ILLINOIS JUDICIAL BENCHBOOK ON JUVENILE LAW
2022

Prepared by
The Illinois Judicial Benchbook on Juvenile Law Writing Team

Hon. William G. Clay IV, Chair
Thirty-First Judicial Circuit

Professor Margareth Etienne
University of Illinois at Urbana-Champaign College of Law

Topic Editors

Hon. Christopher M. Harmon, Twenty-Second Judicial Circuit
Hon. Kimberly G. Koester, Fourth Judicial Circuit

Peer Reviewers

Hon. Linda S. Abrahamson, Sixteenth Judicial Circuit, *retired*
Hon. Darron E. Bowden, Circuit Court of Cook County

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Supreme Court of Illinois
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The Benchbook should be used only as a practical legal reference guide. In ***People ex rel. Glasgow v. Carlson***, 2016 IL 120544, the Supreme Court of Illinois commented on the trial court's reliance on benchbook excerpts, stating, "[w]e caution our circuit courts, however, that a benchbook is to be used only as a practical legal reference guide. Thus, a benchbook should not be viewed or treated as authoritative precedent" and cited language found in the front matter of each benchbook "explaining a '[b]enchbook has no precedential value, is not intended to be cited by courts or litigants as authority in pleadings, rulings or otherwise, and is not a substitute for reading the statutes and cases cited herein.'" ***Id.*** at par. 29.

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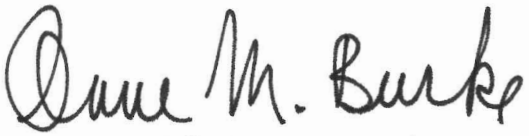
FOREWORD

On behalf of the Illinois Supreme Court, I am pleased to present this Benchbook. This volume is one of a series of judicial benchbooks offered in various topical areas and designed to serve as a key resource to assist Illinois judges in the performance of their judicial duties.

Benchbooks are published annually to provide the most current substantive legal information, complemented by practice aids, sample orders, and checklists. We are confident that you will find them to be informative and useful.

Benchbooks are produced through the collaborative efforts of the Judicial Education Division of the Administrative Office of the Illinois Courts, the Benchbook Editorial Board of the Illinois Judicial College Committee on Judicial Education, and individual benchbook teams of law school professors, judicial editors and judicial peer reviewers. The Court is grateful to everyone who has contributed their time and talent to the production of this publication.

Sincerely,



Anne M. Burke, Chief Justice
Illinois Supreme Court

ACKNOWLEDGMENT

Work on this publication has culminated as a result of a multi-year project involving numerous individuals. Through the collaborative efforts of judges and law professors, eight areas of Illinois law including Civil Law and Procedure, Criminal Law and Procedure, Domestic Violence, DUI/Traffic, Evidence, Family Law and Procedure, Juvenile Law, and Mortgage Foreclosure have Benchbooks for the exclusive use of the Illinois judiciary.

Each team, with the exception of the DUI/Traffic and Mortgage Foreclosure teams, worked closely with a law professor to select and develop the nature and scope of content of the Benchbook for this publication. Topic Editors reviewed, selected, created and updated existing procedural checklists and other reference tools or "practice aids" for each book while guiding and reviewing the initial work of the professor. Peer Reviewers reviewed final drafts for accuracy of content, scope of materials and overall readability.

Judges serving on the various Benchbook teams have contributed significantly to the project and we gratefully acknowledge and appreciate their enthusiasm, wisdom, energy, and effort as topic editors and peer reviewers. We wish to acknowledge the remarkable dedication of the law professors, who without their constant steady work as principal drafters, in most instances, the Benchbooks would not have been possible. We also wish to acknowledge the hard work and dedication of staff of the Judicial Education Division, Administrative Office of the Illinois Courts for assistance in managing the project.

It is our hope that our colleagues will find this Benchbook to be a valuable tool in their work on the bench. We view this Benchbook as a work in progress and therefore encourage our fellow judges, users of the book, to contribute to that process through comments and suggestions to the AOIC at judicialeducation@illinoiscourts.gov.

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USING THE BENCHBOOK

A. SCOPE AND PURPOSE OF THE BENCHBOOK

The purpose of this Benchbook is to provide judges at all levels of experience a practical legal reference guide for use in the courtroom, providing concise, well-organized outlines of governing statutory law and case law.

This Benchbook is intended to give judges quick, practical assistance in their conduct of juvenile proceedings. To that end, it is organized transactionally and contains special features such as procedural checklists, suggested admonishments, and citations to controlling authority. In addition to providing judges with an easily accessible resource manual, it is also hoped that this Benchbook will serve as a useful tool for judges newly assigned to hear juvenile cases. This Benchbook is not intended, however, to be a substitute for reading the statutes or cases cited herein.

Additional resources the Committee recommends to readers to use in conjunction with this Benchbook are *The Illinois Juvenile Court Act*, 2011 Edition, published by the Illinois State Bar Association, and *Juvenile Law and Practice*, 2013 Edition, published by IICLE.

Case law and authorities cited in this Benchbook are current through December 31, 2021.

B. ORGANIZATION OF THE BENCHBOOK

This Benchbook is organized to follow the order of the Juvenile Law Act:

- Article I – General Provisions
- Article II – Abuse, Neglect, Dependency and Termination of Parental Rights
- Article III – Minors Requiring Authoritative Intervention and Truant Minors in Need of Supervision
- Article IV – Addicted Minors
- Article V – Delinquent Minors
- Confidentiality and Juvenile Court Records

A detailed table of contents precedes each chapter. The Appendix contains a selection of checklists and forms. An index is available at the end of this Benchbook.

