

AN ACT concerning civil law.

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

Section 5. The Juvenile Court Act of 1987 is amended by changing Section 2-10 as follows:

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

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

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

(2) If the court finds that there is probable cause to believe that the minor is abused, neglected or dependent, the court shall state in writing the factual basis supporting its finding and the minor, his or her parent, guardian, custodian and other persons able to give relevant testimony shall be examined before the court. The Department of Children and Family Services shall give testimony concerning indicated reports of abuse and neglect, of which they are aware ~~of~~ through the central registry, involving the minor's parent,

guardian or custodian. After such testimony, the court may, consistent with the health, safety and best interests of the minor, enter an order that the minor shall be released upon the request of parent, guardian or custodian if the parent, guardian or custodian appears to take custody. If it is determined that a parent's, guardian's, or custodian's compliance with critical services mitigates the necessity for removal of the minor from his or her home, the court may enter an Order of Protection setting forth reasonable conditions of behavior that a parent, guardian, or custodian must observe for a specified period of time, not to exceed 12 months, without a violation; provided, however, that the 12-month period shall begin anew after any violation. "Custodian" includes the Department of Children and Family Services, if it has been given custody of the child, or any other agency of the State which has been given custody or wardship of the child. If it is consistent with the health, safety and best interests of the minor, the court may also prescribe shelter care and order that the minor be kept in a suitable place designated by the court or in a shelter care facility designated by the Department of Children and Family Services or a licensed child welfare agency; however, on and after January 1, 2015 (the effective date of Public Act 98-803) and before January 1, 2017, a minor charged with a criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or adjudicated delinquent shall not be placed in the custody of or committed to the Department

of Children and Family Services by any court, except a minor less than 16 years of age and committed to the Department of Children and Family Services under Section 5-710 of this Act or a minor for whom an independent basis of abuse, neglect, or dependency exists; and on and after January 1, 2017, a minor charged with a criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or adjudicated delinquent shall not be placed in the custody of or committed to the Department of Children and Family Services by any court, except a minor less than 15 years of age and committed to the Department of Children and Family Services under Section 5-710 of this Act or a minor for whom an independent basis of abuse, neglect, or dependency exists. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency.

In placing the minor, the Department or other agency shall, to the extent compatible with the court's order, comply with Section 7 of the Children and Family Services Act. In determining the health, safety and best interests of the minor to prescribe shelter care, the court must find that it is a matter of immediate and urgent necessity for the safety and protection of the minor or of the person or property of another that the minor be placed in a shelter care facility or that he or she is likely to flee the jurisdiction of the court, and must further find that reasonable efforts have been made or

that, consistent with the health, safety and best interests of the minor, no efforts reasonably can be made to prevent or eliminate the necessity of removal of the minor from his or her home. The court shall require documentation from the Department of Children and Family Services as to the reasonable efforts that were made to prevent or eliminate the necessity of removal of the minor from his or her home or the reasons why no efforts reasonably could be made to prevent or eliminate the necessity of removal. When a minor is placed in the home of a relative, the Department of Children and Family Services shall complete a preliminary background review of the members of the minor's custodian's household in accordance with Section 4.3 of the Child Care Act of 1969 within 90 days of that placement. If the minor is ordered placed in a shelter care facility of the Department of Children and Family Services or a licensed child welfare agency, the court shall, upon request of the appropriate Department or other agency, appoint the Department of Children and Family Services Guardianship Administrator or other appropriate agency executive temporary custodian of the minor and the court may enter such other orders related to the temporary custody as it deems fit and proper, including the provision of services to the minor or his family to ameliorate the causes contributing to the finding of probable cause or to the finding of the existence of immediate and urgent necessity.

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 10 days, excluding weekends and holidays, after the appointment. 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.

Where the Department of Children and Family Services Guardianship Administrator is appointed as the executive temporary custodian, and when the child has siblings in care, the Department of Children and Family Services shall file with the court and serve on the parties a sibling placement and contact plan within 10 days, excluding weekends and holidays, after the appointment. The sibling placement and contact plan shall set forth whether the siblings are placed together, and if they are not placed together, what, if any, efforts are being made to place them together. If the Department has determined that it is not in a child's best interest to be placed with a sibling, the Department shall document in the sibling placement and contact plan the basis for its determination. For siblings placed separately, the sibling placement and contact plan shall set the time and place for visits, the frequency of the visits, the length of visits, who shall be present for the visits, and where appropriate, the child's opportunities to have contact with their siblings in

addition to in person contact. If the Department determines it is not in the best interest of a sibling to have contact with a sibling, the Department shall document in the sibling placement and contact plan the basis for its determination. The sibling placement and contact plan shall specify a date for development of the Sibling Contact Support Plan, under subsection (f) of Section 7.4 of the Children and Family Services Act, and shall remain in effect until the Sibling Contact Support Plan is developed.

