



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB4610

Introduced 02/04/04, by Annazette Collins

SYNOPSIS AS INTRODUCED:

- 705 ILCS 405/1-7 from Ch. 37, par. 801-7
- 705 ILCS 405/1-8 from Ch. 37, par. 801-8
- 705 ILCS 405/1-9 from Ch. 37, par. 801-9
- 705 ILCS 405/2-10 from Ch. 37, par. 802-10
- 705 ILCS 405/3-12 from Ch. 37, par. 803-12
- 705 ILCS 405/4-9 from Ch. 37, par. 804-9
- 705 ILCS 405/5-105
- 705 ILCS 405/5-120
- 705 ILCS 405/5-407
- 705 ILCS 405/5-410
- 705 ILCS 405/5-805
- 705 ILCS 405/5-810
- 705 ILCS 405/5-901
- 705 ILCS 405/5-905
- 705 ILCS 405/5-915
- 705 ILCS 405/5-130 rep.
- 725 ILCS 5/115-10.5
- 730 ILCS 5/3-2-2 from Ch. 38, par. 1003-2-2

Amends the Juvenile Court Act of 1987, the Code of Criminal Procedure of 1963, and the Unified Code of Corrections. Provides that persons under 18 years of age (rather than under 17 years of age) who commit offenses are subject to the proceedings under the Act for delinquent minors. Eliminates provisions requiring the mandatory transfer of minors to adult criminal court for prosecution of certain enumerated offenses.

LRB093 19450 RLC 45188 b

1 AN ACT in relation to 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 1-7, 1-8, 1-9, 2-10, 3-12, 4-9, 5-105, 5-120,
6 5-407, 5-410, 5-805, 5-810, 5-901, 5-905, and 5-915 as follows:

7 (705 ILCS 405/1-7) (from Ch. 37, par. 801-7)

8 Sec. 1-7. Confidentiality of law enforcement records.

9 (A) Inspection and copying of law enforcement records
10 maintained by law enforcement agencies that relate to a minor
11 who has been arrested or taken into custody before his or her
12 18th ~~17th~~ birthday shall be restricted to the following:

13 (1) Any local, State or federal law enforcement
14 officers of any jurisdiction or agency when necessary for
15 the discharge of their official duties during the
16 investigation or prosecution of a crime or relating to a
17 minor who has been adjudicated delinquent and there has
18 been a previous finding that the act which constitutes the
19 previous offense was committed in furtherance of criminal
20 activities by a criminal street gang. For purposes of this
21 Section, "criminal street gang" has the meaning ascribed to
22 it in Section 10 of the Illinois Streetgang Terrorism
23 Omnibus Prevention Act.

24 (2) Prosecutors, probation officers, social workers,
25 or other individuals assigned by the court to conduct a
26 pre-adjudication or pre-disposition investigation, and
27 individuals responsible for supervising or providing
28 temporary or permanent care and custody for minors pursuant
29 to the order of the juvenile court, when essential to
30 performing their responsibilities.

31 (3) Prosecutors and probation officers:

32 (a) in the course of a trial when institution of

1 criminal proceedings has been permitted ~~or required~~
2 under Section 5-805; or

3 (b) when institution of criminal proceedings has
4 been permitted ~~or required~~ under Section 5-805 and such
5 minor is the subject of a proceeding to determine the
6 amount of bail; or

7 (c) when criminal proceedings have been permitted
8 ~~or required~~ under Section 5-805 and such minor is the
9 subject of a pre-trial investigation, pre-sentence
10 investigation, fitness hearing, or proceedings on an
11 application for probation.

12 (4) Adult and Juvenile Prisoner Review Board.

13 (5) Authorized military personnel.

14 (6) Persons engaged in bona fide research, with the
15 permission of the Presiding Judge of the Juvenile Court and
16 the chief executive of the respective law enforcement
17 agency; provided that publication of such research results
18 in no disclosure of a minor's identity and protects the
19 confidentiality of the minor's record.

20 (7) Department of Children and Family Services child
21 protection investigators acting in their official
22 capacity.

23 (8) The appropriate school official. Inspection and
24 copying shall be limited to law enforcement records
25 transmitted to the appropriate school official by a local
26 law enforcement agency under a reciprocal reporting system
27 established and maintained between the school district and
28 the local law enforcement agency under Section 10-20.14 of
29 the School Code concerning a minor enrolled in a school
30 within the school district who has been arrested or taken
31 into custody for any of the following offenses:

32 (i) unlawful use of weapons under Section 24-1 of
33 the Criminal Code of 1961;

34 (ii) a violation of the Illinois Controlled
35 Substances Act;

36 (iii) a violation of the Cannabis Control Act; or

1 (iv) a forcible felony as defined in Section 2-8 of
2 the Criminal Code of 1961.

3 (9) Mental health professionals on behalf of the
4 Illinois Department of Corrections or the Department of
5 Human Services or prosecutors who are evaluating,
6 prosecuting, or investigating a potential or actual
7 petition brought under the Sexually Violent Persons
8 Commitment Act relating to a person who is the subject of
9 juvenile law enforcement records or the respondent to a
10 petition brought under the Sexually Violent Persons
11 Commitment Act who is the subject of the juvenile law
12 enforcement records sought. Any records and any
13 information obtained from those records under this
14 paragraph (9) may be used only in sexually violent persons
15 commitment proceedings.

16 (B) (1) Except as provided in paragraph (2), no law
17 enforcement officer or other person or agency may knowingly
18 transmit to the Department of Corrections, Adult Division
19 or the Department of State Police or to the Federal Bureau
20 of Investigation any fingerprint or photograph relating to
21 a minor who has been arrested or taken into custody before
22 his or her 18th ~~17th~~ birthday, unless the court in
23 proceedings under this Act authorizes the transmission or
24 enters an order under Section 5-805 permitting ~~or requiring~~
25 the institution of criminal proceedings.

26 (2) Law enforcement officers or other persons or
27 agencies shall transmit to the Department of State Police
28 copies of fingerprints and descriptions of all minors who
29 have been arrested or taken into custody before their 18th
30 ~~17th~~ birthday for the offense of unlawful use of weapons
31 under Article 24 of the Criminal Code of 1961, a Class X or
32 Class 1 felony, a forcible felony as defined in Section 2-8
33 of the Criminal Code of 1961, or a Class 2 or greater
34 felony under the Cannabis Control Act, the Illinois
35 Controlled Substances Act, or Chapter 4 of the Illinois
36 Vehicle Code, pursuant to Section 5 of the Criminal

1 Identification Act. Information reported to the Department
2 pursuant to this Section may be maintained with records
3 that the Department files pursuant to Section 2.1 of the
4 Criminal Identification Act. Nothing in this Act prohibits
5 a law enforcement agency from fingerprinting a minor taken
6 into custody or arrested before his or her 18th ~~17th~~
7 birthday for an offense other than those listed in this
8 paragraph (2).

9 (C) The records of law enforcement officers concerning all
10 minors under 18 ~~17~~ years of age must be maintained separate
11 from the records of arrests and may not be open to public
12 inspection or their contents disclosed to the public except by
13 order of the court or when the institution of criminal
14 proceedings has been permitted ~~or required~~ under Section 5-805
15 or such a person has been convicted of a crime and is the
16 subject of pre-sentence investigation or proceedings on an
17 application for probation or when provided by law.

18 (D) Nothing contained in subsection (C) of this Section
19 shall prohibit the inspection or disclosure to victims and
20 witnesses of photographs contained in the records of law
21 enforcement agencies when the inspection and disclosure is
22 conducted in the presence of a law enforcement officer for the
23 purpose of the identification or apprehension of any person
24 subject to the provisions of this Act or for the investigation
25 or prosecution of any crime.

26 (E) Law enforcement officers may not disclose the identity
27 of any minor in releasing information to the general public as
28 to the arrest, investigation or disposition of any case
29 involving a minor.

30 (F) Nothing contained in this Section shall prohibit law
31 enforcement agencies from communicating with each other by
32 letter, memorandum, teletype or intelligence alert bulletin or
33 other means the identity or other relevant information
34 pertaining to a person under 18 ~~17~~ years of age if there are
35 reasonable grounds to believe that the person poses a real and
36 present danger to the safety of the public or law enforcement

1 officers. The information provided under this subsection (F)
2 shall remain confidential and shall not be publicly disclosed,
3 except as otherwise allowed by law.

4 (G) Nothing in this Section shall prohibit the right of a
5 Civil Service Commission or appointing authority of any state,
6 county or municipality examining the character and fitness of
7 an applicant for employment with a law enforcement agency,
8 correctional institution, or fire department from obtaining
9 and examining the records of any law enforcement agency
10 relating to any record of the applicant having been arrested or
11 taken into custody before the applicant's 18th ~~17th~~ birthday.

12 (Source: P.A. 91-357, eff. 7-29-99; 91-368, eff. 1-1-00;
13 92-415, eff. 8-17-01.)

14 (705 ILCS 405/1-8) (from Ch. 37, par. 801-8)

15 Sec. 1-8. Confidentiality and accessibility of juvenile
16 court records.

17 (A) Inspection and copying of juvenile court records
18 relating to a minor who is the subject of a proceeding under
19 this Act shall be restricted to the following:

20 (1) The minor who is the subject of record, his
21 parents, guardian and counsel.

22 (2) Law enforcement officers and law enforcement
23 agencies when such information is essential to executing an
24 arrest or search warrant or other compulsory process, or to
25 conducting an ongoing investigation or relating to a minor
26 who has been adjudicated delinquent and there has been a
27 previous finding that the act which constitutes the
28 previous offense was committed in furtherance of criminal
29 activities by a criminal street gang.

30 Before July 1, 1994, for the purposes of this Section,
31 "criminal street gang" means any ongoing organization,
32 association, or group of 3 or more persons, whether formal
33 or informal, having as one of its primary activities the
34 commission of one or more criminal acts and that has a
35 common name or common identifying sign, symbol or specific

1 color apparel displayed, and whose members individually or
2 collectively engage in or have engaged in a pattern of
3 criminal activity.

4 Beginning July 1, 1994, for purposes of this Section,
5 "criminal street gang" has the meaning ascribed to it in
6 Section 10 of the Illinois Streetgang Terrorism Omnibus
7 Prevention Act.

8 (3) Judges, hearing officers, prosecutors, probation
9 officers, social workers or other individuals assigned by
10 the court to conduct a pre-adjudication or predisposition
11 investigation, and individuals responsible for supervising
12 or providing temporary or permanent care and custody for
13 minors pursuant to the order of the juvenile court when
14 essential to performing their responsibilities.

15 (4) Judges, prosecutors and probation officers:

16 (a) in the course of a trial when institution of
17 criminal proceedings has been permitted ~~or required~~
18 under Section 5-805; or

19 (b) when criminal proceedings have been permitted
20 ~~or required~~ under Section 5-805 and a minor is the
21 subject of a proceeding to determine the amount of
22 bail; or

23 (c) when criminal proceedings have been permitted
24 ~~or required~~ under Section 5-805 and a minor is the
25 subject of a pre-trial investigation, pre-sentence
26 investigation or fitness hearing, or proceedings on an
27 application for probation; or

28 (d) when a minor becomes 18 ~~17~~ years of age or
29 older, and is the subject of criminal proceedings,
30 including a hearing to determine the amount of bail, a
31 pre-trial investigation, a pre-sentence investigation,
32 a fitness hearing, or proceedings on an application for
33 probation.

34 (5) Adult and Juvenile Prisoner Review Boards.

35 (6) Authorized military personnel.

36 (7) Victims, their subrogees and legal

1 representatives; however, such persons shall have access
2 only to the name and address of the minor and information
3 pertaining to the disposition or alternative adjustment
4 plan of the juvenile court.

5 (8) Persons engaged in bona fide research, with the
6 permission of the presiding judge of the juvenile court and
7 the chief executive of the agency that prepared the
8 particular records; provided that publication of such
9 research results in no disclosure of a minor's identity and
10 protects the confidentiality of the record.

11 (9) The Secretary of State to whom the Clerk of the
12 Court shall report the disposition of all cases, as
13 required in Section 6-204 of the Illinois Vehicle Code.
14 However, information reported relative to these offenses
15 shall be privileged and available only to the Secretary of
16 State, courts, and police officers.

17 (10) The administrator of a bonafide substance abuse
18 student assistance program with the permission of the
19 presiding judge of the juvenile court.

20 (11) Mental health professionals on behalf of the
21 Illinois Department of Corrections or the Department of
22 Human Services or prosecutors who are evaluating,
23 prosecuting, or investigating a potential or actual
24 petition brought under the Sexually Persons Commitment Act
25 relating to a person who is the subject of juvenile court
26 records or the respondent to a petition brought under the
27 Sexually Violent Persons Commitment Act, who is the subject
28 of juvenile court records sought. Any records and any
29 information obtained from those records under this
30 paragraph (11) may be used only in sexually violent persons
31 commitment proceedings.

