

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 2-10 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 court shall require the parents,
21 guardians, custodian, or other responsible relative to
22 provide, if known, the names, addresses, and telephone numbers
23 for each of the minor's living maternal and paternal

1 grandparents, maternal and paternal aunts, uncles, adult
2 siblings, and other adult relatives. The Department of Children
3 and Family Services shall give testimony concerning indicated
4 reports of abuse and neglect, of which they are aware of
5 through the central registry, involving the minor's parent,
6 guardian or custodian. After such testimony, the court may,
7 consistent with the health, safety and best interests of the
8 minor, enter an order that the minor shall be released upon the
9 request of parent, guardian or custodian if the parent,
10 guardian or custodian appears to take custody. If it is
11 determined that a parent's, guardian's, or custodian's
12 compliance with critical services mitigates the necessity for
13 removal of the minor from his or her home, the court may enter
14 an Order of Protection setting forth reasonable conditions of
15 behavior that a parent, guardian, or custodian must observe for
16 a specified period of time, not to exceed 12 months, without a
17 violation; provided, however, that the 12-month period shall
18 begin anew after any violation. Custodian shall include any
19 agency of the State which has been given custody or wardship of
20 the child. If it is consistent with the health, safety and best
21 interests of the minor, the court may also prescribe shelter
22 care and order that the minor be kept in a suitable place
23 designated by the court or in a shelter care facility
24 designated by the Department of Children and Family Services or
25 a licensed child welfare agency; however, on and after the
26 effective date of this amendatory Act of the 98th General

1 Assembly and before January 1, 2017, a minor charged with a
2 criminal offense under the Criminal Code of 1961 or the
3 Criminal Code of 2012 or adjudicated delinquent shall not be
4 placed in the custody of or committed to the Department of
5 Children and Family Services by any court, except a minor less
6 than 16 years of age and committed to the Department of
7 Children and Family Services under Section 5-710 of this Act or
8 a minor for whom an independent basis of abuse, neglect, or
9 dependency exists; and on and after January 1, 2017, a minor
10 charged with a criminal offense under the Criminal Code of 1961
11 or the Criminal Code of 2012 or adjudicated delinquent shall
12 not be placed in the custody of or committed to the Department
13 of Children and Family Services by any court, except a minor
14 less than 15 years of age and committed to the Department of
15 Children and Family Services under Section 5-710 of this Act or
16 a minor for whom an independent basis of abuse, neglect, or
17 dependency exists. An independent basis exists when the
18 allegations or adjudication of abuse, neglect, or dependency do
19 not arise from the same facts, incident, or circumstances which
20 give rise to a charge or adjudication of delinquency.

21 In placing the minor, the Department or other agency shall,
22 to the extent compatible with the court's order, comply with
23 Section 7 of the Children and Family Services Act. In
24 determining the health, safety and best interests of the minor
25 to prescribe shelter care, the court must find that it is a
26 matter of immediate and urgent necessity for the safety and

1 protection of the minor or of the person or property of another
2 that the minor be placed in a shelter care facility or that he
3 or she is likely to flee the jurisdiction of the court, and
4 must further find that reasonable efforts have been made or
5 that, consistent with the health, safety and best interests of
6 the minor, no efforts reasonably can be made to prevent or
7 eliminate the necessity of removal of the minor from his or her
8 home. The court shall require documentation from the Department
9 of Children and Family Services as to the reasonable efforts
10 that were made to prevent or eliminate the necessity of removal
11 of the minor from his or her home or the reasons why no efforts
12 reasonably could be made to prevent or eliminate the necessity
13 of removal. When a minor is placed in the home of a relative,
14 the Department of Children and Family Services shall complete a
15 preliminary background review of the members of the minor's
16 custodian's household in accordance with Section 4.3 of the
17 Child Care Act of 1969 within 90 days of that placement. If the
18 minor is ordered placed in a shelter care facility of the
19 Department of Children and Family Services or a licensed child
20 welfare agency, the court shall, upon request of the
21 appropriate Department or other agency, appoint the Department
22 of Children and Family Services Guardianship Administrator or
23 other appropriate agency executive temporary custodian of the
24 minor and the court may enter such other orders related to the
25 temporary custody as it deems fit and proper, including the
26 provision of services to the minor or his family to ameliorate

1 the causes contributing to the finding of probable cause or to
2 the finding of the existence of immediate and urgent necessity.

