



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5496

by Rep. Constance A. Howard

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-410  
705 ILCS 405/5-740

Amends the Juvenile Court Act of 1987. Provides that if any minor is determined to need care away from home in foster care, shelter care, or detention, the court shall order, consistent with the health, safety, and best interests of the minor, the removal of the minor from his or her home because the minor's home cannot provide the quality of care and level of support and supervision the minor needs at the time. Provides that removal from the home is in the minor's and community's best interest for any of the following reasons: (i) the minor is without the care necessary for the minor's well being through no fault or lack of concern by a parent, guardian, custodian, or other person, (ii) the minor has no parent, guardian, custodian, or other person able to return the minor to the court when required, or (iii) for the protection of the minor. Provides that the court shall further find that reasonable efforts have been made or that, consistent with the health, safety, and best interests of the minor, no efforts reasonably can be made to prevent or eliminate the necessity of removal of the minor from his or her home. Provides that once the court finds that it is a matter of immediate and urgent necessity for the protection of the minor that the minor be placed in a shelter care facility, detention center, or foster care, the minor shall not be returned to the parent, custodian, or guardian until the court finds that such placement is no longer necessary for the protection of the minor. Effective immediately.

LRB095 18102 RLC 44185 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 5. The Juvenile Court Act of 1987 is amended by  
5 changing Sections 5-410 and 5-740 as follows:

6 (705 ILCS 405/5-410)

7 Sec. 5-410. Non-secure custody or detention.

8 (1) Any minor arrested or taken into custody pursuant to  
9 this Act who requires care away from his or her home but who  
10 does not require physical restriction shall be given temporary  
11 care in a foster family home or other shelter facility  
12 designated by the court.

13 (2) (a) Any minor 10 years of age or older arrested  
14 pursuant to this Act where there is probable cause to believe  
15 that the minor is a delinquent minor and that (i) secured  
16 custody is a matter of immediate and urgent necessity for the  
17 protection of the minor or of the person or property of  
18 another, (ii) the minor is likely to flee the jurisdiction of  
19 the court, or (iii) the minor was taken into custody under a  
20 warrant, may be kept or detained in an authorized detention  
21 facility. No minor under 12 years of age shall be detained in a  
22 county jail or a municipal lockup for more than 6 hours.

23 (3) For any minor determined to need care away from home in

1 foster care, shelter care, or detention, the court shall order,  
2 in accordance with subsections (1) and (2) of this Section,  
3 consistent with the health, safety, and best interests of the  
4 minor, the removal because the minor's home cannot provide the  
5 quality of care and level of support and supervision the minor  
6 needs at the time. Removal from the home is in the minor's and  
7 community's best interest for any of the following reasons: (i)  
8 the minor is without the care necessary for the minor's well  
9 being through no fault or lack of concern by a parent,  
10 guardian, custodian, or other person, (ii) the minor has no  
11 parent, guardian, custodian, or other person able to return the  
12 minor to the court when required, or (iii) for the protection  
13 of the minor.

14 (4) For any minor determined to need care away from home in  
15 foster care, shelter care, or detention, the court, in  
16 accordance with subsections (1) and (2) of this Section, shall  
17 further find that reasonable efforts have been made or that,  
18 consistent with the health, safety, and best interests of the  
19 minor, no efforts reasonably can be made to prevent or  
20 eliminate the necessity of removal of the minor from his or her  
21 home. The court shall require documentation from the Probation  
22 Department as to the reasonable efforts that were made to  
23 prevent or eliminate the necessity of removal of the minor from  
24 his or her home or the reasons why no efforts reasonably could  
25 be made to prevent or eliminate the necessity of removal.

26 In making its findings that it is consistent with the

1 health, safety, and best interests of the minor to prescribe  
2 shelter care, the court shall state in writing: (i) the factual  
3 basis supporting its findings concerning the immediate and  
4 urgent necessity for the protection of the minor or of the  
5 person or property of another, (ii) the factual basis for the  
6 finding of the minor's and community's best interests, and  
7 (iii) the factual basis supporting its findings that reasonable  
8 efforts were made to prevent or eliminate the removal of the  
9 minor from his or her home or that no efforts reasonably could  
10 be made to prevent or eliminate the removal of the minor from  
11 his or her home.

12 Once the court finds that it is a matter of immediate and  
13 urgent necessity for the protection of the minor that the minor  
14 be placed in a shelter care facility, detention center, or  
15 foster care, the minor shall not be returned to the parent,  
16 custodian, or guardian until the court finds that such  
17 placement is no longer necessary for the protection of the  
18 minor.