32 (B) A minor who is the victim in a juvenile proceeding
33 shall be provided the same confidentiality regarding
34 disclosure of identity as the minor who is the subject of
35 record.

36 (C) Except as otherwise provided in this subsection (C),

1 juvenile court records shall not be made available to the
2 general public but may be inspected by representatives of
3 agencies, associations and news media or other properly
4 interested persons by general or special order of the court.
5 The State's Attorney, the minor, his parents, guardian and
6 counsel shall at all times have the right to examine court
7 files and records.

8 (1) The court shall allow the general public to have
9 access to the name, address, and offense of a minor who is
10 adjudicated a delinquent minor under this Act under either
11 of the following circumstances:

12 (A) The adjudication of delinquency was based upon
13 the minor's commission of first degree murder, attempt
14 to commit first degree murder, aggravated criminal
15 sexual assault, or criminal sexual assault; or

16 (B) The court has made a finding that the minor was
17 at least 13 years of age at the time the act was
18 committed and the adjudication of delinquency was
19 based upon the minor's commission of: (i) an act in
20 furtherance of the commission of a felony as a member
21 of or on behalf of a criminal street gang, (ii) an act
22 involving the use of a firearm in the commission of a
23 felony, (iii) an act that would be a Class X felony
24 offense under or the minor's second or subsequent Class
25 2 or greater felony offense under the Cannabis Control
26 Act if committed by an adult, (iv) an act that would be
27 a second or subsequent offense under Section 402 of the
28 Illinois Controlled Substances Act if committed by an
29 adult, or (v) an act that would be an offense under
30 Section 401 of the Illinois Controlled Substances Act
31 if committed by an adult.

32 (2) The court shall allow the general public to have
33 access to the name, address, and offense of a minor who is
34 at least 13 years of age at the time the offense is
35 committed and who is convicted, in criminal proceedings
36 permitted ~~or required~~ under Section 5-805 ~~5-4~~, under either

1 of the following circumstances:

2 (A) The minor has been convicted of first degree
3 murder, attempt to commit first degree murder,
4 aggravated criminal sexual assault, or criminal sexual
5 assault,

6 (B) The court has made a finding that the minor was
7 at least 13 years of age at the time the offense was
8 committed and the conviction was based upon the minor's
9 commission of: (i) an offense in furtherance of the
10 commission of a felony as a member of or on behalf of a
11 criminal street gang, (ii) an offense involving the use
12 of a firearm in the commission of a felony, (iii) a
13 Class X felony offense under or a second or subsequent
14 Class 2 or greater felony offense under the Cannabis
15 Control Act, (iv) a second or subsequent offense under
16 Section 402 of the Illinois Controlled Substances Act,
17 or (v) an offense under Section 401 of the Illinois
18 Controlled Substances Act.

19 (D) Pending or following any adjudication of delinquency
20 for any offense defined in Sections 12-13 through 12-16 of the
21 Criminal Code of 1961, the victim of any such offense shall
22 receive the rights set out in Sections 4 and 6 of the Bill of
23 Rights for Victims and Witnesses of Violent Crime Act; and the
24 juvenile who is the subject of the adjudication,
25 notwithstanding any other provision of this Act, shall be
26 treated as an adult for the purpose of affording such rights to
27 the victim.

28 (E) Nothing in this Section shall affect the right of a
29 Civil Service Commission or appointing authority of any state,
30 county or municipality examining the character and fitness of
31 an applicant for employment with a law enforcement agency,
32 correctional institution, or fire department to ascertain
33 whether that applicant was ever adjudicated to be a delinquent
34 minor and, if so, to examine the records of disposition or
35 evidence which were made in proceedings under this Act.

36 (F) Following any adjudication of delinquency for a crime

1 which would be a felony if committed by an adult, or following
2 any adjudication of delinquency for a violation of Section
3 24-1, 24-3, 24-3.1, or 24-5 of the Criminal Code of 1961, the
4 State's Attorney shall ascertain whether the minor respondent
5 is enrolled in school and, if so, shall provide a copy of the
6 dispositional order to the principal or chief administrative
7 officer of the school. Access to such juvenile records shall be
8 limited to the principal or chief administrative officer of the
9 school and any guidance counselor designated by him.

10 (G) Nothing contained in this Act prevents the sharing or
11 disclosure of information or records relating or pertaining to
12 juveniles subject to the provisions of the Serious Habitual
13 Offender Comprehensive Action Program when that information is
14 used to assist in the early identification and treatment of
15 habitual juvenile offenders.

16 (H) When a Court hearing a proceeding under Article II of
17 this Act becomes aware that an earlier proceeding under Article
18 II had been heard in a different county, that Court shall
19 request, and the Court in which the earlier proceedings were
20 initiated shall transmit, an authenticated copy of the Court
21 record, including all documents, petitions, and orders filed
22 therein and the minute orders, transcript of proceedings, and
23 docket entries of the Court.

24 (I) The Clerk of the Circuit Court shall report to the
25 Department of State Police, in the form and manner required by
26 the Department of State Police, the final disposition of each
27 minor who has been arrested or taken into custody before his or
28 her 18th ~~17th~~ birthday for those offenses required to be
29 reported under Section 5 of the Criminal Identification Act.
30 Information reported to the Department under this Section may
31 be maintained with records that the Department files under
32 Section 2.1 of the Criminal Identification Act.

33 (Source: P.A. 91-357, eff. 7-29-99; 91-368, eff. 1-1-00,
34 92-415, eff. 8-17-01.)

1 Sec. 1-9. Expungement of law enforcement and juvenile court
2 records.

3 (1) Expungement of law enforcement and juvenile court
4 delinquency records shall be governed by Section 5-915.

5 (2) This subsection (2) applies to expungement of law
6 enforcement and juvenile court records other than delinquency
7 proceedings. Whenever any person has attained the age of 18 ~~17~~
8 or whenever all juvenile court proceedings relating to that
9 person have been terminated, whichever is later, the person may
10 petition the court to expunge law enforcement records relating
11 to incidents occurring before his 18th ~~17th~~ birthday or his
12 juvenile court records, or both, if the minor was placed under
13 supervision pursuant to Sections 2-20, 3-21, or 4-18, and such
14 order of supervision has since been successfully terminated.

15 (3) The chief judge of the circuit in which an arrest was
16 made or a charge was brought or any judge of that circuit
17 designated by the chief judge may, upon verified petition of a
18 person who is the subject of an arrest or a juvenile court
19 proceeding pursuant to subsection (2) of this Section, order
20 the law enforcement records or juvenile court records, or both,
21 to be expunged from the official records of the arresting
22 authority and the clerk of the circuit court. Notice of the
23 petition shall be served upon the State's Attorney and upon the
24 arresting authority which is the subject of the petition for
25 expungement.

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

27 (705 ILCS 405/2-10) (from Ch. 37, par. 802-10)

28 Sec. 2-10. Temporary custody hearing. At the appearance of
29 the minor before the court at the temporary custody hearing,
30 all witnesses present shall be examined before the court in
31 relation to any matter connected with the allegations made in
32 the petition.

33 (1) If the court finds that there is not probable cause to
34 believe that the minor is abused, neglected or dependent it
35 shall release the minor and dismiss the petition.

1 (2) If the court finds that there is probable cause to
2 believe that the minor is abused, neglected or dependent, the
3 court shall state in writing the factual basis supporting its
4 finding and the minor, his or her parent, guardian, custodian
5 and other persons able to give relevant testimony shall be
6 examined before the court. The Department of Children and
7 Family Services shall give testimony concerning indicated
8 reports of abuse and neglect, of which they are aware of
9 through the central registry, involving the minor's parent,
10 guardian or custodian. After such testimony, the court may,
11 consistent with the health, safety and best interests of the
12 minor, enter an order that the minor shall be released upon the
13 request of parent, guardian or custodian if the parent,
14 guardian or custodian appears to take custody. Custodian shall
15 include any agency of the State which has been given custody or
16 wardship of the child. If it is consistent with the health,
17 safety and best interests of the minor, the court may also
18 prescribe 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; however, a minor
22 charged with a criminal offense under the Criminal Code of 1961
23 or adjudicated delinquent shall not be placed in the custody of
24 or committed to the Department of Children and Family Services
25 by any court, except a minor less than 13 years of age and
26 committed to the Department of Children and Family Services
27 under Section 5-710 of this Act or a minor for whom an
28 independent basis of abuse, neglect, or dependency exists,
29 which must be defined by departmental rule. In placing the
30 minor, the Department or other agency shall, to the extent
31 compatible with the court's order, comply with Section 7 of the
32 Children and Family Services Act. In determining the health,
33 safety and best interests of the minor to prescribe shelter
34 care, the court must find that it is a matter of immediate and
35 urgent necessity for the safety and protection of the minor or
36 of the person or property of another that the minor be placed

1 in a shelter care facility or that he or she is likely to flee
2 the jurisdiction of the court, and must further find that
3 reasonable efforts have been made or that, consistent with the
4 health, safety and best interests of the minor, no efforts
5 reasonably can be made to prevent or eliminate the necessity of
6 removal of the minor from his or her home. The court shall
7 require documentation from the Department of Children and
8 Family Services as to the reasonable efforts that were made to
9 prevent or eliminate the necessity of removal of the minor from
10 his or her home or the reasons why no efforts reasonably could
11 be made to prevent or eliminate the necessity of removal. When
12 a minor is placed in the home of a relative, the Department of
13 Children and Family Services shall complete a preliminary
14 background review of the members of the minor's custodian's
15 household in accordance with Section 4.3 of the Child Care Act
16 of 1969 within 90 days of that placement. If the minor is
17 ordered placed in a shelter care facility of the Department of
18 Children and Family Services or a licensed child welfare
19 agency, the court shall, upon request of the appropriate
20 Department or other agency, appoint the Department of Children
21 and Family Services Guardianship Administrator or other
22 appropriate agency executive temporary custodian of the minor
23 and the court may enter such other orders related to the
24 temporary custody as it deems fit and proper, including the
25 provision of services to the minor or his family to ameliorate
26 the causes contributing to the finding of probable cause or to
27 the finding of the existence of immediate and urgent necessity.
28 Acceptance of services shall not be considered an admission of
29 any allegation in a petition made pursuant to this Act, nor may
30 a referral of services be considered as evidence in any
31 proceeding pursuant to this Act, except where the issue is
32 whether the Department has made reasonable efforts to reunite
33 the family. In making its findings that it is consistent with
34 the health, safety and best interests of the minor to prescribe
35 shelter care, the court shall state in writing (i) the factual
36 basis supporting its findings concerning the immediate and

1 urgent necessity for the protection of the minor or of the
2 person or property of another and (ii) the factual basis
3 supporting its findings that reasonable efforts were made to
4 prevent or eliminate the removal of the minor from his or her
5 home or that no efforts reasonably could be made to prevent or
6 eliminate the removal of the minor from his or her home. The
7 parents, guardian, custodian, temporary custodian and minor
8 shall each be furnished a copy of such written findings. The
9 temporary custodian shall maintain a copy of the court order
10 and written findings in the case record for the child. The
11 order together with the court's findings of fact in support
12 thereof shall be entered of record in the court.

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

19 If the child is placed in the temporary custody of the
20 Department of Children and Family Services for his or her
21 protection, the court shall admonish the parents, guardian,
22 custodian or responsible relative that the parents must
23 cooperate with the Department of Children and Family Services,
24 comply with the terms of the service plans, and correct the
25 conditions which require the child to be in care, or risk
26 termination of their parental rights.

27 (3) If prior to the shelter care hearing for a minor
28 described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is
29 unable to serve notice on the party respondent, the shelter
30 care hearing may proceed ex-parte. A shelter care order from an
31 ex-parte hearing shall be endorsed with the date and hour of
32 issuance and shall be filed with the clerk's office and entered
33 of record. The order shall expire after 10 days from the time
34 it is issued unless before its expiration it is renewed, at a
35 hearing upon appearance of the party respondent, or upon an
36 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 that there is "immediate and urgent necessity" to remove
 26 the child or children from the responsible relative.

27 YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN
 28 PLACEMENT of the child or children in foster care until a
 29 trial can be held. A trial may not be held for up to 90
 30 days. You will not be entitled to further notices of
 31 proceedings in this case, including the filing of an
 32 amended petition or a motion to terminate parental rights.

33 At the shelter care hearing, parents have the following
 34 rights:

- 35 1. To ask the court to appoint a lawyer if they
 36 cannot afford one.

1 2. To ask the court to continue the hearing to
2 allow them time to prepare.

3 3. To present evidence concerning:

4 a. Whether or not the child or children were
5 abused, neglected or dependent.

