

# SB2118



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB2118

Introduced 2/14/2008, by Sen. Kwame Raoul

#### SYNOPSIS AS INTRODUCED:

705 ILCS 405/5-415  
705 ILCS 405/5-501

Amends the Juvenile Court Act of 1987. Provides that immediately upon the filing of a petition for a detention or shelter care hearing in the case of a minor retained in custody, the court shall cause counsel to be appointed to represent the minor. Provides that a detention or shelter care hearing may not be held until the minor has had adequate opportunity to consult with counsel.

LRB095 17565 RLC 43639 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 Sections 5-415 and 5-501 as follows:

6 (705 ILCS 405/5-415)

7 Sec. 5-415. Setting of detention or shelter care hearing;  
8 release.

9 (1) Unless sooner released, a minor alleged to be a  
10 delinquent minor taken into temporary custody must be brought  
11 before a judicial officer within 40 hours for a detention or  
12 shelter care hearing to determine whether he or she shall be  
13 further held in custody. If a minor alleged to be a delinquent  
14 minor taken into custody is hospitalized or is receiving  
15 treatment for a physical or mental condition, and is unable to  
16 be brought before a judicial officer for a detention or shelter  
17 care hearing, the 40 hour period will not commence until the  
18 minor is released from the hospital or place of treatment. If  
19 the minor gives false information to law enforcement officials  
20 regarding the minor's identity or age, the 40 hour period will  
21 not commence until the court rules that the minor is subject to  
22 this Act and not subject to prosecution under the Criminal Code  
23 of 1961. Any other delay attributable to a minor alleged to be

1 a delinquent minor who is taken into temporary custody shall  
2 act to toll the 40 hour time period. In all cases, the 40 hour  
3 time period is exclusive of Saturdays, Sundays and  
4 court-designated holidays.

5 (2) If the State's Attorney or probation officer (or other  
6 public officer designated by the court in a county having more  
7 than 3,000,000 inhabitants) determines that the minor should be  
8 retained in custody, he or she shall cause a petition to be  
9 filed as provided in Section 5-520 of this Article, and the  
10 clerk of the court shall set the matter for hearing on the  
11 detention or shelter care hearing calendar. Immediately upon  
12 the filing of a petition in the case of a minor retained in  
13 custody, the court shall cause counsel to be appointed to  
14 represent the minor. When a parent, legal guardian, custodian,  
15 or responsible relative is present and so requests, the  
16 detention or shelter care hearing shall be held immediately if  
17 the court is in session and the State is ready to proceed,  
18 otherwise at the earliest feasible time. In no event shall a  
19 detention or shelter care hearing be held until the minor has  
20 had adequate opportunity to consult with counsel. The probation  
21 officer or such other public officer designated by the court in  
22 a county having more than 3,000,000 inhabitants shall notify  
23 the minor's parent, legal guardian, custodian, or responsible  
24 relative of the time and place of the hearing. The notice may  
25 be given orally.

26 (3) The minor must be released from custody at the

1 expiration of the 40 hour period specified by this Section if  
2 not brought before a judicial officer within that period.

3 (4) After the initial 40 hour period has lapsed, the court  
4 may review the minor's custodial status at any time prior to  
5 the trial or sentencing hearing. If during this time period new  
6 or additional information becomes available concerning the  
7 minor's conduct, the court may conduct a hearing to determine  
8 whether the minor should be placed in a detention or shelter  
9 care facility. If the court finds that there is probable cause  
10 that the minor is a delinquent minor and that it is a matter of  
11 immediate and urgent necessity for the protection of the minor  
12 or of the person or property of another, or that he or she is  
13 likely to flee the jurisdiction of the court, the court may  
14 order that the minor be placed in detention or shelter care.

15 (Source: P.A. 90-590, eff. 1-1-99.)

16 (705 ILCS 405/5-501)

17 Sec. 5-501. Detention or shelter care hearing. At the  
18 appearance of the minor before the court at the detention or  
19 shelter care hearing, the court shall receive all relevant  
20 information and evidence, including affidavits concerning the  
21 allegations made in the petition. Evidence used by the court in  
22 its findings or stated in or offered in connection with this  
23 Section may be by way of proffer based on reliable information  
24 offered by the State or minor. All evidence shall be admissible  
25 if it is relevant and reliable regardless of whether it would

1 be admissible under the rules of evidence applicable at a  
2 trial. No hearing may be held unless the minor is represented  
3 by counsel and no hearing shall be held until the minor has had  
4 adequate opportunity to consult with counsel.