3 Where the Department of Children and Family Services
4 Guardianship Administrator is appointed as the executive
5 temporary custodian, the Department of Children and Family
6 Services shall file with the court and serve on the parties a
7 parent-child visiting plan, within 10 days, excluding weekends
8 and holidays, after the appointment. The parent-child visiting
9 plan shall set out the time and place of visits, the frequency
10 of visits, the length of visits, who shall be present at the
11 visits, and where appropriate, the minor's opportunities to
12 have telephone and mail communication with the parents.

13 Where the Department of Children and Family Services
14 Guardianship Administrator is appointed as the executive
15 temporary custodian, and when the child has siblings in care,
16 the Department of Children and Family Services shall file with
17 the court and serve on the parties a sibling placement and
18 contact plan within 10 days, excluding weekends and holidays,
19 after the appointment. The sibling placement and contact plan
20 shall set forth whether the siblings are placed together, and
21 if they are not placed together, what, if any, efforts are
22 being made to place them together. If the Department has
23 determined that it is not in a child's best interest to be
24 placed with a sibling, the Department shall document in the
25 sibling placement and contact plan the basis for its
26 determination. For siblings placed separately, the sibling

1 placement and contact plan shall set the time and place for
2 visits, the frequency of the visits, the length of visits, who
3 shall be present for the visits, and where appropriate, the
4 child's opportunities to have contact with their siblings in
5 addition to in person contact. If the Department determines it
6 is not in the best interest of a sibling to have contact with a
7 sibling, the Department shall document in the sibling placement
8 and contact plan the basis for its determination. The sibling
9 placement and contact plan shall specify a date for development
10 of the Sibling Contact Support Plan, under subsection (f) of
11 Section 7.4 of the Children and Family Services Act, and shall
12 remain in effect until the Sibling Contact Support Plan is
13 developed.

14 For good cause, the court may waive the requirement to
15 file the parent-child visiting plan or the sibling placement
16 and contact plan, or extend the time for filing either plan.
17 Any party may, by motion, request the court to review the
18 parent-child visiting plan to determine whether it is
19 reasonably calculated to expeditiously facilitate the
20 achievement of the permanency goal. A party may, by motion,
21 request the court to review the parent-child visiting plan or
22 the sibling placement and contact plan to determine whether it
23 is consistent with the minor's best interest. The court may
24 refer the parties to mediation where available. The frequency,
25 duration, and locations of visitation shall be measured by the
26 needs of the child and family, and not by the convenience of

1 Department personnel. Child development principles shall be
2 considered by the court in its analysis of how frequent
3 visitation should be, how long it should last, where it should
4 take place, and who should be present. If upon motion of the
5 party to review either plan and after receiving evidence, the
6 court determines that the parent-child visiting plan is not
7 reasonably calculated to expeditiously facilitate the
8 achievement of the permanency goal or that the restrictions
9 placed on parent-child contact or sibling placement or contact
10 are contrary to the child's best interests, the court shall put
11 in writing the factual basis supporting the determination and
12 enter specific findings based on the evidence. The court shall
13 enter an order for the Department to implement changes to the
14 parent-child visiting plan or sibling placement or contact
15 plan, consistent with the court's findings. At any stage of
16 proceeding, any party may by motion request the court to enter
17 any orders necessary to implement the parent-child visiting
18 plan, sibling placement or contact plan or subsequently
19 developed Sibling Contact Support Plan. Nothing under this
20 subsection (2) shall restrict the court from granting
21 discretionary authority to the Department to increase
22 opportunities for additional parent-child contacts or sibling
23 contacts, without further court orders. Nothing in this
24 subsection (2) shall restrict the Department from immediately
25 restricting or terminating parent-child contact or sibling
26 contacts, without either amending the parent-child visiting

1 plan or the sibling contact plan or obtaining a court order,
2 where the Department or its assigns reasonably believe that
3 continuation of the contact, as set out in the plan, would be
4 contrary to the child's health, safety, and welfare. The
5 Department shall file with the court and serve on the parties
6 any amendments to the plan within 10 days, excluding weekends
7 and holidays, of the change of the visitation.

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

1 order together with the court's findings of fact in support
2 thereof shall be entered of record in the court.

3 Once the court finds that it is a matter of immediate and
4 urgent necessity for the protection of the minor that the minor
5 be placed in a shelter care facility, the minor shall not be
6 returned to the parent, custodian or guardian until the court
7 finds that such placement is no longer necessary for the
8 protection of the minor.

9 If the child is placed in the temporary custody of the
10 Department of Children and Family Services for his or her
11 protection, the court shall admonish the parents, guardian,
12 custodian or responsible relative that the parents must
13 cooperate with the Department of Children and Family Services,
14 comply with the terms of the service plans, and correct the
15 conditions which require the child to be in care, or risk
16 termination of their parental rights.