6 b. Whether or not there is "immediate and
7 urgent necessity" to remove the child from home
8 (including: their ability to care for the child,
9 conditions in the home, alternative means of
10 protecting the child other than removal).

11 c. The best interests of the child.

12 4. To cross examine the State's witnesses.

13 The Notice for rehearings shall be substantially as
14 follows:

15 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
16 TO REHEARING ON TEMPORARY CUSTODY

17 If you were not present at and did not have adequate
18 notice of the Shelter Care Hearing at which temporary
19 custody of was awarded to
20, you have the right to request a full
21 rehearing on whether the State should have temporary
22 custody of To request this rehearing,
23 you must file with the Clerk of the Juvenile Court
24 (address):, in person or by
25 mailing a statement (affidavit) setting forth the
26 following:

27 1. That you were not present at the shelter care
28 hearing.

29 2. That you did not get adequate notice (explaining
30 how the notice was inadequate).

31 3. Your signature.

32 4. Signature must be notarized.

33 The rehearing should be scheduled within 48 hours of
34 your filing this affidavit.

35 At the rehearing, your rights are the same as at the

1 initial shelter care hearing. The enclosed notice explains
2 those rights.

3 At the Shelter Care Hearing, children have the
4 following rights:

5 1. To have a guardian ad litem appointed.

6 2. To be declared competent as a witness and to
7 present testimony concerning:

8 a. Whether they are abused, neglected or
9 dependent.

10 b. Whether there is "immediate and urgent
11 necessity" to be removed from home.

12 c. Their best interests.

13 3. To cross examine witnesses for other parties.

14 4. To obtain an explanation of any proceedings and
15 orders of the court.

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

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

29 (6) No minor under 16 years of age may be confined in a
30 jail or place ordinarily used for the confinement of prisoners
31 in a police station. Minors under 18 ~~17~~ years of age must be
32 kept separate from confined adults and may not at any time be
33 kept in the same cell, room, or yard with adults confined
34 pursuant to the criminal law.

35 (7) If the minor is not brought before a judicial officer
36 within the time period as specified in Section 2-9, the minor

1 must immediately be released from custody.

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

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

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

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

29 (c) A person not a party to the alleged abuse, neglect
30 or dependency, including a parent, relative or legal
31 guardian, is capable of assuming temporary custody of the
32 minor; or

33 (d) Services provided by the Department of Children and
34 Family Services or a child welfare agency or other service
35 provider have been successful in eliminating the need for
36 temporary custody and the child can be cared for at home

1 without endangering the child's health or safety.

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

5 The clerk shall set the matter for hearing not later than
6 14 days after such motion is filed. In the event that the court
7 modifies or vacates a temporary custody order but does not
8 vacate its finding of probable cause, the court may order that
9 appropriate services be continued or initiated in behalf of the
10 minor and his or her family.

11 (10) When the court finds or has found that there is
12 probable cause to believe a minor is an abused minor as
13 described in subsection (2) of Section 2-3 and that there is an
14 immediate and urgent necessity for the abused minor to be
15 placed in shelter care, immediate and urgent necessity shall be
16 presumed for any other minor residing in the same household as
17 the abused minor provided:

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

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

22 Once the presumption of immediate and urgent necessity has
23 been raised, the burden of demonstrating the lack of immediate
24 and urgent necessity shall be on any party that is opposing
25 shelter care for the other minor.

26 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;
27 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;
28 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

29 (705 ILCS 405/3-12) (from Ch. 37, par. 803-12)

30 Sec. 3-12. Shelter care hearing. At the appearance of the
31 minor before the court at the shelter care hearing, all
32 witnesses present shall be examined before the court in
33 relation to any matter connected with the allegations made in
34 the petition.

35 (1) If the court finds that there is not probable cause to

1 believe that the minor is a person requiring authoritative
2 intervention, it shall release the minor and dismiss the
3 petition.

4 (2) If the court finds that there is probable cause to
5 believe that the minor is a person requiring authoritative
6 intervention, the minor, his or her parent, guardian, custodian
7 and other persons able to give relevant testimony shall be
8 examined before the court. After such testimony, the court may
9 enter an order that the minor shall be released upon the
10 request of a parent, guardian or custodian if the parent,
11 guardian or custodian appears to take custody. Custodian shall
12 include any agency of the State which has been given custody or
13 wardship of the child. The Court shall require documentation by
14 representatives of the Department of Children and Family
15 Services or the probation department as to the reasonable
16 efforts that were made to prevent or eliminate the necessity of
17 removal of the minor from his or her home, and shall consider
18 the testimony of any person as to those reasonable efforts. If
19 the court finds that it is a matter of immediate and urgent
20 necessity for the protection of the minor or of the person or
21 property of another that the minor be placed in a shelter care
22 facility, or that he or she is likely to flee the jurisdiction
23 of the court, and further finds that reasonable efforts have
24 been made or good cause has been shown why reasonable efforts
25 cannot prevent or eliminate the necessity of removal of the
26 minor from his or her home, the court may prescribe shelter
27 care and order that the minor be kept in a suitable place
28 designated by the court or in a shelter care facility
29 designated by the Department of Children and Family Services or
30 a licensed child welfare agency; otherwise it shall release the
31 minor from custody. If the court prescribes shelter care, then
32 in placing the minor, the Department or other agency shall, to
33 the extent compatible with the court's order, comply with
34 Section 7 of the Children and Family Services Act. If the minor
35 is ordered placed in a shelter care facility of the Department
36 of Children and Family Services or a licensed child welfare

1 agency, the court shall, upon request of the Department or
2 other agency, appoint the Department of Children and Family
3 Services Guardianship Administrator or other appropriate
4 agency executive temporary custodian of the minor and the court
5 may enter such other orders related to the temporary custody as
6 it deems fit and proper, including the provision of services to
7 the minor or his family to ameliorate the causes contributing
8 to the finding of probable cause or to the finding of the
9 existence of immediate and urgent necessity. Acceptance of
10 services shall not be considered an admission of any allegation
11 in a petition made pursuant to this Act, nor may a referral of
12 services be considered as evidence in any proceeding pursuant
13 to this Act, except where the issue is whether the Department
14 has made reasonable efforts to reunite the family. In making
15 its findings that reasonable efforts have been made or that
16 good cause has been shown why reasonable efforts cannot prevent
17 or eliminate the necessity of removal of the minor from his or
18 her home, the court shall state in writing its findings
19 concerning the nature of the services that were offered or the
20 efforts that were made to prevent removal of the child and the
21 apparent reasons that such services or efforts could not
22 prevent the need for removal. The parents, guardian, custodian,
23 temporary custodian and minor shall each be furnished a copy of
24 such written findings. The temporary custodian shall maintain a
25 copy of the court order and written findings in the case record
26 for the child.

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

29 Once the court finds that it is a matter of immediate and
30 urgent necessity for the protection of the minor that the minor
31 be placed in a shelter care facility, the minor shall not be
32 returned to the parent, custodian or guardian until the court
33 finds that such placement is no longer necessary for the
34 protection of the minor.

35 (3) If prior to the shelter care hearing for a minor
36 described in Sections 2-3, 2-4, 3-3 and 4-3 the petitioner is

1 unable to serve notice on the party respondent, the shelter
 2 care hearing may proceed ex-parte. A shelter care order from an
 3 ex-parte hearing shall be endorsed with the date and hour of
 4 issuance and shall be filed with the clerk's office and entered
 5 of record. The order shall expire after 10 days from the time
 6 it is issued unless before its expiration it is renewed, at a
 7 hearing upon appearance of the party respondent, or upon an
 8 affidavit of the moving party as to all diligent efforts to
 9 notify the party respondent by notice as herein prescribed. The
 10 notice prescribed shall be in writing and shall be personally
 11 delivered to the minor or the minor's attorney and to the last
 12 known address of the other person or persons entitled to
 13 notice. The notice shall also state the nature of the
 14 allegations, the nature of the order sought by the State,
 15 including whether temporary custody is sought, and the
 16 consequences of failure to appear; and shall explain the right
 17 of the parties and the procedures to vacate or modify a shelter
 18 care order as provided in this Section. The notice for a
 19 shelter care hearing shall be substantially as follows:

20 NOTICE TO PARENTS AND CHILDREN OF SHELTER CARE HEARING

21 On at, before the Honorable
 22, (address:), the State of
 23 Illinois will present evidence (1) that (name of child or
 24 children) are abused, neglected or
 25 dependent for the following reasons:

26
 27 and (2) that there is "immediate and urgent necessity" to
 28 remove the child or children from the responsible relative.

29 YOUR FAILURE TO APPEAR AT THE HEARING MAY RESULT IN
 30 PLACEMENT of the child or children in foster care until a trial
 31 can be held. A trial may not be held for up to 90 days.

32 At the shelter care hearing, parents have the following
 33 rights:

- 34 1. To ask the court to appoint a lawyer if they cannot
 35 afford one.
- 36 2. To ask the court to continue the hearing to allow

1 them time to prepare.

2 3. To present evidence concerning:

3 a. Whether or not the child or children were
4 abused, neglected or dependent.

5 b. Whether or not there is "immediate and urgent
6 necessity" to remove the child from home (including:
7 their ability to care for the child, conditions in the
8 home, alternative means of protecting the child other
9 than removal).

10 c. The best interests of the child.

11 4. To cross examine the State's witnesses.

12 The Notice for rehearings shall be substantially as
13 follows:

14 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
15 TO REHEARING ON TEMPORARY CUSTODY

16 If you were not present at and did not have adequate notice
17 of the Shelter Care Hearing at which temporary custody of
18 was awarded to, you have the
19 right to request a full rehearing on whether the State should
20 have temporary custody of To request this
21 rehearing, you must file with the Clerk of the Juvenile Court
22 (address):, in person or by mailing a
23 statement (affidavit) setting forth the following:

24 1. That you were not present at the shelter care
25 hearing.

26 2. That you did not get adequate notice (explaining how
27 the notice was inadequate).

28 3. Your signature.

29 4. Signature must be notarized.

30 The rehearing should be scheduled within one day of your
31 filing this affidavit.

32 At the rehearing, your rights are the same as at the
33 initial shelter care hearing. The enclosed notice explains
34 those rights.

35 At the Shelter Care Hearing, children have the following
36 rights:

- 1 1. To have a guardian ad litem appointed.
- 2 2. To be declared competent as a witness and to present
- 3 testimony concerning:
 - 4 a. Whether they are abused, neglected or
 - 5 dependent.
 - 6 b. Whether there is "immediate and urgent
 - 7 necessity" to be removed from home.
 - 8 c. Their best interests.
- 9 3. To cross examine witnesses for other parties.
- 10 4. To obtain an explanation of any proceedings and
- 11 orders of the court.

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

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

25 (6) No minor under 16 years of age may be confined in a
26 jail or place ordinarily used for the confinement of prisoners
27 in a police station. Minors under 18 ~~17~~ years of age must be
28 kept separate from confined adults and may not at any time be
29 kept in the same cell, room, or yard with adults confined
30 pursuant to the criminal law.

31 (7) If the minor is not brought before a judicial officer
32 within the time period specified in Section 3-11, the minor
33 must immediately be released from custody.

34 (8) If neither the parent, guardian or custodian appears
35 within 24 hours to take custody of a minor released upon
36 request pursuant to subsection (2) of this Section, then the

1 clerk of the court shall set the matter for rehearing not later
2 than 7 days after the original order and shall issue a summons
3 directed to the parent, guardian or custodian to appear. At the
4 same time the probation department shall prepare a report on
5 the minor. If a parent, guardian or custodian does not appear
6 at such rehearing, the judge may enter an order prescribing
7 that the minor be kept in a suitable place designated by the
8 Department of Children and Family Services or a licensed child
9 welfare agency.

10 (9) Notwithstanding any other provision of this Section,
11 any interested party, including the State, the temporary
12 custodian, an agency providing services to the minor or family
13 under a service plan pursuant to Section 8.2 of the Abused and
14 Neglected Child Reporting Act, foster parent, or any of their
15 representatives, on notice to all parties entitled to notice,
16 may file a motion to modify or vacate a temporary custody order
17 on any of the following grounds:

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

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

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

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

29 The clerk shall set the matter for hearing not later than
30 14 days after such motion is filed. In the event that the court
31 modifies or vacates a temporary custody order but does not
32 vacate its finding of probable cause, the court may order that
33 appropriate services be continued or initiated in behalf of the
34 minor and his or her family.

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

1 (705 ILCS 405/4-9) (from Ch. 37, par. 804-9)

2 Sec. 4-9. Shelter care hearing. At the appearance of the
3 minor before the court at the shelter care hearing, all
4 witnesses present shall be examined before the court in
5 relation to any matter connected with the allegations made in
6 the petition.

7 (1) If the court finds that there is not probable cause to
8 believe that the minor is addicted, it shall release the minor
9 and dismiss the petition.

