



Rep. Mary E. Flowers

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LRB094 04962 DRJ 44164 a

1 AMENDMENT TO HOUSE BILL 248

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 248, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Juvenile Court Act of 1987 is amended by  
6 changing Sections 2-10 and 2-18 as follows:

7 (705 ILCS 405/2-10) (from Ch. 37, par. 802-10)

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

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

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

1 guardian or custodian. After such testimony, the court may,  
2 consistent with the health, safety and best interests of the  
3 minor, enter an order that the minor shall be released upon the  
4 request of parent, guardian or custodian if the parent,  
5 guardian or custodian appears to take custody. Custodian shall  
6 include any agency of the State which has been given custody or  
7 wardship of the child. If it is consistent with the health,  
8 safety and best interests of the minor, the court may also  
9 prescribe shelter care and order that the minor be kept in a  
10 suitable place designated by the court or in a shelter care  
11 facility designated by the Department of Children and Family  
12 Services or a licensed child welfare agency; however, a minor  
13 charged with a criminal offense under the Criminal Code of 1961  
14 or adjudicated delinquent shall not be placed in the custody of  
15 or committed to the Department of Children and Family Services  
16 by any court, except a minor less than 13 years of age and  
17 committed to the Department of Children and Family Services  
18 under Section 5-710 of this Act or a minor for whom an  
19 independent basis of abuse, neglect, or dependency exists,  
20 which must be defined by departmental rule. In placing the  
21 minor, the Department or other agency shall, to the extent  
22 compatible with the court's order, comply with Section 7 of the  
23 Children and Family Services Act. In determining the health,  
24 safety and best interests of the minor to prescribe shelter  
25 care, the court must find that it is a matter of immediate and  
26 urgent necessity for the safety and protection of the minor or  
27 of the person or property of another that the minor be placed  
28 in a shelter care facility or that he or she is likely to flee  
29 the jurisdiction of the court, and must further find that  
30 reasonable efforts have been made or that, consistent with the  
31 health, safety and best interests of the minor, no efforts  
32 reasonably can be made to prevent or eliminate the necessity of  
33 removal of the minor from his or her home. The court shall  
34 require documentation from the Department of Children and

1 Family Services as to the reasonable efforts that were made to  
2 prevent or eliminate the necessity of removal of the minor from  
3 his or her home or the reasons why no efforts reasonably could  
4 be made to prevent or eliminate the necessity of removal. When  
5 a minor is placed in the home of a relative, the Department of  
6 Children and Family Services shall complete a preliminary  
7 background review of the members of the minor's custodian's  
8 household in accordance with Section 4.3 of the Child Care Act  
9 of 1969 within 90 days of that placement. If the minor is  
10 ordered placed in a shelter care facility of the Department of  
11 Children and Family Services or a licensed child welfare  
12 agency, the court shall, upon request of the appropriate  
13 Department or other agency, appoint the Department of Children  
14 and Family Services Guardianship Administrator or other  
15 appropriate agency executive temporary custodian of the minor  
16 and the court may enter such other orders related to the  
17 temporary custody as it deems fit and proper, including the  
18 provision of services to the minor or his family to ameliorate  
19 the causes contributing to the finding of probable cause or to  
20 the finding of the existence of immediate and urgent necessity.  
21 Acceptance of services shall not be considered an admission of  
22 any allegation in a petition made pursuant to this Act, nor may  
23 a referral of services be considered as evidence in any  
24 proceeding pursuant to this Act, except where the issue is  
25 whether the Department has made reasonable efforts to reunite  
26 the family. In making its findings that it is consistent with  
27 the health, safety and best interests of the minor to prescribe  
28 shelter care, the court shall state in writing (i) the factual  
29 basis supporting its findings concerning the immediate and  
30 urgent necessity for the protection of the minor or of the  
31 person or property of another and (ii) the factual basis  
32 supporting its findings that reasonable efforts were made to  
33 prevent or eliminate the removal of the minor from his or her  
34 home or that no efforts reasonably could be made to prevent or

1 eliminate the removal of the minor from his or her home. The  
2 parents, guardian, custodian, temporary custodian and minor  
3 shall each be furnished a copy of such written findings. The  
4 temporary custodian shall maintain a copy of the court order  
5 and written findings in the case record for the child. The  
6 order together with the court's findings of fact in support  
7 thereof shall be entered of record in the court.

