



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB2543

Introduced 2/18/2005, by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-10  
705 ILCS 405/2-10.1

from Ch. 37, par. 802-10  
from Ch. 37, par. 802-10.1

Amends the Juvenile Court Act of 1987. Provides that where the Department of Children and Family Services Guardianship Administrator is appointed as the executive temporary custodian, the Department of Children and Family Services shall file with the court and serve on the parties a parent-child visiting plan, within 5 days, excluding weekends and holidays, after the appointment. Provides that the parent-child visiting plan shall set out the time and place of visits, the frequency of visits, the length of visits, who shall be present at the visits, and where appropriate, the minor's opportunities to have telephone and mail communication with the parents. Provides that for good cause, the court may waive the requirement to file the parent-child visiting plan or extend the time for filing the parent-child visiting plan.

LRB094 09292 RXD 39531 b

1 AN ACT concerning criminal law.

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 2-10 and 2-10.1 as follows:

6 (705 ILCS 405/2-10) (from Ch. 37, par. 802-10)

7 Sec. 2-10. Temporary custody hearing. At the appearance of  
8 the minor before the court at the temporary custody hearing,  
9 all witnesses present shall be examined before the court in  
10 relation to any matter connected with the allegations made in  
11 the petition.

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

15 (2) If the court finds that there is probable cause to  
16 believe that the minor is abused, neglected or dependent, the  
17 court shall state in writing the factual basis supporting its  
18 finding and the minor, his or her parent, guardian, custodian  
19 and other persons able to give relevant testimony shall be  
20 examined before the court. The Department of Children and  
21 Family Services shall give testimony concerning indicated  
22 reports of abuse and neglect, of which they are aware of  
23 through the central registry, involving the minor's parent,  
24 guardian or custodian. After such testimony, the court may,  
25 consistent with the health, safety and best interests of the  
26 minor, enter an order that the minor shall be released upon the  
27 request of parent, guardian or custodian if the parent,  
28 guardian or custodian appears to take custody. Custodian shall  
29 include any agency of the State which has been given custody or  
30 wardship of the child. If it is consistent with the health,  
31 safety and best interests of the minor, the court may also  
32 prescribe shelter care and order that the minor be kept in a

1 suitable place designated by the court or in a shelter care  
2 facility designated by the Department of Children and Family  
3 Services or a licensed child welfare agency; however, a minor  
4 charged with a criminal offense under the Criminal Code of 1961  
5 or adjudicated delinquent shall not be placed in the custody of  
6 or committed to the Department of Children and Family Services  
7 by any court, except a minor less than 13 years of age and  
8 committed to the Department of Children and Family Services  
9 under Section 5-710 of this Act or a minor for whom an  
10 independent basis of abuse, neglect, or dependency exists,  
11 which must be defined by departmental rule. In placing the  
12 minor, the Department or other agency shall, to the extent  
13 compatible with the court's order, comply with Section 7 of the  
14 Children and Family Services Act. In determining the health,  
15 safety and best interests of the minor to prescribe shelter  
16 care, the court must find that it is a matter of immediate and  
17 urgent necessity for the safety and protection of the minor or  
18 of the person or property of another that the minor be placed  
19 in a shelter care facility or that he or she is likely to flee  
20 the jurisdiction of the court, and must further find that  
21 reasonable efforts have been made or that, consistent with the  
22 health, safety and best interests of the minor, no efforts  
23 reasonably can be made to prevent or eliminate the necessity of  
24 removal of the minor from his or her home. The court shall  
25 require documentation from the Department of Children and  
26 Family Services as to the reasonable efforts that were made to  
27 prevent or eliminate the necessity of removal of the minor from  
28 his or her home or the reasons why no efforts reasonably could  
29 be made to prevent or eliminate the necessity of removal. When  
30 a minor is placed in the home of a relative, the Department of  
31 Children and Family Services shall complete a preliminary  
32 background review of the members of the minor's custodian's  
33 household in accordance with Section 4.3 of the Child Care Act  
34 of 1969 within 90 days of that placement. If the minor is  
35 ordered placed in a shelter care facility of the Department of  
36 Children and Family Services or a licensed child welfare

1 agency, the court shall, upon request of the appropriate  
2 Department or other agency, appoint the Department of Children  
3 and Family Services Guardianship Administrator or other  
4 appropriate agency executive temporary custodian of the minor  
5 and the court may enter such other orders related to the  
6 temporary custody as it deems fit and proper, including the  
7 provision of services to the minor or his family to ameliorate  
8 the causes contributing to the finding of probable cause or to  
9 the finding of the existence of immediate and urgent necessity.