10 (2) If the court finds that there is probable cause to
11 believe that the minor is addicted, the minor, his or her
12 parent, guardian, custodian and other persons able to give
13 relevant testimony shall be examined before the court. After
14 such testimony, the court may enter an order that the minor
15 shall be released upon the request of a parent, guardian or
16 custodian if the parent, guardian or custodian appears to take
17 custody and agrees to abide by a court order which requires the
18 minor and his or her parent, guardian, or legal custodian to
19 complete an evaluation by an entity licensed by the Department
20 of Human Services, as the successor to the Department of
21 Alcoholism and Substance Abuse, and complete any treatment
22 recommendations indicated by the assessment. Custodian shall
23 include any agency of the State which has been given custody or
24 wardship of the child.

25 The Court shall require documentation by representatives
26 of the Department of Children and Family Services or the
27 probation department as to the reasonable efforts that were
28 made to prevent or eliminate the necessity of removal of the
29 minor from his or her home, and shall consider the testimony of
30 any person as to those reasonable efforts. If the court finds
31 that it is a matter of immediate and urgent necessity for the
32 protection of the minor or of the person or property of another
33 that the minor be or placed in a shelter care facility or that
34 he or she is likely to flee the jurisdiction of the court, and
35 further, finds that reasonable efforts have been made or good
36 cause has been shown why reasonable efforts cannot prevent or

1 eliminate the necessity of removal of the minor from his or her
2 home, the court may prescribe shelter care and order that the
3 minor be kept in a suitable place designated by the court or in
4 a shelter care facility designated by the Department of
5 Children and Family Services or a licensed child welfare
6 agency, or in a facility or program licensed by the Department
7 of Human Services for shelter and treatment services; otherwise
8 it shall release the minor from custody. If the court
9 prescribes shelter care, then in placing the minor, the
10 Department or other agency shall, to the extent compatible with
11 the court's order, comply with Section 7 of the Children and
12 Family Services Act. If the minor is ordered placed in a
13 shelter care facility of the Department of Children and Family
14 Services or a licensed child welfare agency, or in a facility
15 or program licensed by the Department of Human Services for
16 shelter and treatment services, the court shall, upon request
17 of the appropriate Department or other agency, appoint the
18 Department of Children and Family Services Guardianship
19 Administrator or other appropriate agency executive temporary
20 custodian of the minor and the court may enter such other
21 orders related to the temporary custody as it deems fit and
22 proper, including the provision of services to the minor or his
23 family to ameliorate the causes contributing to the finding of
24 probable cause or to the finding of the existence of immediate
25 and urgent necessity. Acceptance of services shall not be
26 considered an admission of any allegation in a petition made
27 pursuant to this Act, nor may a referral of services be
28 considered as evidence in any proceeding pursuant to this Act,
29 except where the issue is whether the Department has made
30 reasonable efforts to reunite the family. In making its
31 findings that reasonable efforts have been made or that good
32 cause has been shown why reasonable efforts cannot prevent or
33 eliminate the necessity of removal of the minor from his or her
34 home, the court shall state in writing its findings concerning
35 the nature of the services that were offered or the efforts
36 that were made to prevent removal of the child and the apparent

1 reasons that such services or efforts could not prevent the
2 need for removal. The parents, guardian, custodian, temporary
3 custodian and minor shall each be furnished a copy of such
4 written findings. The temporary custodian shall maintain a copy
5 of the court order and written findings in the case record for
6 the child. The order together with the court's findings of fact
7 in support thereof shall be entered of record in the court.

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

14 (3) If neither the parent, guardian, legal custodian,
15 responsible relative nor counsel of the minor has had actual
16 notice of or is present at the shelter care hearing, he or she
17 may file his or her affidavit setting forth these facts, and
18 the clerk shall set the matter for rehearing not later than 24
19 hours, excluding Sundays and legal holidays, after the filing
20 of the affidavit. At the rehearing, the court shall proceed in
21 the same manner as upon the original hearing.

22 (4) If the minor is not brought before a judicial officer
23 within the time period as specified in Section 4-8, the minor
24 must immediately be released from custody.

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

30 (6) No minor under 16 years of age may be confined in a
31 jail or place ordinarily used for the confinement of prisoners
32 in a police station. Minors under 18 ~~17~~ years of age must be
33 kept separate from confined adults and may not at any time be
34 kept in the same cell, room or yard with adults confined
35 pursuant to the criminal law.

36 (7) If neither the parent, guardian or custodian appears

1 within 24 hours to take custody of a minor released upon
2 request pursuant to subsection (2) of this Section, then the
3 clerk of the court shall set the matter for rehearing not later
4 than 7 days after the original order and shall issue a summons
5 directed to the parent, guardian or custodian to appear. At the
6 same time the probation department shall prepare a report on
7 the minor. If a parent, guardian or custodian does not appear
8 at such rehearing, the judge may enter an order prescribing
9 that the minor be kept in a suitable place designated by the
10 Department of Children and Family Services or a licensed child
11 welfare agency.

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

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

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

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

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

29 The clerk shall set the matter for hearing not later than
30 14 days after such motion is filed. In the event that the court
31 modifies or vacates a temporary custody order but does not
32 vacate its finding of probable cause, the court may order that
33 appropriate services be continued or initiated in behalf of the
34 minor and his or her family.

35 (Source: P.A. 89-422; 89-507, eff. 7-1-97; 90-590, eff.
36 1-1-99.)

1 (705 ILCS 405/5-105)

2 Sec. 5-105. Definitions. As used in this Article:

3 (1) "Court" means the circuit court in a session or
4 division assigned to hear proceedings under this Act, and
5 includes the term Juvenile Court.

6 (2) "Community service" means uncompensated labor for a
7 community service agency as hereinafter defined.

8 (2.5) "Community service agency" means a not-for-profit
9 organization, community organization, church, charitable
10 organization, individual, public office, or other public body
11 whose purpose is to enhance the physical or mental health of a
12 delinquent minor or to rehabilitate the minor, or to improve
13 the environmental quality or social welfare of the community
14 which agrees to accept community service from juvenile
15 delinquents and to report on the progress of the community
16 service to the State's Attorney pursuant to an agreement or to
17 the court or to any agency designated by the court or to the
18 authorized diversion program that has referred the delinquent
19 minor for community service.

20 (3) "Delinquent minor" means any minor who prior to his or
21 her 18th ~~17th~~ birthday has violated or attempted to violate,
22 regardless of where the act occurred, any federal or State law,
23 county or municipal ordinance.

24 (4) "Department" means the Department of Human Services
25 unless specifically referenced as another department.

26 (5) "Detention" means the temporary care of a minor who is
27 alleged to be or has been adjudicated delinquent and who
28 requires secure custody for the minor's own protection or the
29 community's protection in a facility designed to physically
30 restrict the minor's movements, pending disposition by the
31 court or execution of an order of the court for placement or
32 commitment. Design features that physically restrict movement
33 include, but are not limited to, locked rooms and the secure
34 handcuffing of a minor to a rail or other stationary object. In
35 addition, "detention" includes the court ordered care of an

1 alleged or adjudicated delinquent minor who requires secure
2 custody pursuant to Section 5-125 of this Act.

3 (6) "Diversion" means the referral of a juvenile, without
4 court intervention, into a program that provides services
5 designed to educate the juvenile and develop a productive and
6 responsible approach to living in the community.

7 (7) "Juvenile detention home" means a public facility with
8 specially trained staff that conforms to the county juvenile
9 detention standards promulgated by the Department of
10 Corrections.

11 (8) "Juvenile justice continuum" means a set of delinquency
12 prevention programs and services designed for the purpose of
13 preventing or reducing delinquent acts, including criminal
14 activity by youth gangs, as well as intervention,
15 rehabilitation, and prevention services targeted at minors who
16 have committed delinquent acts, and minors who have previously
17 been committed to residential treatment programs for
18 delinquents. The term includes children-in-need-of-services
19 and families-in-need-of-services programs; aftercare and
20 reentry services; substance abuse and mental health programs;
21 community service programs; community service work programs;
22 and alternative-dispute resolution programs serving
23 youth-at-risk of delinquency and their families, whether
24 offered or delivered by State or local governmental entities,
25 public or private for-profit or not-for-profit organizations,
26 or religious or charitable organizations. This term would also
27 encompass any program or service consistent with the purpose of
28 those programs and services enumerated in this subsection.

29 (9) "Juvenile police officer" means a sworn police officer
30 who has completed a Basic Recruit Training Course, has been
31 assigned to the position of juvenile police officer by his or
32 her chief law enforcement officer and has completed the
33 necessary juvenile officers training as prescribed by the
34 Illinois Law Enforcement Training Standards Board, or in the
35 case of a State police officer, juvenile officer training
36 approved by the Director of State Police.

1 (10) "Minor" means a person under the age of 21 years
2 subject to this Act.

3 (11) "Non-secure custody" means confinement where the
4 minor is not physically restricted by being placed in a locked
5 cell or room, by being handcuffed to a rail or other stationary
6 object, or by other means. Non-secure custody may include, but
7 is not limited to, electronic monitoring, foster home
8 placement, home confinement, group home placement, or physical
9 restriction of movement or activity solely through facility
10 staff.

11 (12) "Public or community service" means uncompensated
12 labor for a not-for-profit organization or public body whose
13 purpose is to enhance physical or mental stability of the
14 offender, environmental quality or the social welfare and which
15 agrees to accept public or community service from offenders and
16 to report on the progress of the offender and the public or
17 community service to the court or to the authorized diversion
18 program that has referred the offender for public or community
19 service.

20 (13) "Sentencing hearing" means a hearing to determine
21 whether a minor should be adjudged a ward of the court, and to
22 determine what sentence should be imposed on the minor. It is
23 the intent of the General Assembly that the term "sentencing
24 hearing" replace the term "dispositional hearing" and be
25 synonymous with that definition as it was used in the Juvenile
26 Court Act of 1987.

27 (14) "Shelter" means the temporary care of a minor in
28 physically unrestricting facilities pending court disposition
29 or execution of court order for placement.

30 (15) "Site" means a not-for-profit organization, public
31 body, church, charitable organization, or individual agreeing
32 to accept community service from offenders and to report on the
33 progress of ordered or required public or community service to
34 the court or to the authorized diversion program that has
35 referred the offender for public or community service.

36 (16) "Station adjustment" means the informal or formal

1 handling of an alleged offender by a juvenile police officer.

2 (17) "Trial" means a hearing to determine whether the
3 allegations of a petition under Section 5-520 that a minor is
4 delinquent are proved beyond a reasonable doubt. It is the
5 intent of the General Assembly that the term "trial" replace
6 the term "adjudicatory hearing" and be synonymous with that
7 definition as it was used in the Juvenile Court Act of 1987.

8 (Source: P.A. 90-590, eff. 1-1-99; 91-820, eff. 6-13-00.)

9 (705 ILCS 405/5-120)

10 Sec. 5-120. Exclusive jurisdiction. Proceedings may be
11 instituted under the provisions of this Article concerning any
12 minor who prior to the minor's 18th ~~17th~~ birthday has violated
13 or attempted to violate, regardless of where the act occurred,
14 any federal or State law or municipal or county ordinance.
15 Except as provided in Sections 5-125, ~~5-130~~, 5-805, and 5-810
16 of this Article, no minor who was under 18 ~~17~~ years of age at
17 the time of the alleged offense may be prosecuted under the
18 criminal laws of this State.

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

20 (705 ILCS 405/5-407)

21 Sec. 5-407. Processing of juvenile in possession of a
22 firearm.

23 (a) If a law enforcement officer detains a minor pursuant
24 to Section 10-27.1A of the School Code, the officer shall
25 deliver the minor to the nearest juvenile officer, in the
26 manner prescribed by subsection (2) of Section 5-405 of this
27 Act. The juvenile officer shall deliver the minor without
28 unnecessary delay to the court or to the place designated by
29 rule or order of court for the reception of minors. In no event
30 shall the minor be eligible for any other disposition by the
31 juvenile police officer, notwithstanding the provisions of
32 subsection (3) of Section 5-405 of this Act.