For good cause, the court may waive the requirement to file the parent-child visiting plan or the sibling placement and contact plan, or extend the time for filing either plan. Any party may, by motion, request the court to review the parent-child visiting plan to determine whether it is reasonably calculated to expeditiously facilitate the achievement of the permanency goal. A party may, by motion, request the court to review the parent-child visiting plan or the sibling placement and contact plan to determine whether it is consistent with the minor's best interest. The court may refer the parties to mediation where available. The frequency, duration, and locations of visitation shall be measured by the needs of the child and family, and not by the convenience of Department personnel. Child development principles shall be considered by the court in its analysis of how frequent visitation should be, how long it should last, where it should take place, and who should be present. If upon motion of the

party to review either plan and after receiving evidence, the court determines that the parent-child visiting plan is not reasonably calculated to expeditiously facilitate the achievement of the permanency goal or that the restrictions placed on parent-child contact or sibling placement or contact are contrary to the child's best interests, the court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. The court shall enter an order for the Department to implement changes to the parent-child visiting plan or sibling placement or contact plan, consistent with the court's findings. At any stage of proceeding, any party may by motion request the court to enter any orders necessary to implement the parent-child visiting plan, sibling placement or contact plan or subsequently developed Sibling Contact Support Plan. Nothing under this subsection (2) shall restrict the court from granting discretionary authority to the Department to increase opportunities for additional parent-child contacts or sibling contacts, without further court orders. Nothing in this subsection (2) shall restrict the Department from immediately restricting or terminating parent-child contact or sibling contacts, without either amending the parent-child visiting plan or the sibling contact plan or obtaining a court order, where the Department or its assigns reasonably believe that continuation of the contact, as set out in the plan, would be contrary to the child's health, safety, and welfare. The

Department shall file with the court and serve on the parties any amendments to the plan within 10 days, excluding weekends and holidays, of the change of the visitation.

Acceptance of services shall not be considered an admission of any allegation in a petition made pursuant to this Act, nor may a referral of services be considered as evidence in any proceeding pursuant to this Act, except where the issue is whether the Department has made reasonable efforts to reunite the family. In making its findings that it is consistent with the health, safety and best interests of the minor to prescribe shelter care, the court shall state in writing (i) the factual basis supporting its findings concerning the immediate and urgent necessity for the protection of the minor or of the person or property of another and (ii) the factual basis supporting its findings that reasonable efforts were made to prevent or eliminate the removal of the minor from his or her home or that no efforts reasonably could be made to prevent or eliminate the removal of the minor from his or her home. The parents, guardian, custodian, temporary custodian and minor shall each be furnished a copy of such written findings. The temporary custodian shall maintain a copy of the court order and written findings in the case record for the child. The order together with the court's findings of fact in support thereof shall be entered of record in the court.

Once the court finds that it is a matter of immediate and urgent necessity for the protection of the minor that the minor

be placed in a shelter care facility, the minor shall not be returned to the parent, custodian or guardian until the court finds that such placement is no longer necessary for the protection of the minor.

If the child is placed in the temporary custody of the Department of Children and Family Services for his or her protection, the court shall admonish the parents, guardian, custodian or responsible relative that the parents must cooperate with the Department of Children and Family Services, comply with the terms of the service plans, and correct the conditions which require the child to be in care, or risk termination of their parental rights. The court shall ensure, by inquiring in open court of each parent, guardian, custodian or responsible relative, that the parent, guardian, custodian or responsible relative has had the opportunity to provide the Department with all known names, addresses, and telephone numbers of each of the minor's living maternal and paternal adult relatives, including, but not limited to, grandparents, aunts, uncles, and siblings. The court shall advise the parents, guardian, custodian or responsible relative to inform the Department if additional information regarding the minor's adult relatives becomes available.

