



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB3793

Introduced 2/22/2021, by Rep. Delia C. Ramirez

SYNOPSIS AS INTRODUCED:

705 ILCS 405/2-10

from Ch. 37, par. 802-10

Amends the Juvenile Court Act of 1987. In the Section concerning temporary custody of an abused or neglected minor, provides that nothing in the provisions shall restrict the Department of Children and Family Services from immediately restricting or terminating parent-child contact or sibling contacts if the Department or its assigns reasonably believe that continuation of the contact, as set out in the plan, would result in an immediate threat (instead of "would be contrary to") to the child's health, safety, and welfare. Provides that the reasonable belief must be based on credible evidence. Provides that such restrictions on parent-child contact and sibling contacts by the Department or its assigns shall only occur on an individual case-by-case basis.

LRB102 17050 KMF 22478 b

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

1 or custodian. After such testimony, the court may, consistent
2 with the health, safety and best interests of the minor, enter
3 an 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
23 98-803) and before January 1, 2017, a minor charged with a
24 criminal offense under the Criminal Code of 1961 or the
25 Criminal Code of 2012 or adjudicated delinquent shall not be
26 placed in the custody of or committed to the Department of

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

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

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

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

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

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

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

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

1 on credible evidence, that continuation of the contact, as set
2 out in the plan, would result in an immediate threat ~~be~~
3 ~~contrary~~ to the child's health, safety, and welfare. Such
4 restrictions on parent-child contact and sibling contacts by
5 the Department or its assigns shall only occur on an
6 individual case-by-case basis. The Department shall file with
7 the court and serve on the parties any amendments to the plan
8 within 10 days, excluding weekends and holidays, of the change
9 of the visitation.

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

1 furnished a copy of such written findings. The temporary
2 custodian shall maintain a copy of the court order and written
3 findings in the case record for the child. The order together
4 with the court's findings of fact in support thereof shall be
5 entered of record in the court.

6 Once the court finds that it is a matter of immediate and
7 urgent necessity for the protection of the minor that the
8 minor be placed in a shelter care facility, the minor shall not
9 be returned to the parent, custodian or guardian until the
10 court finds that such placement is no longer necessary for the
11 protection of the minor.

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

1 parents, guardian, custodian or responsible relative to inform
2 the Department if additional information regarding the minor's
3 adult relatives becomes available.

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

1 the procedures to vacate or modify a shelter care order as
2 provided in this Section. The notice for a shelter care
3 hearing shall be substantially as follows:

4 NOTICE TO PARENTS AND CHILDREN
5 OF SHELTER CARE HEARING

6 On at, before the Honorable
7, (address:), the State
8 of Illinois will present evidence (1) that (name of child
9 or children) are abused, neglected
10 or dependent for the following reasons:

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

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

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

- 23 1. To ask the court to appoint a lawyer if they
- 24 cannot afford one.
- 25 2. To ask the court to continue the hearing to
- 26 allow them time to prepare.

- 1 3. To present evidence concerning:
- 2 a. Whether or not the child or children were
- 3 abused, neglected or dependent.
- 4 b. Whether or not there is "immediate and
- 5 urgent necessity" to remove the child from home
- 6 (including: their ability to care for the child,
- 7 conditions in the home, alternative means of
- 8 protecting the child other than removal).
- 9 c. The best interests of the child.
- 10 4. To cross examine the State's witnesses.

11 The Notice for rehearings shall be substantially as
 12 follows:

13 NOTICE OF PARENT'S AND CHILDREN'S RIGHTS
 14 TO REHEARING ON TEMPORARY CUSTODY

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

- 25 1. That you were not present at the shelter care

1 hearing.

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

4 3. Your signature.

5 4. Signature must be notarized.

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

8 At the rehearing, your rights are the same as at the
9 initial shelter care hearing. The enclosed notice explains
10 those rights.

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

13 1. To have a guardian ad litem appointed.

14 2. To be declared competent as a witness and to
15 present testimony concerning:

16 a. Whether they are abused, neglected or
17 dependent.

18 b. Whether there is "immediate and urgent
19 necessity" to be removed from home.

20 c. Their best interests.

21 3. To cross examine witnesses for other parties.

22 4. To obtain an explanation of any proceedings and
23 orders of the court.

24 (4) If the parent, guardian, legal custodian, responsible
25 relative, minor age 8 or over, or counsel of the minor did not
26 have actual notice of or was not present at the shelter care

1 hearing, he or she may file an affidavit setting forth these
2 facts, and the clerk shall set the matter for rehearing not
3 later than 48 hours, excluding Sundays and legal holidays,
4 after the filing of the affidavit. At the rehearing, the court
5 shall proceed in the same manner as upon the original hearing.

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

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

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

20 (8) If neither the parent, guardian or custodian appears
21 within 24 hours to take custody of a minor released upon
22 request pursuant to subsection (2) of this Section, then the
23 clerk of the court shall set the matter for rehearing not later
24 than 7 days after the original order and shall issue a summons
25 directed to the parent, guardian or custodian to appear. At
26 the same time the probation department shall prepare a report

1 on the minor. If a parent, guardian or custodian does not
2 appear at such rehearing, the judge may enter an order
3 prescribing that the minor be kept in a suitable place
4 designated by the Department of Children and Family Services
5 or a licensed child welfare agency.

6 (9) Notwithstanding any other provision of this Section
7 any interested party, including the State, the temporary
8 custodian, an agency providing services to the minor or family
9 under a service plan pursuant to Section 8.2 of the Abused and
10 Neglected Child Reporting Act, foster parent, or any of their
11 representatives, on notice to all parties entitled to notice,
12 may file a motion that it is in the best interests of the minor
13 to modify or vacate a temporary custody order on any of the
14 following grounds:

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

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

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

25 (d) Services provided by the Department of Children
26 and Family Services or a child welfare agency or other

1 service provider have been successful in eliminating the
2 need for temporary custody and the child can be cared for
3 at home without endangering the child's health or safety.

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

7 The clerk shall set the matter for hearing not later than
8 14 days after such motion is filed. In the event that the court
9 modifies or vacates a temporary custody order but does not
10 vacate its finding of probable cause, the court may order that
11 appropriate services be continued or initiated in behalf of
12 the minor and his or her family.

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

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

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

24 Once the presumption of immediate and urgent necessity has
25 been raised, the burden of demonstrating the lack of immediate
26 and urgent necessity shall be on any party that is opposing

1 shelter care for the other minor.

2 (11) The changes made to this Section by Public Act 98-61
3 apply to a minor who has been arrested or taken into custody on
4 or after January 1, 2014 (the effective date of Public Act
5 98-61).

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

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

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

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

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

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

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

7 If the Department of Children and Family Services is the
8 temporary custodian of the minor, in addition to the
9 requirements of paragraph (1) of subsection (b) of Section 20
10 of the Health Care Surrogate Act, the Department shall follow
11 its rules and procedures in exercising authority granted under
12 this subsection.

13 (Source: P.A. 99-625, eff. 1-1-17; 99-642, eff. 7-28-16;
14 100-159, eff. 8-18-17; 100-863, eff. 8-14-18; 100-959, eff.
15 1-1-19.)