33 (b) Minors ~~not excluded from this Act's jurisdiction under~~
34 ~~subsection (3)(a) of Section 5-130 of this Act~~ shall be brought

1 before a judicial officer within 40 hours, exclusive of
2 Saturdays, Sundays, and court-designated holidays, for a
3 detention hearing to determine whether he or she shall be
4 further held in custody. If the court finds that there is
5 probable cause to believe that the minor is a delinquent minor
6 by virtue of his or her violation of item (4) of subsection (a)
7 of Section 24-1 of the Criminal Code of 1961 while on school
8 grounds, that finding shall create a presumption that immediate
9 and urgent necessity exists under subdivision (2) of Section
10 5-501 of this Act. Once the presumption of immediate and urgent
11 necessity has been raised, the burden of demonstrating the lack
12 of immediate and urgent necessity shall be on any party that is
13 opposing detention for the minor. Should the court order
14 detention pursuant to this Section, the minor shall be
15 detained, pending the results of a court-ordered psychological
16 evaluation to determine if the minor is a risk to himself,
17 herself, or others. Upon receipt of the psychological
18 evaluation, the court shall review the determination regarding
19 the existence of urgent and immediate necessity. The court
20 shall consider the psychological evaluation in conjunction
21 with the other factors identified in subdivision (2) of Section
22 5-501 of this Act in order to make a de novo determination
23 regarding whether it is a matter of immediate and urgent
24 necessity for the protection of the minor or of the person or
25 property of another that the minor be detained or placed in a
26 shelter care facility. In addition to the pre-trial conditions
27 found in Section 5-505 of this Act, the court may order the
28 minor to receive counseling and any other services recommended
29 by the psychological evaluation as a condition for release of
30 the minor.

31 (c) Upon making a determination that the student presents a
32 risk to himself, herself, or others, the court shall issue an
33 order restraining the student from entering the property of the
34 school if he or she has been suspended or expelled from the
35 school as a result of possessing a firearm. The order shall
36 restrain the student from entering the school and school owned

1 or leased property, including any conveyance owned, leased, or
2 contracted by the school to transport students to or from
3 school or a school-related activity. The order shall remain in
4 effect until such time as the court determines that the student
5 no longer presents a risk to himself, herself, or others.

6 (d) Psychological evaluations ordered pursuant to
7 subsection (b) of this Section and statements made by the minor
8 during the course of these evaluations, shall not be admissible
9 on the issue of delinquency during the course of any
10 adjudicatory hearing held under this Act.

11 (e) In this Section:

12 "School" means any public or private elementary or
13 secondary school.

14 "School grounds" includes the real property comprising any
15 school, any conveyance owned, leased, or contracted by a school
16 to transport students to or from school or a school-related
17 activity, or any public way within 1,000 feet of the real
18 property comprising any school.

19 (Source: P.A. 91-11, eff. 6-4-99.)

20 (705 ILCS 405/5-410)

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

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

27 (2) (a) Any minor 10 years of age or older arrested
28 pursuant to this Act where there is probable cause to believe
29 that the minor is a delinquent minor and that (i) secured
30 custody is a matter of immediate and urgent necessity for the
31 protection of the minor or of the person or property of
32 another, (ii) the minor is likely to flee the jurisdiction of
33 the court, or (iii) the minor was taken into custody under a
34 warrant, may be kept or detained in an authorized detention
35 facility. No minor under 12 years of age shall be detained in a

1 county jail or a municipal lockup for more than 6 hours.

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

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

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

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

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

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

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

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

25 (v) Violation of the time limit on detention in a
26 county jail or municipal lockup shall not, in and of
27 itself, render inadmissible evidence obtained as a result
28 of the violation of this time limit. Minors under 18 ~~17~~
29 years of age shall be kept separate from confined adults
30 and may not at any time be kept in the same cell, room or
31 yard with adults confined pursuant to criminal law. Persons
32 18 ~~17~~ years of age and older who have a petition of
33 delinquency filed against them may be confined in an adult
34 detention facility. In making a determination whether to
35 confine a person 18 ~~17~~ years of age or older who has a
36 petition of delinquency filed against the person, these

1 factors, among other matters, shall be considered:

2 (A) The age of the person;

3 (B) Any previous delinquent or criminal history of
4 the person;

5 (C) Any previous abuse or neglect history of the
6 person; and

7 (D) Any mental health or educational history of the
8 person, or both.

9 (d) (i) If a minor 12 years of age or older is confined in a
10 county jail in a county with a population below 3,000,000
11 inhabitants, then the minor's confinement shall be implemented
12 in such a manner that there will be no contact by sight, sound
13 or otherwise between the minor and adult prisoners. Minors 12
14 years of age or older must be kept separate from confined
15 adults and may not at any time be kept in the same cell, room,
16 or yard with confined adults. This paragraph (d) (i) shall only
17 apply to confinement pending an adjudicatory hearing and shall
18 not exceed 40 hours, excluding Saturdays, Sundays and court
19 designated holidays. To accept or hold minors during this time
20 period, county jails shall comply with all monitoring standards
21 promulgated by the Department of Corrections and training
22 standards approved by the Illinois Law Enforcement Training
23 Standards Board.

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

32 (iii) To accept or hold minors 12 years of age or older,
33 after the time period prescribed in paragraphs (d) (i) and
34 (d) (ii) of this subsection (2) of this Section, county jails
35 shall comply with all programmatic and training standards for
36 juvenile detention homes promulgated by the Department of

1 Corrections.

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

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

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

23 (3) If the probation officer or State's Attorney (or such
24 other public officer designated by the court in a county having
25 3,000,000 or more inhabitants) determines that the minor may be
26 a delinquent minor as described in subsection (3) of Section
27 5-105, and should be retained in custody but does not require
28 physical restriction, the minor may be placed in non-secure
29 custody for up to 40 hours pending a detention hearing.

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

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

35 (705 ILCS 405/5-805)

1 Sec. 5-805. Transfer of jurisdiction.

2 (1) (Blank) Mandatory transfers.

3 ~~(a) If a petition alleges commission by a minor 15~~
4 ~~years of age or older of an act that constitutes a forcible~~
5 ~~felony under the laws of this State, and if a motion by the~~
6 ~~State's Attorney to prosecute the minor under the criminal~~
7 ~~laws of Illinois for the alleged forcible felony alleges~~
8 ~~that (i) the minor has previously been adjudicated~~
9 ~~delinquent or found guilty for commission of an act that~~
10 ~~constitutes a felony under the laws of this State or any~~
11 ~~other state and (ii) the act that constitutes the offense~~
12 ~~was committed in furtherance of criminal activity by an~~
13 ~~organized gang, the Juvenile Judge assigned to hear and~~
14 ~~determine those motions shall, upon determining that there~~
15 ~~is probable cause that both allegations are true, enter an~~
16 ~~order permitting prosecution under the criminal laws of~~
17 ~~Illinois.~~

18 ~~(b) If a petition alleges commission by a minor 15~~
19 ~~years of age or older of an act that constitutes a felony~~
20 ~~under the laws of this State, and if a motion by a State's~~
21 ~~Attorney to prosecute the minor under the criminal laws of~~
22 ~~Illinois for the alleged felony alleges that (i) the minor~~
23 ~~has previously been adjudicated delinquent or found guilty~~
24 ~~for commission of an act that constitutes a forcible felony~~
25 ~~under the laws of this State or any other state and (ii)~~
26 ~~the act that constitutes the offense was committed in~~
27 ~~furtherance of criminal activities by an organized gang,~~
28 ~~the Juvenile Judge assigned to hear and determine those~~
29 ~~motions shall, upon determining that there is probable~~
30 ~~cause that both allegations are true, enter an order~~
31 ~~permitting prosecution under the criminal laws of~~
32 ~~Illinois.~~

33 ~~(c) If a petition alleges commission by a minor 15~~
34 ~~years of age or older of:~~ (i) ~~an act that constitutes an~~
35 ~~offense enumerated in the presumptive transfer provisions~~
36 ~~of subsection (2); and (ii) the minor has previously been~~

1 ~~adjudicated delinquent or found guilty of a forcible~~
2 ~~felony, the Juvenile Judge designated to hear and determine~~
3 ~~those motions shall, upon determining that there is~~
4 ~~probable cause that both allegations are true, enter an~~
5 ~~order permitting prosecution under the criminal laws of~~
6 ~~Illinois.~~

7 ~~(d) If a petition alleges commission by a minor 15~~
8 ~~years of age or older of an act that constitutes the~~
9 ~~offense of aggravated discharge of a firearm committed in a~~
10 ~~school, on the real property comprising a school, within~~
11 ~~1,000 feet of the real property comprising a school, at a~~
12 ~~school related activity, or on, boarding, or departing from~~
13 ~~any conveyance owned, leased, or contracted by a school or~~
14 ~~school district to transport students to or from school or~~
15 ~~a school related activity, regardless of the time of day or~~
16 ~~the time of year, the juvenile judge designated to hear and~~
17 ~~determine those motions shall, upon determining that there~~
18 ~~is probable cause that the allegations are true, enter an~~
19 ~~order permitting prosecution under the criminal laws of~~
20 ~~Illinois.~~

21 ~~For purposes of this paragraph (d) of subsection (1):~~

22 ~~"School" means a public or private elementary or~~
23 ~~secondary school, community college, college, or~~
24 ~~university.~~

25 ~~"School related activity" means any sporting, social,~~
26 ~~academic, or other activity for which students' attendance~~
27 ~~or participation is sponsored, organized, or funded in~~
28 ~~whole or in part by a school or school district.~~

29 ~~(2) (Blank). Presumptive transfer.~~

30 ~~(a) If the State's Attorney files a petition, at any~~
31 ~~time prior to commencement of the minor's trial, to permit~~
32 ~~prosecution under the criminal laws and the petition~~
33 ~~alleges the commission by a minor 15 years of age or older~~
34 ~~of: (i) a Class X felony other than armed violence; (ii)~~
35 ~~aggravated discharge of a firearm; (iii) armed violence~~
36 ~~with a firearm when the predicate offense is a Class 1 or~~

1 ~~Class 2 felony and the State's Attorney's motion to~~
2 ~~transfer the case alleges that the offense committed is in~~
3 ~~furtherance of the criminal activities of an organized~~
4 ~~gang; (iv) armed violence with a firearm when the predicate~~
5 ~~offense is a violation of the Illinois Controlled~~
6 ~~Substances Act or a violation of the Cannabis Control Act;~~
7 ~~(v) armed violence when the weapon involved was a machine~~
8 ~~gun or other weapon described in subsection (a)(7) of~~
9 ~~Section 24-1 of the Criminal Code of 1961, and, if the~~
10 ~~juvenile judge assigned to hear and determine motions to~~
11 ~~transfer a case for prosecution in the criminal court~~
12 ~~determines that there is probable cause to believe that the~~
13 ~~allegations in the petition and motion are true, there is a~~
14 ~~rebuttable presumption that the minor is not a fit and~~
15 ~~proper subject to be dealt with under the Juvenile Justice~~
16 ~~Reform Provisions of 1998 (Public Act 90-590), and that,~~
17 ~~except as provided in paragraph (b), the case should be~~
18 ~~transferred to the criminal court.~~

19 ~~(b) The judge shall enter an order permitting~~
20 ~~prosecution under the criminal laws of Illinois unless the~~
21 ~~judge makes a finding based on clear and convincing~~
22 ~~evidence that the minor would be amenable to the care,~~
23 ~~treatment, and training programs available through the~~
24 ~~facilities of the juvenile court based on an evaluation of~~
25 ~~the following:~~

- 26 ~~(i) The seriousness of the alleged offense;~~
27 ~~(ii) The minor's history of delinquency;~~
28 ~~(iii) The age of the minor;~~
29 ~~(iv) The culpability of the minor in committing the~~
30 ~~alleged offense;~~
31 ~~(v) Whether the offense was committed in an aggressive~~
32 ~~or premeditated manner;~~
33 ~~(vi) Whether the minor used or possessed a deadly~~
34 ~~weapon when committing the alleged offense;~~
35 ~~(vii) The minor's history of services, including the~~
36 ~~minor's willingness to participate meaningfully in~~

1 ~~available services;~~

2 ~~(viii) Whether there is a reasonable likelihood that~~
3 ~~the minor can be rehabilitated before the expiration of the~~
4 ~~juvenile court's jurisdiction;~~

5 ~~(ix) The adequacy of the punishment or services~~
6 ~~available in the juvenile justice system.~~

7 ~~In considering these factors, the court shall give greater~~
8 ~~weight to the seriousness of the alleged offense and the~~
9 ~~minor's prior record of delinquency than to the other factors~~
10 ~~listed in this subsection.~~

11 (3) Discretionary transfer.

12 (a) If a petition alleges commission by a minor 13
13 years of age or over of an act that constitutes a crime
14 under the laws of this State and, on motion of the State's
15 Attorney to permit prosecution of the minor under the
16 criminal laws, a Juvenile Judge assigned by the Chief Judge
17 of the Circuit to hear and determine those motions, after
18 hearing but before commencement of the trial, finds that
19 there is probable cause to believe that the allegations in
20 the motion are true and that it is not in the best
21 interests of the public to proceed under this Act, the
22 court may enter an order permitting prosecution under the
23 criminal laws.