17 (3) If prior to the shelter care hearing for a minor
18 described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is
19 unable to serve notice on the party respondent, the shelter
20 care hearing may proceed ex-parte. A shelter care order from an
21 ex-parte hearing shall be endorsed with the date and hour of
22 issuance and shall be filed with the clerk's office and entered
23 of record. The order shall expire after 10 days from the time
24 it is issued unless before its expiration it is renewed, at a
25 hearing upon appearance of the party respondent, or upon an
26 affidavit of the moving party as to all diligent efforts to

1 notify the party respondent by notice as herein prescribed. The
 2 notice prescribed shall be in writing and shall be personally
 3 delivered to the minor or the minor's attorney and to the last
 4 known address of the other person or persons entitled to
 5 notice. The notice shall also state the nature of the
 6 allegations, the nature of the order sought by the State,
 7 including whether temporary custody is sought, and the
 8 consequences of failure to appear and shall contain a notice
 9 that the parties will not be entitled to further written
 10 notices or publication notices of proceedings in this case,
 11 including the filing of an amended petition or a motion to
 12 terminate parental rights, except as required by Supreme Court
 13 Rule 11; and shall explain the right of the parties and the
 14 procedures to vacate or modify a shelter care order as provided
 15 in this Section. The notice for a shelter care hearing shall be
 16 substantially as follows:

17 NOTICE TO PARENTS AND CHILDREN
 18 OF SHELTER CARE HEARING

19 On at, before the Honorable
 20, (address:), the State
 21 of Illinois will present evidence (1) that (name of child
 22 or children) are abused, neglected
 23 or dependent for the following reasons:
 24 and (2)
 25 whether there is "immediate and urgent necessity" to remove
 26 the child or children from the responsible relative.

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

1 present testimony concerning:

2 a. Whether they are abused, neglected or
3 dependent.

4 b. Whether there is "immediate and urgent
5 necessity" to be removed from home.

6 c. Their best interests.

7 3. To cross examine witnesses for other parties.

8 4. To obtain an explanation of any proceedings and
9 orders of the court.

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

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

23 (6) No minor under 16 years of age may be confined in a
24 jail or place ordinarily used for the confinement of prisoners
25 in a police station. Minors under 18 years of age must be kept
26 separate from confined adults and may not at any time be kept

1 in the same cell, room, or yard with adults confined pursuant
2 to the criminal law.

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

6 (8) If neither the parent, guardian or custodian appears
7 within 24 hours to take custody of a minor released upon
8 request pursuant to subsection (2) of this Section, then the
9 clerk of the court shall set the matter for rehearing not later
10 than 7 days after the original order and shall issue a summons
11 directed to the parent, guardian or custodian to appear. At the
12 same time the probation department shall prepare a report on
13 the minor. If a parent, guardian or custodian does not appear
14 at such rehearing, the judge may enter an order prescribing
15 that the minor be kept in a suitable place designated by the
16 Department of Children and Family Services or a licensed child
17 welfare agency.

18 (9) Notwithstanding any other provision of this Section any
19 interested party, including the State, the temporary
20 custodian, an agency providing services to the minor or family
21 under a service plan pursuant to Section 8.2 of the Abused and
22 Neglected Child Reporting Act, foster parent, or any of their
23 representatives, on notice to all parties entitled to notice,
24 may file a motion that it is in the best interests of the minor
25 to modify or vacate a temporary custody order on any of the
26 following grounds:

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

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

7 (c) A person not a party to the alleged abuse, neglect
8 or dependency, including a parent, relative or legal
9 guardian, is capable of assuming temporary custody of the
10 minor; or

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

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

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

25 (10) When the court finds or has found that there is
26 probable cause to believe a minor is an abused minor as

1 described in subsection (2) of Section 2-3 and that there is an
2 immediate and urgent necessity for the abused minor to be
3 placed in shelter care, immediate and urgent necessity shall be
4 presumed for any other minor residing in the same household as
5 the abused minor provided:

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

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

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

14 (11) The changes made to this Section by Public Act 98-61
15 apply to a minor who has been arrested or taken into custody on
16 or after January 1, 2014 (the effective date of Public Act
17 98-61).

18 (Source: P.A. 97-1076, eff. 8-24-12; 97-1150, eff. 1-25-13;
19 98-61, eff. 1-1-14; 98-756, eff. 7-16-14; 98-803, eff. 1-1-15.)