(3) If prior to the shelter care hearing for a minor described in Sections 2-3, 2-4, 3-3 and 4-3 the moving party is unable to serve notice on the party respondent, the shelter care hearing may proceed ex parte. A shelter care order from an

ex parte hearing shall be endorsed with the date and hour of issuance and shall be filed with the clerk's office and entered of record. The order shall expire after 10 days from the time it is issued unless before its expiration it is renewed, at a hearing upon appearance of the party respondent, or upon an affidavit of the moving party as to all diligent efforts to notify the party respondent by notice as herein prescribed. The notice prescribed shall be in writing and shall be personally delivered to the minor or the minor's attorney and to the last known address of the other person or persons entitled to notice. The notice shall also state the nature of the allegations, the nature of the order sought by the State, including whether temporary custody is sought, and the consequences of failure to appear and shall contain a notice that the parties will not be entitled to further written notices or publication notices of proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights, except as required by Supreme Court Rule 11; and shall explain the right of the parties and the procedures to vacate or modify a shelter care order as provided in this Section. The notice for a shelter care hearing shall be substantially as follows:

NOTICE TO PARENTS AND CHILDREN
OF SHELTER CARE HEARING

On at, before the Honorable
....., (address:), the State

of Illinois will present evidence (1) that (name of child or children) are abused, neglected or dependent for the following reasons:

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

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

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

1. To ask the court to appoint a lawyer if they cannot afford one.
2. To ask the court to continue the hearing to allow them time to prepare.
3. To present evidence concerning:
 - a. Whether or not the child or children were abused, neglected or dependent.
 - b. Whether or not there is "immediate and urgent necessity" to remove the child from home (including: their ability to care for the child, conditions in the home, alternative means of protecting the child other than removal).

c. The best interests of the child.

4. To cross examine the State's witnesses.

The Notice for rehearings shall be substantially as follows:

NOTICE OF PARENT'S AND CHILDREN'S RIGHTS

TO REHEARING ON TEMPORARY CUSTODY

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

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

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

3. Your signature.

4. Signature must be notarized.

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

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

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

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

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

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

(5) Only when there is reasonable cause to believe that the minor taken into custody is a person described in subsection (3) of Section 5-105 may the minor be kept or detained in a

detention home or county or municipal jail. This Section shall in no way be construed to limit subsection (6).

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

(7) If the minor is not brought before a judicial officer within the time period as specified in Section 2-9, the minor must immediately be released from custody.

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

(9) Notwithstanding any other provision of this Section any interested party, including the State, the temporary custodian, an agency providing services to the minor or family

under a service plan pursuant to Section 8.2 of the Abused and Neglected Child Reporting Act, foster parent, or any of their representatives, on notice to all parties entitled to notice, may file a motion that it is in the best interests of the minor to modify or vacate a temporary custody order on any of the following grounds:

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

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

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

(d) Services provided by the Department of Children and Family Services or a child welfare agency or other service provider have been successful in eliminating the need for temporary custody and the child can be cared for at home without endangering the child's health or safety.

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

The clerk shall set the matter for hearing not later than 14 days after such motion is filed. In the event that the court

modifies or vacates a temporary custody order but does not vacate its finding of probable cause, the court may order that appropriate services be continued or initiated in behalf of the minor and his or her family.

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

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

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

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

(11) The changes made to this Section by Public Act 98-61 apply to a minor who has been arrested or taken into custody on or after January 1, 2014 (the effective date of Public Act 98-61).

(12) After the court has placed a minor in the care of a temporary custodian pursuant to this Section, any party may file a motion requesting the court to grant the temporary

custodian the authority to serve as a surrogate decision maker for the minor under the Health Care Surrogate Act for purposes of making decisions pursuant to paragraph (1) of subsection (b) of Section 20 of the Health Care Surrogate Act. The court may grant the motion if it determines by clear and convincing evidence that it is in the best interests of the minor to grant the temporary custodian such authority. In making its determination, the court shall weigh the following factors in addition to considering the best interests factors listed in subsection (4.05) of Section 1-3 of this Act:

(a) the efforts to identify and locate the respondents and adult family members of the minor and the results of those efforts;

(b) the efforts to engage the respondents and adult family members of the minor in decision making on behalf of the minor;

(c) the length of time the efforts in paragraphs (a) and (b) have been ongoing;

(d) the relationship between the respondents and adult family members and the minor;

(e) medical testimony regarding the extent to which the minor is suffering and the impact of a delay in decision-making on the minor; and

(f) any other factor the court deems relevant.