24 (b) In making its determination on the motion to permit
25 prosecution under the criminal laws, the court shall
26 consider among other matters:

27 (i) The seriousness of the alleged offense;

28 (ii) The minor's history of delinquency;

29 (iii) The age of the minor;

30 (iv) The culpability of the minor in committing the
31 alleged offense;

32 (v) Whether the offense was committed in an aggressive
33 or premeditated manner;

34 (vi) Whether the minor used or possessed a deadly
35 weapon when committing the alleged offense;

36 (vii) The minor's history of services, including the

1 minor's willingness to participate meaningfully in
2 available services;

3 (viii) The adequacy of the punishment or services
4 available in the juvenile justice system.

5 In considering these factors, the court shall give greater
6 weight to the seriousness of the alleged offense and the
7 minor's prior record of delinquency than to the other factors
8 listed in this subsection.

9 (4) The rules of evidence for this hearing shall be the
10 same as under Section 5-705 of this Act. A minor must be
11 represented in court by counsel before the hearing may be
12 commenced.

13 (5) If criminal proceedings are instituted, the petition
14 for adjudication of wardship shall be dismissed insofar as the
15 act or acts involved in the criminal proceedings. Taking of
16 evidence in a trial on petition for adjudication of wardship is
17 a bar to criminal proceedings based upon the conduct alleged in
18 the petition.

19 (Source: P.A. 90-590, eff. 1-1-99; 91-15, eff. 1-1-00; 91-357,
20 eff. 7-29-99.)

21 (705 ILCS 405/5-810)

22 Sec. 5-810. Extended jurisdiction juvenile prosecutions.

23 (1) If the State's Attorney files a petition, at any time
24 prior to commencement of the minor's trial, to designate the
25 proceeding as an extended jurisdiction juvenile prosecution
26 and the petition alleges the commission by a minor 13 years of
27 age or older of any offense which would be a felony if
28 committed by an adult, and, if the juvenile judge assigned to
29 hear and determine petitions to designate the proceeding as an
30 extended jurisdiction juvenile prosecution determines that
31 there is probable cause to believe that the allegations in the
32 petition and motion are true, there is a rebuttable presumption
33 that the proceeding shall be designated as an extended
34 jurisdiction juvenile proceeding.

35 (b) The judge shall enter an order designating the

1 proceeding as an extended jurisdiction juvenile proceeding
2 unless the judge makes a finding based on clear and convincing
3 evidence that sentencing under the Chapter V of the Unified
4 Code of Corrections would not be appropriate for the minor
5 based on an evaluation of the following factors:

6 (i) The seriousness of the alleged offense;

7 (ii) The minor's history of delinquency;

8 (iii) The age of the minor;

9 (iv) The culpability of the minor in committing the
10 alleged offense;

11 (v) Whether the offense was committed in an aggressive
12 or premeditated manner;

13 (vi) Whether the minor used or possessed a deadly
14 weapon when committing the alleged offense.

15 In considering these factors, the court shall give greater
16 weight to the seriousness of the alleged offense and the
17 minor's prior record of delinquency than to other factors
18 listed in this subsection.

19 (2) Procedures for extended jurisdiction juvenile
20 prosecutions.

21 (a) The State's Attorney may file a written motion for
22 a proceeding to be designated as an extended juvenile
23 jurisdiction prior to commencement of trial. Notice of the
24 motion shall be in compliance with Section 5-530. When the
25 State's Attorney files a written motion that a proceeding
26 be designated an extended jurisdiction juvenile
27 prosecution, the court shall commence a hearing within 30
28 days of the filing of the motion for designation, unless
29 good cause is shown by the prosecution or the minor as to
30 why the hearing could not be held within this time period.
31 If the court finds good cause has been demonstrated, then
32 the hearing shall be held within 60 days of the filing of
33 the motion. The hearings shall be open to the public unless
34 the judge finds that the hearing should be closed for the
35 protection of any party, victim or witness. If the Juvenile
36 Judge assigned to hear and determine a motion to designate

1 an extended jurisdiction juvenile prosecution determines
2 that there is probable cause to believe that the
3 allegations in the petition and motion are true the court
4 shall grant the motion for designation. Information used by
5 the court in its findings or stated in or offered in
6 connection with this Section may be by way of proffer based
7 on reliable information offered by the State or the minor.
8 All evidence shall be admissible if it is relevant and
9 reliable regardless of whether it would be admissible under
10 the rules of evidence.

11 (3) Trial. A minor who is subject of an extended
12 jurisdiction juvenile prosecution has the right to trial by
13 jury. Any trial under this Section shall be open to the public.

14 (4) Sentencing. If an extended jurisdiction juvenile
15 prosecution under subsections (1) results in a guilty plea, a
16 verdict of guilty, or a finding of guilt, the court shall
17 impose the following:

18 (i) one or more juvenile sentences under Section 5-710;

19 and

20 (ii) an adult criminal sentence in accordance with the
21 provisions of Chapter V of the Unified Code of Corrections,
22 the execution of which shall be stayed on the condition
23 that the offender not violate the provisions of the
24 juvenile sentence.

25 Any sentencing hearing under this Section shall be open to the
26 public.

27 (5) If, after an extended jurisdiction juvenile
28 prosecution trial, a minor is convicted of a lesser-included
29 offense or of an offense that the State's Attorney did not
30 designate as an extended jurisdiction juvenile prosecution,
31 the State's Attorney may file a written motion, within 10 days
32 of the finding of guilt, that the minor be sentenced as an
33 extended jurisdiction juvenile prosecution offender. The court
34 shall rule on this motion using the following factors: (i) the
35 seriousness of the alleged offense; (ii) the minor's history of
36 delinquency; (iii) the age of the minor; (iv) the culpability

1 of the minor in committing the alleged offense; (v) whether the
2 offense was committed in an aggressive or premeditated manner;
3 (vi) whether the minor used or possessed a deadly weapon when
4 committing the alleged offense; (vii) the minor's history of
5 services, including the minor's willingness to participate
6 meaningfully in available services; and (viii) the adequacy of
7 the punishment or services available in the juvenile justice
8 system. In considering these factors, the court shall give
9 greater weight to the seriousness of the alleged offense and
10 the minor's prior record of delinquency than to the other
11 factors listed in clauses (i) through (viii). ~~found in~~
12 ~~paragraph (1) (b) of Section 5-805.~~ If the court denies the
13 State's Attorney's motion for sentencing under the extended
14 jurisdiction juvenile prosecution provision, the court shall
15 proceed to sentence the minor under Section 5-710.

16 (6) When it appears that a minor convicted in an extended
17 jurisdiction juvenile prosecution under subsection (1) has
18 violated the conditions of his or her sentence, or is alleged
19 to have committed a new offense upon the filing of a petition
20 to revoke the stay, the court may, without notice, issue a
21 warrant for the arrest of the minor. After a hearing, if the
22 court finds by a preponderance of the evidence that the minor
23 committed a new offense, the court shall order execution of the
24 previously imposed adult criminal sentence. After a hearing, if
25 the court finds by a preponderance of the evidence that the
26 minor committed a violation of his or her sentence other than
27 by a new offense, the court may order execution of the
28 previously imposed adult criminal sentence or may continue him
29 or her on the existing juvenile sentence with or without
30 modifying or enlarging the conditions. Upon revocation of the
31 stay of the adult criminal sentence and imposition of that
32 sentence, the minor's extended jurisdiction juvenile status
33 shall be terminated. The on-going jurisdiction over the minor's
34 case shall be assumed by the adult criminal court and juvenile
35 court jurisdiction shall be terminated and a report of the
36 imposition of the adult sentence shall be sent to the

1 Department of State Police.

2 (7) Upon successful completion of the juvenile sentence the
3 court shall vacate the adult criminal sentence.

4 (8) Nothing in this Section precludes the State from filing
5 a motion for transfer under Section 5-805.

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

7 (705 ILCS 405/5-901)

8 Sec. 5-901. Court file.

9 (1) The Court file with respect to proceedings under this
10 Article shall consist of the petitions, pleadings, victim
11 impact statements, process, service of process, orders, writs
12 and docket entries reflecting hearings held and judgments and
13 decrees entered by the court. The court file shall be kept
14 separate from other records of the court.

15 (a) The file, including information identifying the
16 victim or alleged victim of any sex offense, shall be
17 disclosed only to the following parties when necessary for
18 discharge of their official duties:

19 (i) A judge of the circuit court and members of the
20 staff of the court designated by the judge;

21 (ii) Parties to the proceedings and their
22 attorneys;

23 (iii) Victims and their attorneys, except in cases
24 of multiple victims of sex offenses in which case the
25 information identifying the nonrequesting victims
26 shall be redacted;

27 (iv) Probation officers, law enforcement officers
28 or prosecutors or their staff;

29 (v) Adult and juvenile Prisoner Review Boards.

30 (b) The Court file redacted to remove any information
31 identifying the victim or alleged victim of any sex offense
32 shall be disclosed only to the following parties when
33 necessary for discharge of their official duties:

34 (i) Authorized military personnel;

35 (ii) Persons engaged in bona fide research, with

1 the permission of the judge of the juvenile court and
2 the chief executive of the agency that prepared the
3 particular recording: provided that publication of
4 such research results in no disclosure of a minor's
5 identity and protects the confidentiality of the
6 record;

7 (iii) The Secretary of State to whom the Clerk of
8 the Court shall report the disposition of all cases, as
9 required in Section 6-204 or Section 6-205.1 of the
10 Illinois Vehicle Code. However, information reported
11 relative to these offenses shall be privileged and
12 available only to the Secretary of State, courts, and
13 police officers;

14 (iv) The administrator of a bonafide substance
15 abuse student assistance program with the permission
16 of the presiding judge of the juvenile court;

17 (v) Any individual, or any public or private agency
18 or institution, having custody of the juvenile under
19 court order or providing educational, medical or
20 mental health services to the juvenile or a
21 court-approved advocate for the juvenile or any
22 placement provider or potential placement provider as
23 determined by the court.

24 (3) A minor who is the victim or alleged victim in a
25 juvenile proceeding shall be provided the same confidentiality
26 regarding disclosure of identity as the minor who is the
27 subject of record. Information identifying victims and alleged
28 victims of sex offenses, shall not be disclosed or open to
29 public inspection under any circumstances. Nothing in this
30 Section shall prohibit the victim or alleged victim of any sex
31 offense from voluntarily disclosing his or her identity.

32 (4) Relevant information, reports and records shall be made
33 available to the Department of Corrections when a juvenile
34 offender has been placed in the custody of the Department of
35 Corrections, Juvenile Division.

36 (5) Except as otherwise provided in this subsection (5),

1 juvenile court records shall not be made available to the
2 general public but may be inspected by representatives of
3 agencies, associations and news media or other properly
4 interested persons by general or special order of the court.
5 The State's Attorney, the minor, his or her parents, guardian
6 and counsel shall at all times have the right to examine court
7 files and records.

8 (a) The court shall allow the general public to have
9 access to the name, address, and offense of a minor who is
10 adjudicated a delinquent minor under this Act under either
11 of the following circumstances:

12 (i) The adjudication of delinquency was based upon
13 the minor's commission of first degree murder, attempt
14 to commit first degree murder, aggravated criminal
15 sexual assault, or criminal sexual assault; or

16 (ii) The court has made a finding that the minor
17 was at least 13 years of age at the time the act was
18 committed and the adjudication of delinquency was
19 based upon the minor's commission of: (A) an act in
20 furtherance of the commission of a felony as a member
21 of or on behalf of a criminal street gang, (B) an act
22 involving the use of a firearm in the commission of a
23 felony, (C) an act that would be a Class X felony
24 offense under or the minor's second or subsequent Class
25 2 or greater felony offense under the Cannabis Control
26 Act if committed by an adult, (D) an act that would be
27 a second or subsequent offense under Section 402 of the
28 Illinois Controlled Substances Act if committed by an
29 adult, or (E) an act that would be an offense under
30 Section 401 of the Illinois Controlled Substances Act
31 if committed by an adult.

32 (b) The court shall allow the general public to have
33 access to the name, address, and offense of a minor who is
34 at least 13 years of age at the time the offense is
35 committed and who is convicted, in criminal proceedings
36 permitted ~~or required~~ under Section 5-805, under either of

1 the following circumstances:

2 (i) The minor has been convicted of first degree
3 murder, attempt to commit first degree murder,
4 aggravated criminal sexual assault, or criminal sexual
5 assault,

6 (ii) The court has made a finding that the minor
7 was at least 13 years of age at the time the offense
8 was committed and the conviction was based upon the
9 minor's commission of: (A) an offense in furtherance of
10 the commission of a felony as a member of or on behalf
11 of a criminal street gang, (B) an offense involving the
12 use of a firearm in the commission of a felony, (C) a
13 Class X felony offense under the Cannabis Control Act
14 or a second or subsequent Class 2 or greater felony
15 offense under the Cannabis Control Act, (D) a second or
16 subsequent offense under Section 402 of the Illinois
17 Controlled Substances Act, or (E) an offense under
18 Section 401 of the Illinois Controlled Substances Act.