8 If the Department of Children and Family Services  
9 Guardianship Administrator is appointed the executive  
10 temporary custodian of a minor, the Department has the  
11 authority to authorize appropriate physical and mental health  
12 evaluations of the minor and any emergency medical treatment or  
13 surgical procedure the minor may require unless otherwise  
14 ordered by the court. "Emergency medical treatment or surgical  
15 procedure" means immediate ordinary or major measures  
16 necessary to preserve the life, health, or physical well-being  
17 of the patient. The minor's parents retain their rights to make  
18 all other medical decisions and all education decisions  
19 relating to the minor, unless the court finds that the parents'  
20 retention of these rights is not in the minor's best interests.

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

27 If the child is placed in the temporary custody of the  
28 Department of Children and Family Services for his or her  
29 protection, the court shall admonish the parents, guardian,  
30 custodian or responsible relative that the parents must  
31 cooperate with the Department of Children and Family Services,  
32 comply with the terms of the service plans, and correct the  
33 conditions which require the child to be in care, or risk  
34 termination of their parental rights.

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

27 NOTICE TO PARENTS AND CHILDREN  
 28 OF SHELTER CARE HEARING

29 On ..... at ....., before the Honorable  
 30 ....., (address:) ....., the State  
 31 of Illinois will present evidence (1) that (name of child  
 32 or children) ..... are abused, neglected  
 33 or dependent for the following reasons:  
 34 ..... and (2)

1 that there is "immediate and urgent necessity" to remove  
2 the child or children from the responsible relative.

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

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

11 1. To ask the court to appoint a lawyer if they  
12 cannot afford one.

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

15 3. To present evidence concerning:

16 a. Whether or not the child or children were  
17 abused, neglected or dependent.

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

23 c. The best interests of the child.

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

25 The Notice for rehearings shall be substantially as  
26 follows:

27 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS  
28 TO REHEARING ON TEMPORARY CUSTODY

29 If you were not present at and did not have adequate  
30 notice of the Shelter Care Hearing at which temporary  
31 custody of ..... was awarded to  
32 ....., you have the right to request a full  
33 rehearing on whether the State should have temporary

1 custody of ..... To request this rehearing,  
 2 you must file with the Clerk of the Juvenile Court  
 3 (address): ....., in person or by  
 4 mailing a statement (affidavit) setting forth the  
 5 following:

- 6 1. That you were not present at the shelter care
- 7 hearing.
- 8 2. That you did not get adequate notice (explaining
- 9 how the notice was inadequate).
- 10 3. Your signature.
- 11 4. Signature must be notarized.

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

14 At the rehearing, your rights are the same as at the  
 15 initial shelter care hearing. The enclosed notice explains  
 16 those rights.

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

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

30 (4) If the parent, guardian, legal custodian, responsible  
 31 relative, minor age 8 or over, or counsel of the minor did not  
 32 have actual notice of or was not present at the shelter care  
 33 hearing, he or she may file an affidavit setting forth these  
 34 facts, and the clerk shall set the matter for rehearing not

1 later than 48 hours, excluding Sundays and legal holidays,  
2 after the filing of the affidavit. At the rehearing, the court  
3 shall proceed in the same manner as upon the original hearing.

4 (5) Only when there is reasonable cause to believe that the  
5 minor taken into custody is a person described in subsection  
6 (3) of Section 5-105 may the minor be kept or detained in a  
7 detention home or county or municipal jail. This Section shall  
8 in no way be construed to limit subsection (6).

9 (6) No minor under 16 years of age may be confined in a  
10 jail or place ordinarily used for the confinement of prisoners  
11 in a police station. Minors under 17 years of age must be kept  
12 separate from confined adults and may not at any time be kept  
13 in the same cell, room, or yard with adults confined pursuant  
14 to the criminal law.

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

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

30 (9) Notwithstanding any other provision of this Section any  
31 interested party, including the State, the temporary  
32 custodian, an agency providing services to the minor or family  
33 under a service plan pursuant to Section 8.2 of the Abused and  
34 Neglected Child Reporting Act, foster parent, or any of their

1 representatives, on notice to all parties entitled to notice,  
2 may file a motion that it is in the best interests of the minor  
3 to modify or vacate a temporary custody order on any of the  
4 following grounds:

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

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

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

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

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

23 The clerk shall set the matter for hearing not later than  
24 14 days after such motion is filed. In the event that the court  
25 modifies or vacates a temporary custody order but does not  
26 vacate its finding of probable cause, the court may order that  
27 appropriate services be continued or initiated in behalf of the  
28 minor and his or her family.