If the Department of Children and Family Services is the temporary custodian of the minor, in addition to the

requirements of paragraph (1) of subsection (b) of Section 20 of the Health Care Surrogate Act, the Department shall follow its rules and procedures in exercising authority granted under this subsection.

(Source: P.A. 99-625, eff. 1-1-17; 99-642, eff. 7-28-16; 100-159, eff. 8-18-17; revised 10-5-17.)

Section 10. The Health Care Surrogate Act is amended by changing Section 25 as follows:

(755 ILCS 40/25) (from Ch. 110 1/2, par. 851-25)

Sec. 25. Surrogate decision making.

(a) When a patient lacks decisional capacity, the health care provider must make a reasonable inquiry as to the availability and authority of a health care agent under the Powers of Attorney for Health Care Law. When no health care agent is authorized and available, the health care provider must make a reasonable inquiry as to the availability of possible surrogates listed in items (1) through (4) of this subsection. For purposes of this Section, a reasonable inquiry includes, but is not limited to, identifying a member of the patient's family or other health care agent by examining the patient's personal effects or medical records. If a family member or other health care agent is identified, an attempt to contact that person by telephone must be made within 24 hours after a determination by the provider that the patient lacks

decisional capacity. No person shall be liable for civil damages or subject to professional discipline based on a claim of violating a patient's right to confidentiality as a result of making a reasonable inquiry as to the availability of a patient's family member or health care agent, except for willful or wanton misconduct.

The surrogate decision makers, as identified by the attending physician, are then authorized to make decisions as follows: (i) for patients who lack decisional capacity and do not have a qualifying condition, medical treatment decisions may be made in accordance with subsection (b-5) of Section 20; and (ii) for patients who lack decisional capacity and have a qualifying condition, medical treatment decisions including whether to forgo life-sustaining treatment on behalf of the patient may be made without court order or judicial involvement in the following order of priority:

- (1) the patient's guardian of the person;
- (2) the patient's spouse;
- (3) any adult son or daughter of the patient;
- (4) either parent of the patient;
- (5) any adult brother or sister of the patient;
- (6) any adult grandchild of the patient;
- (7) a close friend of the patient;
- (8) the patient's guardian of the estate; ~~and~~

(9) the patient's temporary custodian appointed under subsection (2) of Section 2-10 of the Juvenile Court Act of

1987 if the court has entered an order granting such authority pursuant to subsection (12) of Section 2-10 of the Juvenile Court Act of 1987.

The health care provider shall have the right to rely on any of the above surrogates if the provider believes after reasonable inquiry that neither a health care agent under the Powers of Attorney for Health Care Law nor a surrogate of higher priority is available.

Where there are multiple surrogate decision makers at the same priority level in the hierarchy, it shall be the responsibility of those surrogates to make reasonable efforts to reach a consensus as to their decision on behalf of the patient regarding the forgoing of life-sustaining treatment. If 2 or more surrogates who are in the same category and have equal priority indicate to the attending physician that they disagree about the health care matter at issue, a majority of the available persons in that category (or the parent with custodial rights) shall control, unless the minority (or the parent without custodial rights) initiates guardianship proceedings in accordance with the Probate Act of 1975. No health care provider or other person is required to seek appointment of a guardian.

(b) After a surrogate has been identified, the name, address, telephone number, and relationship of that person to the patient shall be recorded in the patient's medical record.

(c) Any surrogate who becomes unavailable for any reason

may be replaced by applying the provisions of Section 25 in the same manner as for the initial choice of surrogate.

(d) In the event an individual of a higher priority to an identified surrogate becomes available and willing to be the surrogate, the individual with higher priority may be identified as the surrogate. In the event an individual in a higher, a lower, or the same priority level or a health care provider seeks to challenge the priority of or the life-sustaining treatment decision of the recognized surrogate decision maker, the challenging party may initiate guardianship proceedings in accordance with the Probate Act of 1975.

(e) The surrogate decision maker shall have the same right as the patient to receive medical information and medical records and to consent to disclosure.

(f) Any surrogate shall have the authority to make decisions for the patient until removed by the patient who no longer lacks decisional capacity, appointment of a guardian of the person, or the patient's death.

(Source: P.A. 96-492, eff. 8-14-09.)