19 (b) The written authorization of the probation officer or  
20 detention officer (or other public officer designated by the  
21 court in a county having 3,000,000 or more inhabitants)  
22 constitutes authority for the superintendent of any juvenile  
23 detention home to detain and keep a minor for up to 40 hours,  
24 excluding Saturdays, Sundays and court-designated holidays.  
25 These records shall be available to the same persons and  
26 pursuant to the same conditions as are law enforcement records

1 as provided in Section 5-905.

2 (b-4) The consultation required by subsection (b-5) shall  
3 not be applicable if the probation officer or detention officer  
4 (or other public officer designated by the court in a county  
5 having 3,000,000 or more inhabitants) utilizes a scorable  
6 detention screening instrument, which has been developed with  
7 input by the State's Attorney, to determine whether a minor  
8 should be detained, however, subsection (b-5) shall still be  
9 applicable where no such screening instrument is used or where  
10 the probation officer, detention officer (or other public  
11 officer designated by the court in a county having 3,000,000 or  
12 more inhabitants) deviates from the screening instrument.

13 (b-5) Subject to the provisions of subsection (b-4), if a  
14 probation officer or detention officer (or other public officer  
15 designated by the court in a county having 3,000,000 or more  
16 inhabitants) does not intend to detain a minor for an offense  
17 which constitutes one of the following offenses he or she shall  
18 consult with the State's Attorney's Office prior to the release  
19 of the minor: first degree murder, second degree murder,  
20 involuntary manslaughter, criminal sexual assault, aggravated  
21 criminal sexual assault, aggravated battery with a firearm,  
22 aggravated or heinous battery involving permanent disability  
23 or disfigurement or great bodily harm, robbery, aggravated  
24 robbery, armed robbery, vehicular hijacking, aggravated  
25 vehicular hijacking, vehicular invasion, arson, aggravated  
26 arson, kidnapping, aggravated kidnapping, home invasion,

1 burglary, or residential burglary.

2 (c) Except as otherwise provided in paragraph (a), (d), or  
3 (e), no minor shall be detained in a county jail or municipal  
4 lockup for more than 12 hours, unless the offense is a crime of  
5 violence in which case the minor may be detained up to 24  
6 hours. For the purpose of this paragraph, "crime of violence"  
7 has the meaning ascribed to it in Section 1-10 of the  
8 Alcoholism and Other Drug Abuse and Dependency Act.

9 (i) The period of detention is deemed to have begun  
10 once the minor has been placed in a locked room or cell or  
11 handcuffed to a stationary object in a building housing a  
12 county jail or municipal lockup. Time spent transporting a  
13 minor is not considered to be time in detention or secure  
14 custody.

15 (ii) Any minor so confined shall be under periodic  
16 supervision and shall not be permitted to come into or  
17 remain in contact with adults in custody in the building.

18 (iii) Upon placement in secure custody in a jail or  
19 lockup, the minor shall be informed of the purpose of the  
20 detention, the time it is expected to last and the fact  
21 that it cannot exceed the time specified under this Act.

22 (iv) A log shall be kept which shows the offense which  
23 is the basis for the detention, the reasons and  
24 circumstances for the decision to detain and the length of  
25 time the minor was in detention.

26 (v) Violation of the time limit on detention in a

1 county jail or municipal lockup shall not, in and of  
2 itself, render inadmissible evidence obtained as a result  
3 of the violation of this time limit. Minors under 17 years  
4 of age shall be kept separate from confined adults and may  
5 not at any time be kept in the same cell, room or yard with  
6 adults confined pursuant to criminal law. Persons 17 years  
7 of age and older who have a petition of delinquency filed  
8 against them may be confined in an adult detention  
9 facility. In making a determination whether to confine a  
10 person 17 years of age or older who has a petition of  
11 delinquency filed against the person, these factors, among  
12 other matters, shall be considered:

13 (A) The age of the person;

14 (B) Any previous delinquent or criminal history of  
15 the person;

16 (C) Any previous abuse or neglect history of the  
17 person; and

18 (D) Any mental health or educational history of the  
19 person, or both.