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

1 the abused minor provided:

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

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

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

10 (Source: P.A. 89-21, eff. 7-1-95; 89-422; 89-582, eff. 1-1-97;  
11 89-626, eff. 8-9-96; 90-28, eff. 1-1-98; 90-87, eff. 9-1-97;  
12 90-590, eff. 1-1-99; 90-655, eff. 7-30-98.)

13 (705 ILCS 405/2-18) (from Ch. 37, par. 802-18)

14 Sec. 2-18. Evidence.

15 (1) At the adjudicatory hearing, the court shall first  
16 consider only the question whether the minor is abused,  
17 neglected or dependent. The standard of proof and the rules of  
18 evidence in the nature of civil proceedings in this State are  
19 applicable to proceedings under this Article. If the petition  
20 also seeks the appointment of a guardian of the person with  
21 power to consent to adoption of the minor under Section 2-29,  
22 the court may also consider legally admissible evidence at the  
23 adjudicatory hearing that one or more grounds of unfitness  
24 exists under subdivision D of Section 1 of the Adoption Act.

25 (2) In any hearing under this Act, the following shall  
26 constitute prima facie evidence of abuse or neglect, as the  
27 case may be:

28 (a) proof that a minor has a medical diagnosis of  
29 battered child syndrome is prima facie evidence of abuse;

30 (b) proof that a minor has a medical diagnosis of  
31 failure to thrive syndrome is prima facie evidence of  
32 neglect;

33 (c) proof that a minor has a medical diagnosis of fetal

1 alcohol syndrome is prima facie evidence of neglect;

2 (d) proof that a minor has a medical diagnosis at birth  
3 of withdrawal symptoms from narcotics or barbiturates is  
4 prima facie evidence of neglect;

5 (e) proof of injuries sustained by a minor or of the  
6 condition of a minor of such a nature as would ordinarily  
7 not be sustained or exist except by reason of the acts or  
8 omissions of the parent, custodian or guardian of such  
9 minor shall be prima facie evidence of abuse or neglect, as  
10 the case may be;

11 (f) proof that a parent, custodian or guardian of a  
12 minor repeatedly used a drug, to the extent that it has or  
13 would ordinarily have the effect of producing in the user a  
14 substantial state of stupor, unconsciousness,  
15 intoxication, hallucination, disorientation or  
16 incompetence, or a substantial impairment of judgment, or a  
17 substantial manifestation of irrationality, shall be prima  
18 facie evidence of neglect;

19 (g) proof that a parent, custodian, or guardian of a  
20 minor repeatedly used a controlled substance, as defined in  
21 subsection (f) of Section 102 of the Illinois Controlled  
22 Substances Act, in the presence of the minor or a sibling  
23 of the minor is prima facie evidence of neglect. "Repeated  
24 use", for the purpose of this subsection, means more than  
25 one use of a controlled substance as defined in subsection  
26 (f) of Section 102 of the Illinois Controlled Substances  
27 Act;

28 (h) proof that a newborn infant's blood, urine, or  
29 meconium contains any amount of a controlled substance as  
30 defined in subsection (f) of Section 102 of the Illinois  
31 Controlled Substances Act, or a metabolite of a controlled  
32 substance, with the exception of controlled substances or  
33 metabolites of those substances, the presence of which is  
34 the result of medical treatment administered to the mother

1 or the newborn, is prime facie evidence of neglect;

2 (i) proof that a minor was present in a structure or  
3 vehicle in which the minor's parent, custodian, or guardian  
4 was involved in the manufacture of methamphetamine  
5 constitutes prima facie evidence of abuse and neglect.

6 (3) In any hearing under this Act, proof of the abuse,  
7 neglect or dependency of one minor shall be admissible evidence  
8 on the issue of the abuse, neglect or dependency of any other  
9 minor for whom the respondent is responsible.

10 (4) (a) Any writing, record, photograph or x-ray of any  
11 hospital or public or private agency, whether in the form of an  
12 entry in a book or otherwise, made as a memorandum or record of  
13 any condition, act, transaction, occurrence or event relating  
14 to a minor in an abuse, neglect or dependency proceeding, shall  
15 be admissible in evidence as proof of that condition, act,  
16 transaction, occurrence or event, if the court finds that the  
17 document was made in the regular course of the business of the  
18 hospital or agency and that it was in the regular course of  
19 such business to make it, at the time of the act, transaction,  
20 occurrence or event, or within a reasonable time thereafter.