19 (6) Nothing in this Section shall be construed to limit the
20 use of a adjudication of delinquency as evidence in any
21 juvenile or criminal proceeding, where it would otherwise be
22 admissible under the rules of evidence, including but not
23 limited to, use as impeachment evidence against any witness,
24 including the minor if he or she testifies.

25 (7) Nothing in this Section shall affect the right of a
26 Civil Service Commission or appointing authority examining the
27 character and fitness of an applicant for a position as a law
28 enforcement officer to ascertain whether that applicant was
29 ever adjudicated to be a delinquent minor and, if so, to
30 examine the records or evidence which were made in proceedings
31 under this Act.

32 (8) Following any adjudication of delinquency for a crime
33 which would be a felony if committed by an adult, or following
34 any adjudication of delinquency for a violation of Section
35 24-1, 24-3, 24-3.1, or 24-5 of the Criminal Code of 1961, the
36 State's Attorney shall ascertain whether the minor respondent

1 is enrolled in school and, if so, shall provide a copy of the
2 sentencing order to the principal or chief administrative
3 officer of the school. Access to such juvenile records shall be
4 limited to the principal or chief administrative officer of the
5 school and any guidance counselor designated by him or her.

6 (9) Nothing contained in this Act prevents the sharing or
7 disclosure of information or records relating or pertaining to
8 juveniles subject to the provisions of the Serious Habitual
9 Offender Comprehensive Action Program when that information is
10 used to assist in the early identification and treatment of
11 habitual juvenile offenders.

12 (11) The Clerk of the Circuit Court shall report to the
13 Department of State Police, in the form and manner required by
14 the Department of State Police, the final disposition of each
15 minor who has been arrested or taken into custody before his or
16 her 18th ~~17th~~ birthday for those offenses required to be
17 reported under Section 5 of the Criminal Identification Act.
18 Information reported to the Department under this Section may
19 be maintained with records that the Department files under
20 Section 2.1 of the Criminal Identification Act.

21 (12) Information or records may be disclosed to the general
22 public when the court is conducting hearings under Section
23 5-805 or 5-810.

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

25 (705 ILCS 405/5-905)

26 Sec. 5-905. Law enforcement records.

27 (1) Law Enforcement Records. Inspection and copying of law
28 enforcement records maintained by law enforcement agencies
29 that relate to a minor who has been arrested or taken into
30 custody before his or her 18th ~~17th~~ birthday shall be
31 restricted to the following and when necessary for the
32 discharge of their official duties:

33 (a) A judge of the circuit court and members of the
34 staff of the court designated by the judge;

35 (b) Law enforcement officers, probation officers or

1 prosecutors or their staff;

2 (c) The minor, the minor's parents or legal guardian
3 and their attorneys, but only when the juvenile has been
4 charged with an offense;

5 (d) Adult and Juvenile Prisoner Review Boards;

6 (e) Authorized military personnel;

7 (f) Persons engaged in bona fide research, with the
8 permission of the judge of juvenile court and the chief
9 executive of the agency that prepared the particular
10 recording: provided that publication of such research
11 results in no disclosure of a minor's identity and protects
12 the confidentiality of the record;

13 (g) Individuals responsible for supervising or
14 providing temporary or permanent care and custody of minors
15 pursuant to orders of the juvenile court or directives from
16 officials of the Department of Children and Family Services
17 or the Department of Human Services who certify in writing
18 that the information will not be disclosed to any other
19 party except as provided under law or order of court;

20 (h) The appropriate school official. Inspection and
21 copying shall be limited to law enforcement records
22 transmitted to the appropriate school official by a local
23 law enforcement agency under a reciprocal reporting system
24 established and maintained between the school district and
25 the local law enforcement agency under Section 10-20.14 of
26 the School Code concerning a minor enrolled in a school
27 within the school district who has been arrested for any
28 offense classified as a felony or a Class A or B
29 misdemeanor.

30 (2) Information identifying victims and alleged victims of
31 sex offenses, shall not be disclosed or open to public
32 inspection under any circumstances. Nothing in this Section
33 shall prohibit the victim or alleged victim of any sex offense
34 from voluntarily disclosing his or her identity.

35 (3) Relevant information, reports and records shall be made
36 available to the Department of Corrections when a juvenile

1 offender has been placed in the custody of the Department of
2 Corrections, Juvenile Division.

3 (4) Nothing in this Section shall prohibit the inspection
4 or disclosure to victims and witnesses of photographs contained
5 in the records of law enforcement agencies when the inspection
6 or disclosure is conducted in the presence of a law enforcement
7 officer for purposes of identification or apprehension of any
8 person in the course of any criminal investigation or
9 prosecution.

10 (5) The records of law enforcement officers concerning all
11 minors under 18 ~~17~~ years of age must be maintained separate
12 from the records of adults and may not be open to public
13 inspection or their contents disclosed to the public except by
14 order of the court or when the institution of criminal
15 proceedings has been permitted under Section ~~5-130 or~~ 5-805 ~~or~~
16 ~~required under Section 5-130 or 5-805~~ or such a person has been
17 convicted of a crime and is the subject of pre-sentence
18 investigation or when provided by law.

19 (6) Except as otherwise provided in this subsection (6),
20 law enforcement officers may not disclose the identity of any
21 minor in releasing information to the general public as to the
22 arrest, investigation or disposition of any case involving a
23 minor. Any victim or parent or legal guardian of a victim may
24 petition the court to disclose the name and address of the
25 minor and the minor's parents or legal guardian, or both. Upon
26 a finding by clear and convincing evidence that the disclosure
27 is either necessary for the victim to pursue a civil remedy
28 against the minor or the minor's parents or legal guardian, or
29 both, or to protect the victim's person or property from the
30 minor, then the court may order the disclosure of the
31 information to the victim or to the parent or legal guardian of
32 the victim only for the purpose of the victim pursuing a civil
33 remedy against the minor or the minor's parents or legal
34 guardian, or both, or to protect the victim's person or
35 property from the minor.

36 (7) Nothing contained in this Section shall prohibit law

1 enforcement agencies when acting in their official capacity
2 from communicating with each other by letter, memorandum,
3 teletype or intelligence alert bulletin or other means the
4 identity or other relevant information pertaining to a person
5 under 18 ~~17~~ years of age. The information provided under this
6 subsection (7) shall remain confidential and shall not be
7 publicly disclosed, except as otherwise allowed by law.

8 (8) No person shall disclose information under this Section
9 except when acting in his or her official capacity and as
10 provided by law or order of court.

11 (Source: P.A. 90-590, eff. 1-1-99; 91-479, eff. 1-1-00.)

12 (705 ILCS 405/5-915)

13 Sec. 5-915. Expungement of law enforcement and juvenile
14 court records.

15 (1) Whenever any person has attained the age of 18 ~~17~~ or
16 whenever all juvenile court proceedings relating to that person
17 have been terminated, whichever is later, the person may
18 petition the court to expunge law enforcement records relating
19 to incidents occurring before his or her 18th ~~17th~~ birthday or
20 his or her juvenile court records, or both, but only in the
21 following circumstances:

22 (a) the minor was arrested and no petition for
23 delinquency was filed with the clerk of the circuit court;
24 or

25 (b) the minor was charged with an offense and was found
26 not delinquent of that offense; or

27 (c) the minor was placed under supervision pursuant to
28 Section 5-615, and the order of supervision has since been
29 successfully terminated; or

30 (d) the minor was adjudicated for an offense which
31 would be a Class B misdemeanor if committed by an adult.

32 (2) Any person may petition the court to expunge all law
33 enforcement records relating to any incidents occurring before
34 his or her 18th ~~17th~~ birthday which did not result in
35 proceedings in criminal court and all juvenile court records

1 with respect to any adjudications except those based upon first
2 degree murder and sex offenses which would be felonies if
3 committed by an adult, if the person for whom expungement is
4 sought has had no convictions for any crime since his or her
5 18th ~~17th~~ birthday and:

6 (a) has attained the age of 21 years; or

7 (b) 5 years have elapsed since all juvenile court
8 proceedings relating to him or her have been terminated or
9 his or her commitment to the Department of Corrections,
10 Juvenile Division pursuant to this Act has been terminated;
11 whichever is later of (a) or (b).

12 (3) The chief judge of the circuit in which an arrest was
13 made or a charge was brought or any judge of that circuit
14 designated by the chief judge may, upon verified petition of a
15 person who is the subject of an arrest or a juvenile court
16 proceeding under subsection (1) or (2) of this Section, order
17 the law enforcement records or official court file, or both, to
18 be expunged from the official records of the arresting
19 authority, the clerk of the circuit court and the Department of
20 State Police. Notice of the petition shall be served upon the
21 State's Attorney and upon the arresting authority which is the
22 subject of the petition for expungement.

23 (4) Upon entry of an order expunging records or files, the
24 offense, which the records or files concern shall be treated as
25 if it never occurred. Law enforcement officers and other public
26 offices and agencies shall properly reply on inquiry that no
27 record or file exists with respect to the person.

28 (5) Records which have not been expunged are sealed, and
29 may be obtained only under the provisions of Sections 5-901,
30 5-905 and 5-915.

31 (6) Nothing in this Section shall be construed to prohibit
32 the maintenance of information relating to an offense after
33 records or files concerning the offense have been expunged if
34 the information is kept in a manner that does not enable
35 identification of the offender. This information may only be
36 used for statistical and bona fide research purposes.

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

2 (705 ILCS 405/5-130 rep.)

3 Section 10. The Juvenile Court Act of 1987 is amended by
4 repealing Section 5-130.

5 Section 15. The Code of Criminal Procedure of 1963 is
6 amended by changing Section 115-10.5 as follows:

7 (725 ILCS 5/115-10.5)

8 Sec. 115-10.5. Hearsay exception regarding safe zone
9 testimony.

10 (a) In any prosecution for any offense charged as a
11 violation of Section 407 of the Illinois Controlled Substances
12 Act ~~or Section 5-130 of the Juvenile Court Act of 1987~~ the
13 following evidence shall be admitted as an exception to the
14 hearsay rule any testimony by any qualified individual
15 regarding the status of any property as:

16 (1) a truck stop or safety rest area, or

17 (2) a school or conveyance owned, leased or contracted
18 by a school to transport students to or from school, or

19 (3) residential property owned, operated, and managed
20 by a public housing agency, or

21 (4) a public park, or

22 (5) the real property comprising any church,
23 synagogue, or other building, structure, or place used
24 primarily for religious worship, or

25 (6) the real property comprising any of the following
26 places, buildings, or structures used primarily for
27 housing or providing space for activities for senior
28 citizens: nursing homes, assisted-living centers, senior
29 citizen housing complexes, or senior centers oriented
30 toward daytime activities.

31 (b) As used in this Section, "qualified individual" means
32 any person who (i) lived or worked within the territorial
33 jurisdiction where the offense took place when the offense took

1 place; and (ii) is familiar with various public places within
2 the territorial jurisdiction where the offense took place when
3 the offense took place.

4 (c) For the purposes of this Section, "qualified
5 individual" includes any peace officer, or any member of any
6 duly organized State, county, or municipal peace unit, assigned
7 to the territorial jurisdiction where the offense took place
8 when the offense took place.

9 (d) This Section applies to all prosecutions pending at the
10 time this amendatory Act of the 91st General Assembly takes
11 effect and to all prosecutions commencing on or after its
12 effective date.

13 (Source: P.A. 91-899, eff. 1-1-01.)

14 Section 20. The Unified Code of Corrections is amended by
15 changing Section 3-2-2 as follows:

16 (730 ILCS 5/3-2-2) (from Ch. 38, par. 1003-2-2)

17 Sec. 3-2-2. Powers and Duties of the Department.

18 (1) In addition to the powers, duties and responsibilities
19 which are otherwise provided by law, the Department shall have
20 the following powers:

21 (a) To accept persons committed to it by the courts of
22 this State for care, custody, treatment and
23 rehabilitation.

24 (b) To develop and maintain reception and evaluation
25 units for purposes of analyzing the custody and
26 rehabilitation needs of persons committed to it and to
27 assign such persons to institutions and programs under its
28 control or transfer them to other appropriate agencies. In
29 consultation with the Department of Alcoholism and
30 Substance Abuse (now the Department of Human Services), the
31 Department of Corrections shall develop a master plan for
32 the screening and evaluation of persons committed to its
33 custody who have alcohol or drug abuse problems, and for
34 making appropriate treatment available to such persons;

1 the Department shall report to the General Assembly on such
2 plan not later than April 1, 1987. The maintenance and
3 implementation of such plan shall be contingent upon the
4 availability of funds.

