admissible without such
27 testimony. The court shall determine the proper weight accorded
28 to the documents.

29 (a-10) In unfitness proceedings under Section 2-29 of this
30 Act, if documents, assessments, and evaluations are used at the
31 best interest portion, relating to parent-child bonding, the
32 author of those documents shall testify, if available, as to
33 the recommendations and findings. If the author is unavailable,
34 the documents are admissible without such testimony. The court

1 shall determine the proper weight accorded to the documents.

2 (a-15) For purposes of paragraphs (a-5) and (a-10) of this
3 subsection (4), "unavailable" means: the author is absent from
4 the hearing and the party wishing to introduce the document has
5 been unable to procure the author's attendance by process or
6 other reasonable means; or the author persists in refusing to
7 testify concerning the document despite an order of the court
8 to do so; or the author is unable to be present or to testify at
9 the hearing because of health, or then-existing physical or
10 mental illness or infirmity, or death.

11 (a-20) A certification by the head or responsible employee
12 of the hospital or agency that the writing, record, photograph
13 or x-ray is the full and complete record of the condition, act,
14 transaction, occurrence or event and that it satisfies the
15 conditions of this paragraph shall be prima facie evidence of
16 the facts contained in such certification. A certification by
17 someone other than the head of the hospital or agency shall be
18 accompanied by a photocopy of a delegation of authority signed
19 by both the head of the hospital or agency and by such other
20 employee. All other circumstances of the making of the
21 memorandum, record, photograph or x-ray, including lack of
22 personal knowledge of the maker, may be proved to affect the
23 weight to be accorded such evidence, but shall not affect its
24 admissibility.

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

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

32 (d) There shall be a rebuttable presumption that a minor is
33 competent to testify in abuse or neglect proceedings. The court
34 shall determine how much weight to give to the minor's

1 testimony, and may allow the minor to testify in chambers with
2 only the court, the court reporter and attorneys for the
3 parties present.

4 (e) The privileged character of communication between any
5 professional person and patient or client, except privilege
6 between attorney and client, shall not apply to proceedings
7 subject to this Article.

8 (f) Proof of the impairment of emotional health or
9 impairment of mental or emotional condition as a result of the
10 failure of the respondent to exercise a minimum degree of care
11 toward a minor may include competent opinion or expert
12 testimony, and may include proof that such impairment lessened
13 during a period when the minor was in the care, custody or
14 supervision of a person or agency other than the respondent.

15 (5) In any hearing under this Act alleging neglect for
16 failure to provide education as required by law under
17 subsection (1) of Section 2-3, proof that a minor under 13
18 years of age who is subject to compulsory school attendance
19 under the School Code is a chronic truant as defined under the
20 School Code shall be prima facie evidence of neglect by the
21 parent or guardian in any hearing under this Act and proof that
22 a minor who is 13 years of age or older who is subject to
23 compulsory school attendance under the School Code is a chronic
24 truant shall raise a rebuttable presumption of neglect by the
25 parent or guardian. This subsection (5) shall not apply in
26 counties with 2,000,000 or more inhabitants.

27 (6) In any hearing under this Act, the court may take
28 judicial notice of prior sworn testimony or evidence admitted
29 in prior proceedings involving the same minor if (a) the
30 parties were either represented by counsel at such prior
31 proceedings or the right to counsel was knowingly waived and
32 (b) the taking of judicial notice would not result in admitting
33 hearsay evidence at a hearing where it would otherwise be
34 prohibited.

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