21 (a-5) In unfitness proceedings under Section 2-29 of this  
22 Act, if documents, assessments, and evaluations are directly  
23 used to prove an unfitness ground as alleged in the petition,  
24 and a party objects to the introduction of the documents into  
25 evidence, the author of those documents shall testify, if  
26 available, as to the recommendations and findings. If the  
27 author is unavailable, the documents are admissible without  
28 such testimony. The court shall determine the proper weight  
29 accorded to the documents.

30 (a-10) In unfitness proceedings under Section 2-29 of this  
31 Act, if documents, assessments, and evaluations are used at the  
32 best interest portion, relating to parent-child bonding, and a  
33 party objects to the introduction of the documents into  
34 evidence, the author of those documents shall testify, if

1 available, as to the recommendations and findings. If the  
2 author is unavailable, the documents are admissible without  
3 such testimony. The court shall determine the proper weight  
4 accorded to the documents.

5 (a-15) For purposes of paragraphs (a-5) and (a-10) of this  
6 subsection (4), "unavailable" means: the author is absent from  
7 the hearing and the party wishing to introduce the document has  
8 been unable to procure the author's attendance by process or  
9 other reasonable means; or the author persists in refusing to  
10 testify concerning the document despite an order of the court  
11 to do so; or the author is unable to be present or to testify at  
12 the hearing because of health, or then-existing physical or  
13 mental illness or infirmity, or death.

14 (a-20) A certification by the head or responsible employee  
15 of the hospital or agency that the writing, record, photograph  
16 or x-ray is the full and complete record of the condition, act,  
17 transaction, occurrence or event and that it satisfies the  
18 conditions of this paragraph shall be prima facie evidence of  
19 the facts contained in such certification. A certification by  
20 someone other than the head of the hospital or agency shall be  
21 accompanied by a photocopy of a delegation of authority signed  
22 by both the head of the hospital or agency and by such other  
23 employee. All other circumstances of the making of the  
24 memorandum, record, photograph or x-ray, including lack of  
25 personal knowledge of the maker, may be proved to affect the  
26 weight to be accorded such evidence, but shall not affect its  
27 admissibility.

28 (b) Any indicated report filed pursuant to the Abused and  
29 Neglected Child Reporting Act shall be admissible in evidence.

30 (c) Previous statements made by the minor relating to any  
31 allegations of abuse or neglect shall be admissible in  
32 evidence. However, no such statement, if uncorroborated and not  
33 subject to cross-examination, shall be sufficient in itself to  
34 support a finding of abuse or neglect.

1 (d) There shall be a rebuttable presumption that a minor is  
2 competent to testify in abuse or neglect proceedings. The court  
3 shall determine how much weight to give to the minor's  
4 testimony, and may allow the minor to testify in chambers with  
5 only the court, the court reporter and attorneys for the  
6 parties present.

7 (e) The privileged character of communication between any  
8 professional person and patient or client, except privilege  
9 between attorney and client, shall not apply to proceedings  
10 subject to this Article.

11 (f) Proof of the impairment of emotional health or  
12 impairment of mental or emotional condition as a result of the  
13 failure of the respondent to exercise a minimum degree of care  
14 toward a minor may include competent opinion or expert  
15 testimony, and may include proof that such impairment lessened  
16 during a period when the minor was in the care, custody or  
17 supervision of a person or agency other than the respondent.

18 (5) In any hearing under this Act alleging neglect for  
19 failure to provide education as required by law under  
20 subsection (1) of Section 2-3, proof that a minor under 13  
21 years of age who is subject to compulsory school attendance  
22 under the School Code is a chronic truant as defined under the  
23 School Code shall be prima facie evidence of neglect by the  
24 parent or guardian in any hearing under this Act and proof that  
25 a minor who is 13 years of age or older who is subject to  
26 compulsory school attendance under the School Code is a chronic  
27 truant shall raise a rebuttable presumption of neglect by the  
28 parent or guardian. This subsection (5) shall not apply in  
29 counties with 2,000,000 or more inhabitants.

30 (6) In any hearing under this Act, the court may take  
31 judicial notice of prior sworn testimony or evidence admitted  
32 in prior proceedings involving the same minor if (a) the  
33 parties were either represented by counsel at such prior  
34 proceedings or the right to counsel was knowingly waived and

1 (b) the taking of judicial notice would not result in admitting  
2 hearsay evidence at a hearing where it would otherwise be  
3 prohibited.

4 (Source: P.A. 93-884, eff. 1-1-05.)".