



Rep. Mary E. Flowers

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LRB094 09292 RXD 43047 a

1 AMENDMENT TO HOUSE BILL 2543

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2543 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 2-10.1 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 Where the Department of Children and Family Services  
21 Guardianship Administrator is appointed as the executive  
22 temporary custodian, the Department of Children and Family  
23 Services shall file with the court and serve on the parties a  
24 parent-child visiting plan, within 10 days, excluding weekends  
25 and holidays, after the appointment. The parent-child visiting  
26 plan shall set out the time and place of visits, the frequency  
27 of visits, the length of visits, who shall be present at the  
28 visits, and where appropriate, the minor's opportunities to  
29 have telephone and mail communication with the parents. For  
30 good cause, the court may waive the requirement to file the  
31 parent-child visiting plan or extend the time for filing the  
32 parent-child visiting plan. Any party may, by motion, request  
33 the court to review the parent-child visiting plan to determine  
34 whether it is reasonably calculated to expeditiously

1 facilitate the achievement of the permanency goal and is  
2 consistent with the minor's best interest. The frequency,  
3 duration, and locations of visitation shall be measured by the  
4 needs of the child and family, and not by the convenience of  
5 Department personnel. Child development principles shall be  
6 considered by the court in its analysis of how frequent  
7 visitation should be, how long it should last, where it should  
8 take place, and who should be present. If upon motion of the  
9 party to review the plan and after receiving evidence, the  
10 court determines that the parent-child visiting plan is not  
11 reasonably calculated to expeditiously facilitate the  
12 achievement of the permanency goal or that the restrictions  
13 placed on parent-child contact are contrary to the child's best  
14 interests, the court shall put in writing the factual basis  
15 supporting the determination and enter specific findings based  
16 on the evidence. The court shall enter an order for the  
17 Department to implement changes to the parent-child visiting  
18 plan, consistent with the court's findings. At any stage of  
19 proceeding, any party may by motion request the court to enter  
20 any orders necessary to implement the parent-child visiting  
21 plan. Nothing under this subsection (2) shall restrict the  
22 court from granting discretionary authority to the Department  
23 to increase opportunities for additional parent-child  
24 contacts, without further court orders. Nothing in this  
25 subsection (2) shall restrict the Department from immediately  
26 restricting or terminating parent-child contact, without  
27 either amending the parent-child visiting plan or obtaining a  
28 court order, where the Department or its assigns reasonably  
29 believe that continuation of parent-child contact, as set out  
30 in the parent-child visiting plan, would be contrary to the  
31 child's health, safety, and welfare. The Department shall file  
32 with the court and serve on the parties any amendments to the  
33 visitation plan within 10 days, excluding weekends and  
34 holidays, of the change of the visitation. Any party may, by

1 motion, request the court to review the parent-child visiting  
2 plan to determine whether the parent-child visiting plan is  
3 reasonably calculated to expeditiously facilitate the  
4 achievement of the permanency goal, and is consistent with the  
5 minor's health, safety, and best interest.

6 Acceptance of services shall not be considered an admission  
7 of any allegation in a petition made pursuant to this Act, nor  
8 may a referral of services be considered as evidence in any  
9 proceeding pursuant to this Act, except where the issue is  
10 whether the Department has made reasonable efforts to reunite  
11 the family. In making its findings that it is consistent with  
12 the health, safety and best interests of the minor to prescribe  
13 shelter care, the court shall state in writing (i) the factual  
14 basis supporting its findings concerning the immediate and  
15 urgent necessity for the protection of the minor or of the  
16 person or property of another and (ii) the factual basis  
17 supporting its findings that reasonable efforts were made to  
18 prevent or eliminate the removal of the minor from his or her  
19 home or that no efforts reasonably could be made to prevent or  
20 eliminate the removal of the minor from his or her home. The  
21 parents, guardian, custodian, temporary custodian and minor  
22 shall each be furnished a copy of such written findings. The  
23 temporary custodian shall maintain a copy of the court order  
24 and written findings in the case record for the child. The  
25 order together with the court's findings of fact in support  
26 thereof shall be entered of record in the court.

27 Once the court finds that it is a matter of immediate and  
28 urgent necessity for the protection of the minor that the minor  
29 be placed in a shelter care facility, the minor shall not be  
30 returned to the parent, custodian or guardian until the court  
31 finds that such placement is no longer necessary for the  
32 protection of the minor.

