

# SB0192



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB0192

Introduced 1/30/2019, by Sen. Laura Fine

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-10

from Ch. 37, par. 802-10

Amends the Juvenile Court Act of 1987. Provides that if the parent, guardian, legal custodian, responsible relative, minor age 8 or over, or counsel of the minor did not have actual notice of and was not present at the shelter care hearing, he or she may file a motion with an affidavit (rather than affidavit) setting forth these facts, and the court shall set the matter for rehearing not later than 48 hours, excluding Sundays and legal holidays, after the filing of the motion. Makes conforming changes. Effective immediately.

LRB101 08502 SLF 53579 b

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 2-10 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 through  
23 the central registry, involving the minor's parent, guardian or

1     custodian. After such testimony, the court may, consistent with  
2     the health, safety and best interests of the minor, enter an  
3     order that the minor shall be released upon the request of  
4     parent, guardian or custodian if the parent, guardian or  
5     custodian appears to take custody. If it is determined that a  
6     parent's, guardian's, or custodian's compliance with critical  
7     services mitigates the necessity for removal of the minor from  
8     his or her home, the court may enter an Order of Protection  
9     setting forth reasonable conditions of behavior that a parent,  
10    guardian, or custodian must observe for a specified period of  
11    time, not to exceed 12 months, without a violation; provided,  
12    however, that the 12-month period shall begin anew after any  
13    violation. "Custodian" includes the Department of Children and  
14    Family Services, if it has been given custody of the child, or  
15    any other 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, on and  
22    after January 1, 2015 (the effective date of Public Act 98-803)  
23    and before January 1, 2017, a minor charged with a criminal  
24    offense under the Criminal Code of 1961 or the Criminal Code of  
25    2012 or adjudicated delinquent shall not be placed in the  
26    custody of or committed to the Department of Children and

1 Family Services by any court, except a minor less than 16 years  
2 of age and committed to the Department of Children and Family  
3 Services under Section 5-710 of this Act or a minor for whom an  
4 independent basis of abuse, neglect, or dependency exists; and  
5 on and after January 1, 2017, a minor charged with a criminal  
6 offense under the Criminal Code of 1961 or the Criminal Code of  
7 2012 or adjudicated delinquent shall not be placed in the  
8 custody of or committed to the Department of Children and  
9 Family Services by any court, except a minor less than 15 years  
10 of age and committed to the Department of Children and Family  
11 Services under Section 5-710 of this Act or a minor for whom an  
12 independent basis of abuse, neglect, or dependency exists. An  
13 independent basis exists when the allegations or adjudication  
14 of abuse, neglect, or dependency do not arise from the same  
15 facts, incident, or circumstances which give rise to a charge  
16 or adjudication of delinquency.

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

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

25 Where the Department of Children and Family Services  
26 Guardianship Administrator is appointed as the executive

1 temporary custodian, the Department of Children and Family  
2 Services shall file with the court and serve on the parties a  
3 parent-child visiting plan, within 10 days, excluding weekends  
4 and holidays, after the appointment. The parent-child visiting  
5 plan shall set out the time and place of visits, the frequency  
6 of visits, the length of visits, who shall be present at the  
7 visits, and where appropriate, the minor's opportunities to  
8 have telephone and mail communication with the parents.

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

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

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

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



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

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

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

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

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

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

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

23 NOTICE TO PARENTS AND CHILDREN  
 24 OF SHELTER CARE HEARING

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

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

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

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

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

15 1. To ask the court to appoint a lawyer if they  
 16 cannot afford one.

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

19 3. To present evidence concerning:

20 a. Whether or not the child or children were  
 21 abused, neglected or dependent.

22 b. Whether or not there is "immediate and  
 23 urgent necessity" to remove the child from home  
 24 (including: their ability to care for the child,  
 25 conditions in the home, alternative means of  
 26 protecting the child other than removal).

1 c. The best interests of the child.

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

3 The Notice for rehearings shall be substantially as  
4 follows:

5 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS  
6 TO REHEARING ON TEMPORARY CUSTODY

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

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

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

21 3. Your signature.

22 4. Signature must be notarized.

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

25 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 and ~~or~~ was not present at the shelter  
19 care hearing, he or she may file a motion with an affidavit  
20 setting forth these facts, and the court ~~clerk~~ shall set the  
21 matter for rehearing not later than 48 hours, excluding Sundays  
22 and legal holidays, after the filing of the motion ~~affidavit~~.  
23 At the rehearing, the court shall proceed in the same manner as  
24 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

1 (3) of Section 5-105 may the minor be kept or detained in a  
2 detention home or county or municipal jail. This Section shall  
3 in no way be construed to limit subsection (6).

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

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

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

25 (9) Notwithstanding any other provision of this Section any  
26 interested party, including the State, the temporary

1     custodian, an agency providing services to the minor or family  
2     under a service plan pursuant to Section 8.2 of the Abused and  
3     Neglected Child Reporting Act, foster parent, or any of their  
4     representatives, on notice to all parties entitled to notice,  
5     may file a motion that it is in the best interests of the minor  
6     to modify or vacate a temporary custody order on any of the  
7     following grounds:

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

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

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

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

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

26            The clerk shall set the matter for hearing not later than



1 14 days after such motion is filed. In the event that the court  
2 modifies or vacates a temporary custody order but does not  
3 vacate its finding of probable cause, the court may order that  
4 appropriate services be continued or initiated in behalf of the  
5 minor and his or her family.

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

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

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

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

21 (11) The changes made to this Section by Public Act 98-61  
22 apply to a minor who has been arrested or taken into custody on  
23 or after January 1, 2014 (the effective date of Public Act  
24 98-61).

25 (12) After the court has placed a minor in the care of a  
26 temporary custodian pursuant to this Section, any party may

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

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

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

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

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

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

25 (f) any other factor the court deems relevant.

26 If the Department of Children and Family Services is the

1 temporary custodian of the minor, in addition to the  
2 requirements of paragraph (1) of subsection (b) of Section 20  
3 of the Health Care Surrogate Act, the Department shall follow  
4 its rules and procedures in exercising authority granted under  
5 this subsection.

6 (Source: P.A. 99-625, eff. 1-1-17; 99-642, eff. 7-28-16;  
7 100-159, eff. 8-18-17; 100-863, eff. 8-14-18; 100-959, eff.  
8 1-1-19.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.