10 Where the Department of Children and Family Services  
11 Guardianship Administrator is appointed as the executive  
12 temporary custodian, the Department of Children and Family  
13 Services shall file with the court and serve on the parties a  
14 parent-child visiting plan, within 5 days, excluding weekends  
15 and holidays, after the appointment. The parent-child visiting  
16 plan shall set out the time and place of visits, the frequency  
17 of visits, the length of visits, who shall be present at the  
18 visits, and where appropriate, the minor's opportunities to  
19 have telephone and mail communication with the parents. For  
20 good cause, the court may waive the requirement to file the  
21 parent-child visiting plan or extend the time for filing the  
22 parent-child visiting plan. Any party may, by motion, request  
23 the court to review the parent-child visiting plan to determine  
24 whether it is reasonably calculated to expeditiously  
25 facilitate the achievement of reunification and is consistent  
26 with the minor's best interest. The frequency, duration, and  
27 locations of visitation shall be measured by the needs of the  
28 child and family, and not by the convenience of Department  
29 personnel. Child development principles shall be considered by  
30 the court in its analysis of how frequent visitation should be,  
31 how long it should last, where it should take place, and who  
32 should be present. If after receiving evidence, the court  
33 determines that the parent-child visiting plan is not  
34 reasonably calculated to expeditiously facilitate the  
35 achievement of reunification or that the restrictions placed on  
36 parent-child contact are contrary to the child's best

1 interests, the court shall put in writing the factual basis  
2 supporting the determination and enter specific findings based  
3 on the evidence. The court shall enter an order for the  
4 Department to implement changes to the parent-child visiting  
5 plan, consistent with the court's findings. At any stage of  
6 proceeding, any party may by motion request the court to enter  
7 any orders necessary to implement the parent-child visiting  
8 plan. Nothing under this subsection (2) shall restrict the  
9 court from granting discretionary authority to the Department  
10 to increase opportunities for additional parent-child  
11 contacts, without further court orders. Nothing in this  
12 subsection (2) shall restrict the Department from immediately  
13 restricting or terminating parent-child contact, without  
14 either amending the parent-child visiting plan or obtaining a  
15 court order, where the Department or its assigns reasonably  
16 believe that continuation of parent-child contact, as set out  
17 in the parent-child visiting plan, would place the minor in  
18 imminent risk of harm. Where the restriction or termination on  
19 parent-child contact is inconsistent with the parent-child  
20 visiting plan filed with the court, the Department shall file  
21 with the court and serve on the parties an amended plan within  
22 5 days, excluding weekends and holidays, after restricting or  
23 terminating parent-child contact. Any party may, by motion,  
24 request the court to review the parent-child visiting plan to  
25 determine whether the parent-child visiting plan is reasonably  
26 calculated to expeditiously facilitate the achievement of  
27 reunification, and is consistent with the minor's best  
28 interest.

29 Acceptance of services shall not be considered an admission  
30 of any allegation in a petition made pursuant to this Act, nor  
31 may a referral of services be considered as evidence in any  
32 proceeding pursuant to this Act, except where the issue is  
33 whether the Department has made reasonable efforts to reunite  
34 the family. In making its findings that it is consistent with  
35 the health, safety and best interests of the minor to prescribe  
36 shelter care, the court shall state in writing (i) the factual

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

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

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

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

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

18 NOTICE TO PARENTS AND CHILDREN  
 19 OF SHELTER CARE HEARING

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

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

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

- 36 1. To ask the court to appoint a lawyer if they

1 cannot afford one.

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

4 3. To present evidence concerning:

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

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

12 c. The best interests of the child.

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

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

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

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

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

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

32 3. Your signature.

33 4. Signature must be notarized.

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



1           At the rehearing, your rights are the same as at the  
2           initial shelter care hearing. The enclosed notice explains  
3           those rights.

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

6                     1. To have a guardian ad litem appointed.

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

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

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

13                           c. Their best interests.

14                     3. To cross examine witnesses for other parties.

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

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

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 17 years of age must be kept  
33           separate from confined adults and may not at any time be kept  
34           in the same cell, room, or yard with adults confined pursuant  
35           to the criminal law.

36           (7) If the minor is not brought before a judicial officer

1 within the time period as specified in Section 2-9, the minor  
2 must immediately be released from custody.

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

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

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

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

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

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

1 temporary custody and the child can be cared for at home  
2 without endangering the child's health or safety.

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

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

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

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

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

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

27 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;  
28 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;  
29 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

30 (705 ILCS 405/2-10.1) (from Ch. 37, par. 802-10.1)

31 Sec. 2-10.1. Whenever a minor is placed in shelter care  
32 with the Department or a licensed child welfare agency in  
33 accordance with Section 2-10, the Department or agency, as  
34 appropriate, shall prepare and file with the court within 45  
35 days of placement under Section 2-10 a case plan which complies

1 with the federal Adoption Assistance and Child Welfare Act of  
2 1980 and is consistent with the health, safety and best  
3 interests of the minor.

4 For the purposes of this Act, "case plan" and "service  
5 plan" shall have the same meaning. Where the minor's permanency  
6 goal is to return home, each case plan filed pursuant to this  
7 Act shall include an updated parent-child visiting plan. At all  
8 stages of the proceeding, the parent-child visiting plan shall  
9 be reviewable by the court pursuant to the procedure provided  
10 under paragraph (2) of Section 2-10 of this Act. Nothing in  
11 this Section shall prevent parent-child visitation where the  
12 minor's permanency goal is other than to return home.

13 (Source: P.A. 90-28, eff. 1-1-98.)