

SB3599



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3599

Introduced 2/10/2012, by Sen. Annazette R. Collins

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-410

705 ILCS 405/5-501

Amends the Juvenile Court Act of 1987. Provides that no minor under 17 (rather than 12) years of age shall be detained in a county jail or a municipal lockup for more than 6 hours.

LRB097 17723 RLC 62937 b

A BILL FOR

1 AN ACT concerning minors.

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 5-501 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 17 ~~12~~ years of age shall be detained
22 in a county jail or a municipal lockup for more than 6 hours.

23 (b) The written authorization of the probation officer or

1 detention officer (or other public officer designated by the
2 court in a county having 3,000,000 or more inhabitants)
3 constitutes authority for the superintendent of any juvenile
4 detention home to detain and keep a minor for up to 40 hours,
5 excluding Saturdays, Sundays and court-designated holidays.
6 These records shall be available to the same persons and
7 pursuant to the same conditions as are law enforcement records
8 as provided in Section 5-905.

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

20 (b-5) Subject to the provisions of subsection (b-4), if a
21 probation officer or detention officer (or other public officer
22 designated by the court in a county having 3,000,000 or more
23 inhabitants) does not intend to detain a minor for an offense
24 which constitutes one of the following offenses he or she shall
25 consult with the State's Attorney's Office prior to the release
26 of the minor: first degree murder, second degree murder,

1 involuntary manslaughter, criminal sexual assault, aggravated
2 criminal sexual assault, aggravated battery with a firearm as
3 described in Section 12-4.2 or subdivision (e)(1), (e)(2),
4 (e)(3), or (e)(4) of Section 12-3.05, aggravated or heinous
5 battery involving permanent disability or disfigurement or
6 great bodily harm, robbery, aggravated robbery, armed robbery,
7 vehicular hijacking, aggravated vehicular hijacking, vehicular
8 invasion, arson, aggravated arson, kidnapping, aggravated
9 kidnapping, home invasion, burglary, or residential burglary.

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

17 (i) The period of detention is deemed to have begun
18 once the minor has been placed in a locked room or cell or
19 handcuffed to a stationary object in a building housing a
20 county jail or municipal lockup. Time spent transporting a
21 minor is not considered to be time in detention or secure
22 custody.

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

26 (iii) Upon placement in secure custody in a jail or

1 lockup, the minor shall be informed of the purpose of the
2 detention, the time it is expected to last and the fact
3 that it cannot exceed the time specified under this Act.

4 (iv) A log shall be kept which shows the offense which
5 is the basis for the detention, the reasons and
6 circumstances for the decision to detain and the length of
7 time the minor was in detention.

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

21 (A) The age of the person;

22 (B) Any previous delinquent or criminal history of
23 the person;

24 (C) Any previous abuse or neglect history of the
25 person; and

26 (D) Any mental health or educational history of the

1 person, or both.

2 (d) (Blank). ~~(i) If a minor 12 years of age or older is~~
3 ~~confined in a county jail in a county with a population below~~
4 ~~3,000,000 inhabitants, then the minor's confinement shall be~~
5 ~~implemented in such a manner that there will be no contact by~~
6 ~~sight, sound or otherwise between the minor and adult~~
7 ~~prisoners. Minors 12 years of age or older 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 confined adults. This~~
10 ~~paragraph (d)(i) shall only apply to confinement pending an~~
11 ~~adjudicatory hearing and shall not exceed 40 hours, excluding~~
12 ~~Saturdays, Sundays and court designated holidays. To accept or~~
13 ~~hold minors during this time period, county jails shall comply~~
14 ~~with all monitoring standards promulgated by the Department of~~
15 ~~Corrections and training standards approved by the Illinois Law~~
16 ~~Enforcement Training Standards Board.~~

17 ~~(ii) To accept or hold minors, 12 years of age or older,~~
18 ~~after the time period prescribed in paragraph (d)(i) of this~~
19 ~~subsection (2) of this Section but not exceeding 7 days~~
20 ~~including Saturdays, Sundays and holidays pending an~~
21 ~~adjudicatory hearing, county jails shall comply with all~~
22 ~~temporary detention standards promulgated by the Department of~~
23 ~~Corrections and training standards approved by the Illinois Law~~
24 ~~Enforcement Training Standards Board.~~

25 ~~(iii) To accept or hold minors 12 years of age or older,~~
26 ~~after the time period prescribed in paragraphs (d)(i) and~~

