

HB5291



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5291

Introduced 2/8/2012, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-501

Amends the Juvenile Court Act of 1987. Makes a technical change in a Section concerning detention or shelter care hearings.

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A BILL FOR

1 AN ACT concerning courts.

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

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

6 (705 ILCS 405/5-501)

7 Sec. 5-501. Detention or shelter care hearing. At the ~~the~~
8 appearance of the minor before the court at the detention or
9 shelter care hearing, the court shall receive all relevant
10 information and evidence, including affidavits concerning the
11 allegations made in the petition. Evidence used by the court in
12 its findings or stated in or offered in connection with this
13 Section may be by way of proffer based on reliable information
14 offered by the State or minor. All evidence shall be admissible
15 if it is relevant and reliable regardless of whether it would
16 be admissible under the rules of evidence applicable at a
17 trial. No hearing may be held unless the minor is represented
18 by counsel and no hearing shall be held until the minor has had
19 adequate opportunity to consult with counsel.

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

23 (2) If the court finds that there is probable cause to

1 believe that the minor is a delinquent minor, the minor, his or
2 her parent, guardian, custodian and other persons able to give
3 relevant testimony may be examined before the court. The court
4 may also consider any evidence by way of proffer based upon
5 reliable information offered by the State or the minor. All
6 evidence, including affidavits, shall be admissible if it is
7 relevant and reliable regardless of whether it would be
8 admissible under the rules of evidence applicable at trial.
9 After such evidence is presented, the court may enter an order
10 that the minor shall be released upon the request of a parent,
11 guardian or legal custodian if the parent, guardian or
12 custodian appears to take custody.

13 If the court finds that it is a matter of immediate and
14 urgent necessity for the protection of the minor or of the
15 person or property of another that the minor be detained or
16 placed in a shelter care facility or that he or she is likely
17 to flee the jurisdiction of the court, the court may prescribe
18 detention or 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; otherwise it shall
22 release the minor from custody. If the court prescribes shelter
23 care, then in placing the minor, the Department or other agency
24 shall, to the extent compatible with the court's order, comply
25 with Section 7 of the Children and Family Services Act. In
26 making the determination of the existence of immediate and

1 urgent necessity, the court shall consider among other matters:

2 (a) the nature and seriousness of the alleged offense; (b) the
3 minor's record of delinquency offenses, including whether the
4 minor has delinquency cases pending; (c) the minor's record of
5 willful failure to appear following the issuance of a summons
6 or warrant; (d) the availability of non-custodial
7 alternatives, including the presence of a parent, guardian or
8 other responsible relative able and willing to provide
9 supervision and care for the minor and to assure his or her
10 compliance with a summons. If the minor is ordered placed in a
11 shelter care facility of a licensed child welfare agency, the
12 court shall, upon request of the agency, appoint the
13 appropriate agency executive temporary custodian of the minor
14 and the court may enter such other orders related to the
15 temporary custody of the minor as it deems fit and proper.

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

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

24 (3) Only when there is reasonable cause to believe that the
25 minor taken into custody is a delinquent minor may the minor be
26 kept or detained in a facility authorized for juvenile

1 detention. This Section shall in no way be construed to limit
2 subsection (4).

3 (4) Minors 12 years of age or older must be kept separate
4 from confined adults and may not at any time be kept in the
5 same cell, room or yard with confined adults. This paragraph
6 (4):

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

15 (b) To accept or hold minors, 12 years of age or older,
16 after the time period prescribed in clause (a) of
17 subsection (4) of this Section but not exceeding 7 days
18 including Saturdays, Sundays, and holidays, pending an
19 adjudicatory hearing, county jails shall comply with all
20 temporary detention standards promulgated by the
21 Department of Corrections and training standards approved
22 by the Illinois Law Enforcement Training Standards Board.

23 (c) To accept or hold minors 12 years of age or older,
24 after the time period prescribed in clause (a) and (b), of
25 this subsection county jails shall comply with all
26 programmatic and training standards for juvenile detention

1 homes promulgated by the Department of Corrections.

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

5 (6) If neither the parent, guardian or legal custodian
6 appears within 24 hours to take custody of a minor released
7 from detention or shelter care, then the clerk of the court
8 shall set the matter for rehearing not later than 7 days after
9 the original order and shall issue a summons directed to the
10 parent, guardian or legal custodian to appear. At the same time
11 the probation department shall prepare a report on the minor.
12 If a parent, guardian or legal custodian does not appear at
13 such rehearing, the judge may enter an order prescribing that
14 the minor be kept in a suitable place designated by the
15 Department of Human Services or a licensed child welfare
16 agency. The time during which a minor is in custody after being
17 released upon the request of a parent, guardian or legal
18 custodian shall be considered as time spent in detention for
19 purposes of scheduling the trial.

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

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

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

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

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

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

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

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1 (Source: P.A. 95-846, eff. 1-1-09.)