

# HB1128



## 98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1128

by Rep. Michael J. Zalewski

### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-501

Amends the Juvenile Court Act of 1987. Makes a technical change in a Section concerning detention or shelter care hearings.

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A BILL FOR

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 Section 5-501 as follows:

6 (705 ILCS 405/5-501)

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

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

23 (2) If the court finds that there is probable cause to

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

13 If the court finds that it is a matter of immediate and  
14 urgent necessity for the protection of the minor or of the  
15 person or property of another that the minor be detained or  
16 placed in a shelter care facility or that he or she is likely  
17 to flee the jurisdiction of the court, the court may prescribe  
18 detention or shelter care and order that the minor be kept in a  
19 suitable place designated by the court or in a shelter care  
20 facility designated by the Department of Children and Family  
21 Services or a licensed child welfare agency; otherwise it shall  
22 release the minor from custody. If the court prescribes shelter  
23 care, then in placing the minor, the Department or other agency  
24 shall, to the extent compatible with the court's order, comply  
25 with Section 7 of the Children and Family Services Act. In  
26 making the determination of the existence of immediate and

1 urgent necessity, the court shall consider among other matters:

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

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

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

24 (3) Only when there is reasonable cause to believe that the  
25 minor taken into custody is a delinquent minor may the minor be  
26 kept or detained in a facility authorized for juvenile

1 detention. This Section shall in no way be construed to limit  
2 subsection (4).

3 (4) Minors 12 years of age or older must be kept separate  
4 from confined adults and may not at any time be kept in the  
5 same cell, room or yard with confined adults. This paragraph  
6 (4):

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

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

23 (c) To accept or hold minors 12 years of age or older,  
24 after the time period prescribed in clause (a) and (b), of  
25 this subsection county jails shall comply with all  
26 programmatic and training standards for juvenile detention

1 homes promulgated by the Department of Corrections.

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

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

20 (7) Any party, including the State, the temporary  
21 custodian, an agency providing services to the minor or family  
22 under a service plan pursuant to Section 8.2 of the Abused and  
23 Neglected Child Reporting Act, foster parent, or any of their  
24 representatives, may file a motion to modify or vacate a  
25 temporary custody order or vacate a detention or shelter care  
26 order on any of the following grounds:

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

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

6           (c) A person, including a parent, relative or legal  
7           guardian, is capable of assuming temporary custody of the  
8           minor; or

9           (d) Services provided by the Department of Children and  
10          Family Services or a child welfare agency or other service  
11          provider have been successful in eliminating the need for  
12          temporary custody.

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

19          (8) Whenever a petition has been filed under Section 5-520  
20          the court can, at any time prior to trial or sentencing, order  
21          that the minor be placed in detention or a shelter care  
22          facility after the court conducts a hearing and finds that the  
23          conduct and behavior of the minor may endanger the health,  
24          person, welfare, or property of himself or others or that the  
25          circumstances of his or her home environment may endanger his  
26          or her health, person, welfare or property.

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