1 ~~(d) (ii) of this subsection (2) of this Section, county jails~~
2 ~~shall comply with all programmatic and training standards for~~
3 ~~juvenile detention homes promulgated by the Department of~~
4 ~~Corrections.~~

5 (e) (Blank). ~~When a minor who is at least 15 years of age~~
6 ~~is prosecuted under the criminal laws of this State, the court~~
7 ~~may enter an order directing that the juvenile be confined in~~
8 ~~the county jail. However, any juvenile confined in the county~~
9 ~~jail under this provision shall be separated from adults who~~
10 ~~are confined in the county jail in such a manner that there~~
11 ~~will be no contact by sight, sound or otherwise between the~~
12 ~~juvenile and adult prisoners.~~

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

19 (g) For purposes of processing a minor, the minor may be
20 taken to a County Jail or municipal lockup under the direct and
21 constant supervision of a law enforcement officer or
22 correctional officer. During such time as is necessary to
23 process the minor, and while supervised by a law enforcement
24 officer or correctional officer, the sight and sound separation
25 provisions shall not apply.

26 (3) If the probation officer or State's Attorney (or such

1 other public officer designated by the court in a county having
2 3,000,000 or more inhabitants) determines that the minor may be
3 a delinquent minor as described in subsection (3) of Section
4 5-105, and should be retained in custody but does not require
5 physical restriction, the minor may be placed in non-secure
6 custody for up to 40 hours pending a detention hearing.

7 (4) Any minor taken into temporary custody, not requiring
8 secure detention, may, however, be detained in the home of his
9 or her parent or guardian subject to such conditions as the
10 court may impose.

11 (Source: P.A. 96-1551, eff. 7-1-11.)

12 (705 ILCS 405/5-501)

13 Sec. 5-501. Detention or shelter care hearing. At the
14 appearance of the minor before the court at the detention or
15 shelter care hearing, the court shall receive all relevant
16 information and evidence, including affidavits concerning the
17 allegations made in the petition. Evidence used by the court in
18 its findings or stated in or offered in connection with this
19 Section may be by way of proffer based on reliable information
20 offered by the State or minor. All evidence shall be admissible
21 if it is relevant and reliable regardless of whether it would
22 be admissible under the rules of evidence applicable at a
23 trial. No hearing may be held unless the minor is represented
24 by counsel and no hearing shall be held until the minor has had
25 adequate opportunity to consult with counsel.

1 (1) If the court finds that there is not probable cause to
2 believe that the minor is a delinquent minor it shall release
3 the minor and dismiss the petition.

4 (2) If the court finds that there is probable cause to
5 believe that the minor is a delinquent minor, the minor, his or
6 her parent, guardian, custodian and other persons able to give
7 relevant testimony may be examined before the court. The court
8 may also consider any evidence by way of proffer based upon
9 reliable information offered by the State or the minor. All
10 evidence, including affidavits, shall be admissible if it is
11 relevant and reliable regardless of whether it would be
12 admissible under the rules of evidence applicable at trial.
13 After such evidence is presented, the court may enter an order
14 that the minor shall be released upon the request of a parent,
15 guardian or legal custodian if the parent, guardian or
16 custodian appears to take custody.

17 If the court finds that it is a matter of immediate and
18 urgent necessity for the protection of the minor or of the
19 person or property of another that the minor be detained or
20 placed in a shelter care facility or that he or she is likely
21 to flee the jurisdiction of the court, the court may prescribe
22 detention or shelter care and order that the minor be kept in a
23 suitable place designated by the court or in a shelter care
24 facility designated by the Department of Children and Family
25 Services or a licensed child welfare agency; otherwise it shall
26 release the minor from custody. If the court prescribes shelter

1 care, then in placing the minor, the Department or other agency
2 shall, to the extent compatible with the court's order, comply
3 with Section 7 of the Children and Family Services Act. In
4 making the determination of the existence of immediate and
5 urgent necessity, the court shall consider among other matters:

6 (a) the nature and seriousness of the alleged offense; (b) the
7 minor's record of delinquency offenses, including whether the
8 minor has delinquency cases pending; (c) the minor's record of
9 willful failure to appear following the issuance of a summons
10 or warrant; (d) the availability of non-custodial
11 alternatives, including the presence of a parent, guardian or
12 other responsible relative able and willing to provide
13 supervision and care for the minor and to assure his or her
14 compliance with a summons. If the minor is ordered placed in a
15 shelter care facility of a licensed child welfare agency, the
16 court shall, upon request of the agency, appoint the
17 appropriate agency executive temporary custodian of the minor
18 and the court may enter such other orders related to the
19 temporary custody of the minor as it deems fit and proper.