20 (d) (i) If a minor 12 years of age or older is confined in a  
21 county jail in a county with a population below 3,000,000  
22 inhabitants, then the minor's confinement shall be implemented  
23 in such a manner that there will be no contact by sight, sound  
24 or otherwise between the minor and adult prisoners. Minors 12  
25 years of age or older must be kept separate from confined  
26 adults and may not at any time be kept in the same cell, room,

1 or yard with confined adults. This paragraph (d)(i) shall only  
2 apply to confinement pending an adjudicatory hearing and shall  
3 not exceed 40 hours, excluding Saturdays, Sundays and court  
4 designated holidays. To accept or hold minors during this time  
5 period, county jails shall comply with all monitoring standards  
6 promulgated by the Department of Corrections and training  
7 standards approved by the Illinois Law Enforcement Training  
8 Standards Board.

9 (ii) To accept or hold minors, 12 years of age or older,  
10 after the time period prescribed in paragraph (d)(i) of this  
11 subsection (2) of this Section but not exceeding 7 days  
12 including Saturdays, Sundays and holidays pending an  
13 adjudicatory hearing, county jails shall comply with all  
14 temporary detention standards promulgated by the Department of  
15 Corrections and training standards approved by the Illinois Law  
16 Enforcement Training Standards Board.

17 (iii) To accept or hold minors 12 years of age or older,  
18 after the time period prescribed in paragraphs (d)(i) and  
19 (d)(ii) of this subsection (2) of this Section, county jails  
20 shall comply with all programmatic and training standards for  
21 juvenile detention homes promulgated by the Department of  
22 Corrections.

23 (e) When a minor who is at least 15 years of age is  
24 prosecuted under the criminal laws of this State, the court may  
25 enter an order directing that the juvenile be confined in the  
26 county jail. However, any juvenile confined in the county jail



1 under this provision shall be separated from adults who are  
2 confined in the county jail in such a manner that there will be  
3 no contact by sight, sound or otherwise between the juvenile  
4 and adult prisoners.

5 (f) For purposes of appearing in a physical lineup, the  
6 minor may be taken to a county jail or municipal lockup under  
7 the direct and constant supervision of a juvenile police  
8 officer. During such time as is necessary to conduct a lineup,  
9 and while supervised by a juvenile police officer, the sight  
10 and sound separation provisions shall not apply.

11 (g) For purposes of processing a minor, the minor may be  
12 taken to a County Jail or municipal lockup under the direct and  
13 constant supervision of a law enforcement officer or  
14 correctional officer. During such time as is necessary to  
15 process the minor, and while supervised by a law enforcement  
16 officer or correctional officer, the sight and sound separation  
17 provisions shall not apply.

18 (3) If the probation officer or State's Attorney (or such  
19 other public officer designated by the court in a county having  
20 3,000,000 or more inhabitants) determines that the minor may be  
21 a delinquent minor as described in subsection (3) of Section  
22 5-105, and should be retained in custody but does not require  
23 physical restriction, the minor may be placed in non-secure  
24 custody for up to 40 hours pending a detention hearing.

25 (4) Any minor taken into temporary custody, not requiring  
26 secure detention, may, however, be detained in the home of his

1 or her parent or guardian subject to such conditions as the  
2 court may impose.

3 (Source: P.A. 93-255, eff. 1-1-04.)

4 (705 ILCS 405/5-740)

5 Sec. 5-740. Placement; legal custody or guardianship.

6 (1) If the court finds that the parents, guardian, or legal  
7 custodian of a minor adjudged a ward of the court are unfit or  
8 are unable, for some reason other than financial circumstances  
9 alone, to care for, protect, train or discipline the minor or  
10 are unwilling to do so, and that appropriate services aimed at  
11 family preservation and family reunification have been  
12 unsuccessful in rectifying the conditions which have led to a  
13 finding of unfitness or inability to care for, protect, train  
14 or discipline the minor, and that it is in the best interest of  
15 the minor to take him or her from the custody of his or her  
16 parents, guardian or custodian, the court may:

17 (a) place him or her in the custody of a suitable  
18 relative or other person;

19 (b) place him or her under the guardianship of a  
20 probation officer;

21 (c) commit him or her to an agency for care or  
22 placement, except an institution under the authority of the  
23 Department of Corrections or of the Department of Children  
24 and Family Services;

25 (d) commit him or her to some licensed training school

1 or industrial school; or

2 (e) commit him or her to any appropriate institution  
3 having among its purposes the care of delinquent children,  
4 including a child protective facility maintained by a child  
5 protection district serving the county from which  
6 commitment is made, but not including any institution under  
7 the authority of the Department of Corrections or of the  
8 Department of Children and Family Services.