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

8 (2) If the court finds that there is probable cause to  
9 believe that the minor is a delinquent minor, the minor, his or  
10 her parent, guardian, custodian and other persons able to give  
11 relevant testimony may be examined before the court. The court  
12 may also consider any evidence by way of proffer based upon  
13 reliable information offered by the State or the minor. All  
14 evidence, including affidavits, shall be admissible if it is  
15 relevant and reliable regardless of whether it would be  
16 admissible under the rules of evidence applicable at trial.  
17 After such evidence is presented, the court may enter an order  
18 that the minor shall be released upon the request of a parent,  
19 guardian or legal custodian if the parent, guardian or  
20 custodian appears to take custody.

21 If the court finds that it is a matter of immediate and  
22 urgent necessity for the protection of the minor or of the  
23 person or property of another that the minor be detained or  
24 placed in a shelter care facility or that he or she is likely  
25 to flee the jurisdiction of the court, the court may prescribe  
26 detention or shelter care and order that the minor be kept in a

1 suitable place designated by the court or in a shelter care  
2 facility designated by the Department of Children and Family  
3 Services or a licensed child welfare agency; otherwise it shall  
4 release the minor from custody. If the court prescribes shelter  
5 care, then in placing the minor, the Department or other agency  
6 shall, to the extent compatible with the court's order, comply  
7 with Section 7 of the Children and Family Services Act. In  
8 making the determination of the existence of immediate and  
9 urgent necessity, the court shall consider among other matters:

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

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

26 Once the court finds that it is a matter of immediate and

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

6 (3) Only when there is reasonable cause to believe that the  
7 minor taken into custody is a delinquent minor may the minor be  
8 kept or detained in a facility authorized for juvenile  
9 detention. This Section shall in no way be construed to limit  
10 subsection (4).

11 (4) Minors 12 years of age or older must be kept separate  
12 from confined adults and may not at any time be kept in the  
13 same cell, room or yard with confined adults. This paragraph  
14 (4):

15 (a) shall only apply to confinement pending an  
16 adjudicatory hearing and shall not exceed 40 hours,  
17 excluding Saturdays, Sundays, and court designated  
18 holidays. To accept or hold minors during this time period,  
19 county jails shall comply with all monitoring standards for  
20 juvenile detention homes promulgated by the Department of  
21 Corrections and training standards approved by the  
22 Illinois Law Enforcement Training Standards Board.

23 (b) To accept or hold minors, 12 years of age or older,  
24 after the time period prescribed in clause (a) of  
25 subsection (4) of this Section but not exceeding 7 days  
26 including Saturdays, Sundays, and holidays, pending an

1           adjudicatory hearing, county jails shall comply with all  
2           temporary detention standards promulgated by the  
3           Department of Corrections and training standards approved  
4           by the Illinois Law Enforcement Training Standards Board.

5           (c) To accept or hold minors 12 years of age or older,  
6           after the time period prescribed in clause (a) and (b), of  
7           this subsection county jails shall comply with all  
8           programmatic and training standards for juvenile detention  
9           homes promulgated by the Department of Corrections.

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

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



1 purposes of scheduling the trial.

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

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

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

14 (c) A person, including a parent, relative or legal  
15 guardian, is capable of assuming temporary custody of the  
16 minor; or

17 (d) Services provided by the Department of Children and  
18 Family Services or a child welfare agency or other service  
19 provider have been successful in eliminating the need for  
20 temporary custody.

21 The clerk shall set the matter for hearing not later than  
22 14 days after such motion is filed. In the event that the court  
23 modifies or vacates a temporary order but does not vacate its  
24 finding of probable cause, the court may order that appropriate  
25 services be continued or initiated in behalf of the minor and  
26 his or her family.

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

9           (Source: P.A. 90-590, eff. 1-1-99.)