

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 10 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 the permanency goal and is
26 consistent with the minor's best interest. The frequency,
27 duration, and locations of visitation shall be measured by the
28 needs of the child and family, and not by the convenience of
29 Department personnel. Child development principles shall be
30 considered by the court in its analysis of how frequent
31 visitation should be, how long it should last, where it should
32 take place, and who should be present. If upon motion of the
33 party to review the plan and after receiving evidence, the
34 court determines that the parent-child visiting plan is not
35 reasonably calculated to expeditiously facilitate the
36 achievement of the permanency goal or that the restrictions

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

28 Acceptance of services shall not be considered an admission
29 of any allegation in a petition made pursuant to this Act, nor
30 may 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 17 years of age must be kept
32 separate from confined adults and may not at any time be kept
33 in the same cell, room, or yard with adults confined pursuant
34 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 405/2-10.1) (from Ch. 37, par. 802-10.1)

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

1 1980 and is consistent with the health, safety and best
2 interests of the minor.

3 For the purposes of this Act, "case plan" and "service
4 plan" shall have the same meaning.

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