

AN ACT concerning courts.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Juvenile Court Act of 1987 is amended by changing Sections 5-415 and 5-501 as follows:

(705 ILCS 405/5-415)

Sec. 5-415. Setting of detention or shelter care hearing;
release.

(1) Unless sooner released, a minor alleged to be a delinquent minor taken into temporary custody must be brought before a judicial officer within 40 hours for a detention or shelter care hearing to determine whether he or she shall be further held in custody. If a minor alleged to be a delinquent minor taken into custody is hospitalized or is receiving treatment for a physical or mental condition, and is unable to be brought before a judicial officer for a detention or shelter care hearing, the 40 hour period will not commence until the minor is released from the hospital or place of treatment. If the minor gives false information to law enforcement officials regarding the minor's identity or age, the 40 hour period will not commence until the court rules that the minor is subject to this Act and not subject to prosecution under the Criminal Code of 1961. Any other delay attributable to a minor alleged to be

a delinquent minor who is taken into temporary custody shall act to toll the 40 hour time period. The 40 hour time period shall be tolled to allow counsel for the minor to prepare for the detention or shelter care hearing, upon a motion filed by such counsel and granted by the court. In all cases, the 40 hour time period is exclusive of Saturdays, Sundays and court-designated holidays.

(2) If the State's Attorney or probation officer (or other public officer designated by the court in a county having more than 3,000,000 inhabitants) determines that the minor should be retained in custody, he or she shall cause a petition to be filed as provided in Section 5-520 of this Article, and the clerk of the court shall set the matter for hearing on the detention or shelter care hearing calendar. Immediately upon the filing of a petition in the case of a minor retained in custody, the court shall cause counsel to be appointed to represent the minor. When a parent, legal guardian, custodian, or responsible relative is present and so requests, the detention or shelter care hearing shall be held immediately if the court is in session and the State is ready to proceed, otherwise at the earliest feasible time. In no event shall a detention or shelter care hearing be held until the minor has had adequate opportunity to consult with counsel. The probation officer or such other public officer designated by the court in a county having more than 3,000,000 inhabitants shall notify the minor's parent, legal guardian, custodian, or responsible

relative of the time and place of the hearing. The notice may be given orally.

(3) The minor must be released from custody at the expiration of the 40 hour period specified by this Section if not brought before a judicial officer within that period.

(4) After the initial 40 hour period has lapsed, the court may review the minor's custodial status at any time prior to the trial or sentencing hearing. If during this time period new or additional information becomes available concerning the minor's conduct, the court may conduct a hearing to determine whether the minor should be placed in a detention or shelter care facility. If the court finds that there is probable cause that the minor is a delinquent minor and that it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another, or that he or she is likely to flee the jurisdiction of the court, the court may order that the minor be placed in detention or shelter care.

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

(705 ILCS 405/5-501)

Sec. 5-501. Detention or shelter care hearing. At the appearance of the minor before the court at the detention or shelter care hearing, the court shall receive all relevant information and evidence, including affidavits concerning the allegations made in the petition. Evidence used by the court in its findings or stated in or offered in connection with this

Section may be by way of proffer based on reliable information offered by the State or minor. All evidence shall be admissible if it is relevant and reliable regardless of whether it would be admissible under the rules of evidence applicable at a trial. No hearing may be held unless the minor is represented by counsel and no hearing shall be held until the minor has had adequate opportunity to consult with counsel.

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

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

If the court finds that it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another that the minor be detained or

placed in a shelter care facility or that he or she is likely to flee the jurisdiction of the court, the court may prescribe detention or shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services or a licensed child welfare agency; otherwise it shall release the minor from custody. If the court prescribes shelter care, then in placing the minor, the Department or other agency shall, to the extent compatible with the court's order, comply with Section 7 of the Children and Family Services Act. In making the determination of the existence of immediate and urgent necessity, the court shall consider among other matters: (a) the nature and seriousness of the alleged offense; (b) the minor's record of delinquency offenses, including whether the minor has delinquency cases pending; (c) the minor's record of willful failure to appear following the issuance of a summons or warrant; (d) the availability of non-custodial alternatives, including the presence of a parent, guardian or other responsible relative able and willing to provide supervision and care for the minor and to assure his or her compliance with a summons. If the minor is ordered placed in a shelter care facility of a licensed child welfare agency, the court shall, upon request of the agency, appoint the appropriate agency executive temporary custodian of the minor and the court may enter such other orders related to the temporary custody of the minor as it deems fit and proper.

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

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, the minor shall not be returned to the parent, custodian or guardian until the court finds that the placement is no longer necessary for the protection of the minor.

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

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

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

(b) To accept or hold minors, 12 years of age or older,

after the time period prescribed in clause (a) of subsection (4) of this Section but not exceeding 7 days including Saturdays, Sundays, and holidays, pending an adjudicatory hearing, county jails shall comply with all temporary detention standards promulgated by the Department of Corrections and training standards approved by the Illinois Law Enforcement Training Standards Board.

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

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

(6) If neither the parent, guardian or legal custodian appears within 24 hours to take custody of a minor released from detention or shelter care, then the clerk of the court shall set the matter for rehearing not later than 7 days after the original order and shall issue a summons directed to the parent, guardian or legal custodian to appear. At the same time the probation department shall prepare a report on the minor. If a parent, guardian or legal custodian does not appear at such rehearing, the judge may enter an order prescribing that the minor be kept in a suitable place designated by the Department of Human Services or a licensed child welfare

agency. The time during which a minor is in custody after being released upon the request of a parent, guardian or legal custodian shall be considered as time spent in detention for purposes of scheduling the trial.

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

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

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

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

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

The clerk shall set the matter for hearing not later than 14 days after such motion is filed. In the event that the court modifies or vacates a temporary order but does not vacate its

finding of probable cause, the court may order that appropriate services be continued or initiated in behalf of the minor and his or her family.

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

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