33 If the child is placed in the temporary custody of the  
34 Department of Children and Family Services for his or her

1 protection, the court shall admonish the parents, guardian,  
2 custodian or responsible relative that the parents must  
3 cooperate with the Department of Children and Family Services,  
4 comply with the terms of the service plans, and correct the  
5 conditions which require the child to be in care, or risk  
6 termination of their parental rights.

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

33 NOTICE TO PARENTS AND CHILDREN  
34 OF SHELTER CARE HEARING

1           On ..... at ....., before the Honorable  
 2           ....., (address:) ....., the State  
 3           of Illinois will present evidence (1) that (name of child  
 4           or children) ..... are abused, neglected  
 5           or dependent for the following reasons:

6           ..... and (2)  
 7           that there is "immediate and urgent necessity" to remove  
 8           the child or children from the responsible relative.

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

15          At the shelter care hearing, parents have the following  
 16          rights:

17                 1. To ask the court to appoint a lawyer if they  
 18                 cannot afford one.

19                 2. To ask the court to continue the hearing to  
 20                 allow them time to prepare.

21                 3. To present evidence concerning:  
 22                         a. Whether or not the child or children were  
 23                         abused, neglected or dependent.

24                         b. Whether or not there is "immediate and  
 25                         urgent necessity" to remove the child from home  
 26                         (including: their ability to care for the child,  
 27                         conditions in the home, alternative means of  
 28                         protecting the child other than removal).

29                         c. The best interests of the child.

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

31          The Notice for rehearings shall be substantially as  
 32          follows:

33                         NOTICE OF PARENT'S AND CHILDREN'S RIGHTS

1 TO REHEARING ON TEMPORARY CUSTODY

2 If you were not present at and did not have adequate  
3 notice of the Shelter Care Hearing at which temporary  
4 custody of ..... was awarded to  
5 ....., you have the right to request a full  
6 rehearing on whether the State should have temporary  
7 custody of ..... To request this rehearing,  
8 you must file with the Clerk of the Juvenile Court  
9 (address): ....., in person or by  
10 mailing a statement (affidavit) setting forth the  
11 following:

- 12 1. That you were not present at the shelter care
- 13 hearing.
- 14 2. That you did not get adequate notice (explaining
- 15 how the notice was inadequate).
- 16 3. Your signature.
- 17 4. Signature must be notarized.

18 The rehearing should be scheduled within 48 hours of  
19 your filing this affidavit.

20 At the rehearing, your rights are the same as at the  
21 initial shelter care hearing. The enclosed notice explains  
22 those rights.

23 At the Shelter Care Hearing, children have the  
24 following rights:

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



1 orders of the court.

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

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

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

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

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

1 welfare agency.

2 (9) Notwithstanding any other provision of this Section any  
3 interested party, including the State, the temporary  
4 custodian, an agency providing services to the minor or family  
5 under a service plan pursuant to Section 8.2 of the Abused and  
6 Neglected Child Reporting Act, foster parent, or any of their  
7 representatives, on notice to all parties entitled to notice,  
8 may file a motion that it is in the best interests of the minor  
9 to modify or vacate a temporary custody order on any of the  
10 following grounds:

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

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

17 (c) A person not a party to the alleged abuse, neglect  
18 or dependency, including a parent, relative or legal  
19 guardian, is capable of assuming temporary custody of the  
20 minor; or

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

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

29 The clerk shall set the matter for hearing not later than  
30 14 days after such motion is filed. In the event that the court  
31 modifies or vacates a temporary custody order but does not  
32 vacate its finding of probable cause, the court may order that  
33 appropriate services be continued or initiated in behalf of the  
34 minor and his or her family.

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

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

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

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

16 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;  
17 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;  
18 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

19 (705 ILCS 405/2-10.1) (from Ch. 37, par. 802-10.1)

20 Sec. 2-10.1. Whenever a minor is placed in shelter care  
21 with the Department or a licensed child welfare agency in  
22 accordance with Section 2-10, the Department or agency, as  
23 appropriate, shall prepare and file with the court within 45  
24 days of placement under Section 2-10 a case plan which complies  
25 with the federal Adoption Assistance and Child Welfare Act of  
26 1980 and is consistent with the health, safety and best  
27 interests of the minor.

28 For the purposes of this Act, "case plan" and "service  
29 plan" shall have the same meaning.

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