20 The order together with the court's findings of fact in
21 support of the order shall be entered of record in the court.

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

1 protection of the minor.

2 (3) Only when there is reasonable cause to believe that the
3 minor taken into custody is a delinquent minor may the minor be
4 kept or detained in a facility authorized for juvenile
5 detention. ~~This Section shall in no way be construed to limit~~
6 ~~subsection (4).~~

7 (4) (Blank). ~~Minors 12 years of age or older 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 confined adults. This~~
10 ~~paragraph (4):~~

11 ~~(a) shall only apply to confinement pending an~~
12 ~~adjudicatory hearing and shall not exceed 40 hours,~~
13 ~~excluding Saturdays, Sundays, and court designated~~
14 ~~holidays. To accept or hold minors during this time period,~~
15 ~~county jails shall comply with all monitoring standards for~~
16 ~~juvenile detention homes promulgated by the Department of~~
17 ~~Corrections and training standards approved by the~~
18 ~~Illinois Law Enforcement Training Standards Board.~~

19 ~~(b) To accept or hold minors, 12 years of age or older,~~
20 ~~after the time period prescribed in clause (a) of~~
21 ~~subsection (4) of this Section but not exceeding 7 days~~
22 ~~including Saturdays, Sundays, and holidays, pending an~~
23 ~~adjudicatory hearing, county jails shall comply with all~~
24 ~~temporary detention standards promulgated by the~~
25 ~~Department of Corrections and training standards approved~~
26 ~~by the Illinois Law Enforcement Training Standards Board.~~

1 ~~(c) To accept or hold minors 12 years of age or older,~~
2 ~~after the time period prescribed in clause (a) and (b), of~~
3 ~~this subsection county jails shall comply with all~~
4 ~~programmatic and training standards for juvenile detention~~
5 ~~homes promulgated by the Department of Corrections.~~

6 (5) If the minor is not brought before a judicial officer
7 within the time period as specified in Section 5-415 the minor
8 must immediately be released from custody.

9 (6) If neither the parent, guardian or legal custodian
10 appears within 24 hours to take custody of a minor released
11 from detention or shelter care, then the clerk of the court
12 shall set the matter for rehearing not later than 7 days after
13 the original order and shall issue a summons directed to the
14 parent, guardian or legal custodian to appear. At the same time
15 the probation department shall prepare a report on the minor.
16 If a parent, guardian or legal custodian does not appear at
17 such rehearing, the judge may enter an order prescribing that
18 the minor be kept in a suitable place designated by the
19 Department of Human Services or a licensed child welfare
20 agency. The time during which a minor is in custody after being
21 released upon the request of a parent, guardian or legal
22 custodian shall be considered as time spent in detention for
23 purposes of scheduling the trial.

24 (7) Any party, including the State, the temporary
25 custodian, an agency providing services to the minor or family
26 under a service plan pursuant to Section 8.2 of the Abused and

1 Neglected Child Reporting Act, foster parent, or any of their
2 representatives, may file a motion to modify or vacate a
3 temporary custody order or vacate a detention or shelter care
4 order on any of the following grounds:

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

8 (b) There is a material change in the circumstances of
9 the natural family from which the minor was removed; or

10 (c) A person, including a parent, relative or legal
11 guardian, is capable of assuming temporary custody of the
12 minor; or

13 (d) Services provided by the Department of Children and
14 Family Services or a child welfare agency or other service
15 provider have been successful in eliminating the need for
16 temporary custody.

17 The clerk shall set the matter for hearing not later than
18 14 days after such motion is filed. In the event that the court
19 modifies or vacates a temporary order but does not vacate its
20 finding of probable cause, the court may order that appropriate
21 services be continued or initiated in behalf of the minor and
22 his or her family.

23 (8) Whenever a petition has been filed under Section 5-520
24 the court can, at any time prior to trial or sentencing, order
25 that the minor be placed in detention or a shelter care
26 facility after the court conducts a hearing and finds that the

1 conduct and behavior of the minor may endanger the health,
2 person, welfare, or property of himself or others or that the
3 circumstances of his or her home environment may endanger his
4 or her health, person, welfare or property.

5 (Source: P.A. 95-846, eff. 1-1-09.)