9 For any minor determined to need care away from home in  
10 foster care, shelter care or detention, the court shall order,  
11 in accordance with this subsection (1), consistent with the  
12 health, safety, and best interests of the minor, the removal  
13 because the minor's home cannot provide the quality of care and  
14 level of support and supervision the minor needs at the time.  
15 Removal from the home is in the minor's and community's best  
16 interest for any of the following reasons: (i) the minor is  
17 without the care necessary for the minor's well being through  
18 no fault or lack of concern by a parent, guardian, custodian,  
19 or other person, (ii) the minor has no parent, guardian,  
20 custodian, or other person able to return the minor to the  
21 court when required, or (iii) for the protection of the minor.

22 For any minor determined to need care away from home in  
23 foster care, shelter care, or detention, the court, in  
24 accordance with this subsection (1), shall further find that  
25 reasonable efforts have been made or that, consistent with the  
26 health, safety and best interests of the minor, no efforts

1 reasonably can be made to prevent or eliminate the necessity of  
2 removal of the minor from his or her home. The court shall  
3 require documentation from the Probation Department as to the  
4 reasonable efforts that were made to prevent or eliminate the  
5 necessity of removal of the minor from his or her home or the  
6 reasons why no efforts reasonably could be made to prevent or  
7 eliminate the necessity of removal.

8 In making its findings that it is consistent with the  
9 health, safety and best interests of the minor to prescribe  
10 shelter care, the court shall state in writing: (i) the factual  
11 basis supporting its findings concerning the immediate and  
12 urgent necessity for the protection of the minor or of the  
13 person or property of another, (ii) the factual basis for the  
14 finding of the minor's and community's best interests, and  
15 (iii) the factual basis supporting its findings that reasonable  
16 efforts were made to prevent or eliminate the removal of the  
17 minor from his or her home or that no efforts reasonably could  
18 be made to prevent or eliminate the removal of the minor from  
19 his or her home.

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

1           (2) When making such placement, the court, wherever  
2 possible, shall select a person holding the same religious  
3 belief as that of the minor or a private agency controlled by  
4 persons of like religious faith of the minor and shall require  
5 the Department of Children and Family Services to otherwise  
6 comply with Section 7 of the Children and Family Services Act  
7 in placing the child. In addition, whenever alternative plans  
8 for placement are available, the court shall ascertain and  
9 consider, to the extent appropriate in the particular case, the  
10 views and preferences of the minor.

11           (3) When a minor is placed with a suitable relative or  
12 other person, the court shall appoint him or her the legal  
13 custodian or guardian of the person of the minor. When a minor  
14 is committed to any agency, the court shall appoint the proper  
15 officer or representative of the proper officer as legal  
16 custodian or guardian of the person of the minor. Legal  
17 custodians and guardians of the person of the minor have the  
18 respective rights and duties set forth in subsection (9) of  
19 Section 5-105 except as otherwise provided by order of court;  
20 but no guardian of the person may consent to adoption of the  
21 minor. An agency whose representative is appointed guardian of  
22 the person or legal custodian of the minor may place him or her  
23 in any child care facility, but the facility must be licensed  
24 under the Child Care Act of 1969 or have been approved by the  
25 Department of Children and Family Services as meeting the  
26 standards established for such licensing. Like authority and

1 restrictions shall be conferred by the court upon any probation  
2 officer who has been appointed guardian of the person of a  
3 minor.

4 (4) No placement by any probation officer or agency whose  
5 representative is appointed guardian of the person or legal  
6 custodian of a minor may be made in any out of State child care  
7 facility unless it complies with the Interstate Compact on the  
8 Placement of Children.

9 (5) The clerk of the court shall issue to the guardian or  
10 legal custodian of the person a certified copy of the order of  
11 court, as proof of his or her authority. No other process is  
12 necessary as authority for the keeping of the minor.

13 (6) Legal custody or guardianship granted under this  
14 Section continues until the court otherwise directs, but not  
15 after the minor reaches the age of 21 years except as set forth  
16 in Section 5-750.

17 (7) Whenever a minor is removed from home and placed in a  
18 shelter care facility, detention center, or foster care or  
19 other residential placement and the county will be responsible  
20 for the costs of such placement under Section 6-7 of this Act,  
21 then the Court shall order that the Probation Department shall  
22 be responsible for the child's placement, care, and control  
23 until such time as the Court finds that such placement is no  
24 longer required for the protection of the child.

25 (Source: P.A. 90-590, eff. 1-1-99.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.