5 (b-1) To create and implement, on January 1, 2002, a
6 pilot program to establish the effectiveness of
7 pupillometer technology (the measurement of the pupil's
8 reaction to light) as an alternative to a urine test for
9 purposes of screening and evaluating persons committed to
10 its custody who have alcohol or drug problems. The pilot
11 program shall require the pupillometer technology to be
12 used in at least one Department of Corrections facility.
13 The Director may expand the pilot program to include an
14 additional facility or facilities as he or she deems
15 appropriate. A minimum of 4,000 tests shall be included in
16 the pilot program. The Department must report to the
17 General Assembly on the effectiveness of the program by
18 January 1, 2003.

19 (b-5) To develop, in consultation with the Department
20 of State Police, a program for tracking and evaluating each
21 inmate from commitment through release for recording his or
22 her gang affiliations, activities, or ranks.

23 (c) To maintain and administer all State correctional
24 institutions and facilities under its control and to
25 establish new ones as needed. Pursuant to its power to
26 establish new institutions and facilities, the Department
27 may, with the written approval of the Governor, authorize
28 the Department of Central Management Services to enter into
29 an agreement of the type described in subsection (d) of
30 Section 405-300 of the Department of Central Management
31 Services Law (20 ILCS 405/405-300). The Department shall
32 designate those institutions which shall constitute the
33 State Penitentiary System.

34 Pursuant to its power to establish new institutions and
35 facilities, the Department may authorize the Department of
36 Central Management Services to accept bids from counties

1 and municipalities for the construction, remodeling or
2 conversion of a structure to be leased to the Department of
3 Corrections for the purposes of its serving as a
4 correctional institution or facility. Such construction,
5 remodeling or conversion may be financed with revenue bonds
6 issued pursuant to the Industrial Building Revenue Bond Act
7 by the municipality or county. The lease specified in a bid
8 shall be for a term of not less than the time needed to
9 retire any revenue bonds used to finance the project, but
10 not to exceed 40 years. The lease may grant to the State
11 the option to purchase the structure outright.

12 Upon receipt of the bids, the Department may certify
13 one or more of the bids and shall submit any such bids to
14 the General Assembly for approval. Upon approval of a bid
15 by a constitutional majority of both houses of the General
16 Assembly, pursuant to joint resolution, the Department of
17 Central Management Services may enter into an agreement
18 with the county or municipality pursuant to such bid.

19 (c-5) To build and maintain regional juvenile
20 detention centers and to charge a per diem to the counties
21 as established by the Department to defray the costs of
22 housing each minor in a center. In this subsection (c-5),
23 "juvenile detention center" means a facility to house
24 minors during pendency of trial who have been transferred
25 from proceedings under the Juvenile Court Act of 1987 to
26 prosecutions under the criminal laws of this State in
27 accordance with Section 5-805 of the Juvenile Court Act of
28 1987, whether the transfer was by operation of law before
29 the effective date of this amendatory Act of the 93rd
30 General Assembly or permissive under that Section. The
31 Department shall designate the counties to be served by
32 each regional juvenile detention center.

33 (d) To develop and maintain programs of control,
34 rehabilitation and employment of committed persons within
35 its institutions.

36 (e) To establish a system of supervision and guidance

1 of committed persons in the community.

2 (f) To establish in cooperation with the Department of
3 Transportation to supply a sufficient number of prisoners
4 for use by the Department of Transportation to clean up the
5 trash and garbage along State, county, township, or
6 municipal highways as designated by the Department of
7 Transportation. The Department of Corrections, at the
8 request of the Department of Transportation, shall furnish
9 such prisoners at least annually for a period to be agreed
10 upon between the Director of Corrections and the Director
11 of Transportation. The prisoners used on this program shall
12 be selected by the Director of Corrections on whatever
13 basis he deems proper in consideration of their term,
14 behavior and earned eligibility to participate in such
15 program - where they will be outside of the prison facility
16 but still in the custody of the Department of Corrections.
17 Prisoners convicted of first degree murder, or a Class X
18 felony, or armed violence, or aggravated kidnapping, or
19 criminal sexual assault, aggravated criminal sexual abuse
20 or a subsequent conviction for criminal sexual abuse, or
21 forcible detention, or arson, or a prisoner adjudged a
22 Habitual Criminal shall not be eligible for selection to
23 participate in such program. The prisoners shall remain as
24 prisoners in the custody of the Department of Corrections
25 and such Department shall furnish whatever security is
26 necessary. The Department of Transportation shall furnish
27 trucks and equipment for the highway cleanup program and
28 personnel to supervise and direct the program. Neither the
29 Department of Corrections nor the Department of
30 Transportation shall replace any regular employee with a
31 prisoner.

32 (g) To maintain records of persons committed to it and
33 to establish programs of research, statistics and
34 planning.

35 (h) To investigate the grievances of any person
36 committed to the Department, to inquire into any alleged

1 misconduct by employees or committed persons, and to
2 investigate the assets of committed persons to implement
3 Section 3-7-6 of this Code; and for these purposes it may
4 issue subpoenas and compel the attendance of witnesses and
5 the production of writings and papers, and may examine
6 under oath any witnesses who may appear before it; to also
7 investigate alleged violations of a parolee's or
8 releasee's conditions of parole or release; and for this
9 purpose it may issue subpoenas and compel the attendance of
10 witnesses and the production of documents only if there is
11 reason to believe that such procedures would provide
12 evidence that such violations have occurred.

13 If any person fails to obey a subpoena issued under
14 this subsection, the Director may apply to any circuit
15 court to secure compliance with the subpoena. The failure
16 to comply with the order of the court issued in response
17 thereto shall be punishable as contempt of court.

18 (i) To appoint and remove the chief administrative
19 officers, and administer programs of training and
20 development of personnel of the Department. Personnel
21 assigned by the Department to be responsible for the
22 custody and control of committed persons or to investigate
23 the alleged misconduct of committed persons or employees or
24 alleged violations of a parolee's or releasee's conditions
25 of parole shall be conservators of the peace for those
26 purposes, and shall have the full power of peace officers
27 outside of the facilities of the Department in the
28 protection, arrest, retaking and reconfining of committed
29 persons or where the exercise of such power is necessary to
30 the investigation of such misconduct or violations.

31 (j) To cooperate with other departments and agencies
32 and with local communities for the development of standards
33 and programs for better correctional services in this
34 State.

35 (k) To administer all moneys and properties of the
36 Department.

1 (1) To report annually to the Governor on the committed
2 persons, institutions and programs of the Department.

3 (1-5) In a confidential annual report to the Governor,
4 the Department shall identify all inmate gangs by
5 specifying each current gang's name, population and allied
6 gangs. The Department shall further specify the number of
7 top leaders identified by the Department for each gang
8 during the past year, and the measures taken by the
9 Department to segregate each leader from his or her gang
10 and allied gangs. The Department shall further report the
11 current status of leaders identified and segregated in
12 previous years. All leaders described in the report shall
13 be identified by inmate number or other designation to
14 enable tracking, auditing, and verification without
15 revealing the names of the leaders. Because this report
16 contains law enforcement intelligence information
17 collected by the Department, the report is confidential and
18 not subject to public disclosure.

19 (m) To make all rules and regulations and exercise all
20 powers and duties vested by law in the Department.

21 (n) To establish rules and regulations for
22 administering a system of good conduct credits,
23 established in accordance with Section 3-6-3, subject to
24 review by the Prisoner Review Board.

25 (o) To administer the distribution of funds from the
26 State Treasury to reimburse counties where State penal
27 institutions are located for the payment of assistant
28 state's attorneys' salaries under Section 4-2001 of the
29 Counties Code.

30 (p) To exchange information with the Department of
31 Human Services and the Illinois Department of Public Aid
32 for the purpose of verifying living arrangements and for
33 other purposes directly connected with the administration
34 of this Code and the Illinois Public Aid Code.

35 (q) To establish a diversion program.

36 The program shall provide a structured environment for

1 selected technical parole or mandatory supervised release
2 violators and committed persons who have violated the rules
3 governing their conduct while in work release. This program
4 shall not apply to those persons who have committed a new
5 offense while serving on parole or mandatory supervised
6 release or while committed to work release.

7 Elements of the program shall include, but shall not be
8 limited to, the following:

9 (1) The staff of a diversion facility shall provide
10 supervision in accordance with required objectives set
11 by the facility.

12 (2) Participants shall be required to maintain
13 employment.

14 (3) Each participant shall pay for room and board
15 at the facility on a sliding-scale basis according to
16 the participant's income.

17 (4) Each participant shall:

18 (A) provide restitution to victims in
19 accordance with any court order;

20 (B) provide financial support to his
21 dependents; and

22 (C) make appropriate payments toward any other
23 court-ordered obligations.

24 (5) Each participant shall complete community
25 service in addition to employment.

26 (6) Participants shall take part in such
27 counseling, educational and other programs as the
28 Department may deem appropriate.

29 (7) Participants shall submit to drug and alcohol
30 screening.

31 (8) The Department shall promulgate rules
32 governing the administration of the program.

33 (r) To enter into intergovernmental cooperation
34 agreements under which persons in the custody of the
35 Department may participate in a county impact
36 incarceration program established under Section 3-6038 or

1 3-15003.5 of the Counties Code.

2 (r-5) To enter into intergovernmental cooperation
3 agreements under which minors adjudicated delinquent and
4 committed to the Department of Corrections, Juvenile
5 Division, may participate in a county juvenile impact
6 incarceration program established under Section 3-6039 of
7 the Counties Code.

8 (r-10) To systematically and routinely identify with
9 respect to each streetgang active within the correctional
10 system: (1) each active gang; (2) every existing inter-gang
11 affiliation or alliance; and (3) the current leaders in
12 each gang. The Department shall promptly segregate leaders
13 from inmates who belong to their gangs and allied gangs.
14 "Segregate" means no physical contact and, to the extent
15 possible under the conditions and space available at the
16 correctional facility, prohibition of visual and sound
17 communication. For the purposes of this paragraph (r-10),
18 "leaders" means persons who:

19 (i) are members of a criminal streetgang;

20 (ii) with respect to other individuals within the
21 streetgang, occupy a position of organizer,
22 supervisor, or other position of management or
23 leadership; and

24 (iii) are actively and personally engaged in
25 directing, ordering, authorizing, or requesting
26 commission of criminal acts by others, which are
27 punishable as a felony, in furtherance of streetgang
28 related activity both within and outside of the
29 Department of Corrections.

30 "Streetgang", "gang", and "streetgang related" have the
31 meanings ascribed to them in Section 10 of the Illinois
32 Streetgang Terrorism Omnibus Prevention Act.

33 (s) To operate a super-maximum security institution,
34 in order to manage and supervise inmates who are disruptive
35 or dangerous and provide for the safety and security of the
36 staff and the other inmates.

1 (t) To monitor any unprivileged conversation or any
2 unprivileged communication, whether in person or by mail,
3 telephone, or other means, between an inmate who, before
4 commitment to the Department, was a member of an organized
5 gang and any other person without the need to show cause or
6 satisfy any other requirement of law before beginning the
7 monitoring, except as constitutionally required. The
8 monitoring may be by video, voice, or other method of
9 recording or by any other means. As used in this
10 subdivision (1)(t), "organized gang" has the meaning
11 ascribed to it in Section 10 of the Illinois Streetgang
12 Terrorism Omnibus Prevention Act.

13 As used in this subdivision (1)(t), "unprivileged
14 conversation" or "unprivileged communication" means a
15 conversation or communication that is not protected by any
16 privilege recognized by law or by decision, rule, or order
17 of the Illinois Supreme Court.

18 (u) To establish a Women's and Children's Pre-release
19 Community Supervision Program for the purpose of providing
20 housing and services to eligible female inmates, as
21 determined by the Department, and their newborn and young
22 children.

23 (v) To do all other acts necessary to carry out the
24 provisions of this Chapter.

25 (2) The Department of Corrections shall by January 1, 1998,
26 consider building and operating a correctional facility within
27 100 miles of a county of over 2,000,000 inhabitants, especially
28 a facility designed to house juvenile participants in the
29 impact incarceration program.

30 (3) When the Department lets bids for contracts for medical
31 services to be provided to persons committed to Department
32 facilities by a health maintenance organization, medical
33 service corporation, or other health care provider, the bid may
34 only be let to a health care provider that has obtained an
35 irrevocable letter of credit or performance bond issued by a
36 company whose bonds are rated AAA by a bond rating

1 organization.

2 (4) When the Department lets bids for contracts for food or
3 commissary services to be provided to Department facilities,
4 the bid may only be let to a food or commissary services
5 provider that has obtained an irrevocable letter of credit or
6 performance bond issued by a company whose bonds are rated AAA
7 by a bond rating organization.

8 (Source: P.A. 91-239, eff. 1-1-00; 91-357, eff. 7-29-99;
9 92-444, eff. 1-1-02; 92-712, eff. 1-1-03.)