Illinois Judicial Benchbook on Juvenile Law

Overall Table of Contents*

**Each section listed above contains a detailed Table of Contents*

ARTICLE I

GENERAL PROVISIONS

CHAPTER 1. INTRODUCTION

1.01 ORGANIZATION OF THE JUVENILE COURT ACT

The Juvenile Court Act, **705 ILCS 405/1-1** ***et seq.***, is divided into seven Articles, primarily arranged according to types of children over which the juvenile court has jurisdiction. Article V of the Juvenile Court Act is codified separately as the Juvenile Justice Reform Act of 1988. It governs the adjudication of delinquency and often operates under a different set of goals and principles than the other Articles of the Juvenile Court Act.

Article I. General Provisions

Article II. Abused, Neglected or Dependent Minors

Article III. Minors Requiring Authoritative Intervention and Minor Truants in Need of Supervision

Article IV. Addicted Minors

Article V. Delinquent Minors

Article VI. Administration of Juvenile Services

Article VII. Savings; Repealer

1.05 PURPOSES AND POLICIES OF THE JUVENILE COURT ACT

The Act's objectives are set out in section 1-2 **(705 ILCS 405/1-2)**:

- to secure for each minor subject hereto such care and guidance, preferably in his or her own home, as will serve the moral, emotional, mental and physical welfare of the minor and the best interests of the community;

- to preserve and strengthen the minor's family ties whenever possible, removing him or her from the custody of his or her parents only when his or her welfare or safety or the protection of the public cannot be adequately safeguarded without removal;

- in the case of a minor who is removed from the home:

    - secure for the child the custody, control and discipline equivalent to that which should be given by his or her parents;

    - immediately consider concurrent planning so that permanency may occur

at the earliest possible opportunity;

- make the best available placement to provide permanency for the child if reunification fails or is delayed;

- place a minor in a home where he or she may become a member of the family by adoption or otherwise when circumstances so require.

1.10 CHILD'S BEST INTEREST

A) OVERARCHING PURPOSE

The central objective of the Juvenile Court Act is to serve and protect the best interest of children. ***In re N.B.***, 191 Ill. 2d 338 (2000), ***In re A.P.***, 179 Ill. 2d 184 (1997); ***In re W.C.***, 167 Ill. 2d 307 (1995), ***In re J.J.***, 142 Ill. 2d 1 (1991).

B) PARENTAL RIGHTS AND CHILD'S BEST INTEREST

705 ILCS 405/1-3 (4.05)

A parent's right to custody is overcome when a court determines that a child's best interest would not be served by maintaining custody in the parent. *See* ***In re Ashley K.***, 212 Ill. App. 3d 849, 879 (1st Dist. 1991) ("[t]he best interest of the child takes precedence over even a natural parent's superior right to custody of his child"). *See also* ***In re P.F.***, 265 Ill. App. 3d 1092 (1st Dist. 1994) (the constitutionally protected right of family privacy is not violated where a preponderance of the evidence supports a finding that removal of a child from the home is in the child's best interest).

C) APPLYING THE BEST INTEREST STANDARD

705 ILCS 405/ 1- 3 (4.05)

Whenever a "best interest" determination is required, the Act requires the following factors to be considered in the context of a child's age and developmental needs:

- the physical safety and welfare of the child, including food, shelter, health, and clothing;

- the development of the child's identity;

- the child's background and ties, including familial, cultural, and religious;

- the child's sense of attachments, including:

  (i) where the child actually feels love, attachment and a sense of being valued;

  (ii) the child's sense of security;

  (iii) the child's sense of familiarity;

  (iv) continuity of affection for the child;

  (v) the least disruptive placement alternative for the child;

- the child's wishes and long-term goals;
- the child's community ties, including church, school, and friends;
- permanence for the child;
- the uniqueness of every family and child;
- the risks attendant to entering and being in substitute care;
- the preferences of the persons available to care for the child.

1.15 THE ROLE OF THE JUDGE IN JUVENILE COURT PROCEEDINGS

A) UNIQUE RESPONSIBILITIES

Judging in juvenile courts is one of the most challenging and rewarding assignments in the Illinois judicial system. Like all judges, a juvenile court judge must act pursuant to statutory authority and function as an impartial and independent decision maker. Unlike other judges, however, a juvenile court judge plays a role beyond assuring that litigants receive a fair trial and just verdict. The ultimate goal of a juvenile court proceeding is to ensure safety, stability, correction and direction for children who are subject to its jurisdiction. In pursuit of this goal, a juvenile court judge must sometimes walk a fine line between functioning as an advocate for a child and maintaining neutrality as the ultimate decision maker on the issue of a child's best interest.

This balance is reflected in cases decided under the Act. Thus, in ***In re J.J.***, 142 Ill. 2d 1 (1991), the Illinois Supreme Court held that "[u]nder the Juvenile Court Act, the circuit court has not only the authority but the duty to determine whether the best interests of the minor will be served by dismissing a petition alleging abuse of a minor." *See also* ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982). Similarly, ***In re Patricia S.***, 222 Ill. App. 3d 585 (1st Dist. 1991), the

reviewing court suggested that a trial court must "act affirmatively, and perhaps at times aggressively, to ferret out information" even if the parties agree about what is in a minor's best interest.

In ***In re Ashley F.***, 265 Ill. App. 3d 419 (1st Dist. 1994), however, the reviewing court declined to find that the trial court had abdicated its *parens patriae* responsibility when it entered a finding of no probable cause and dismissed a petition without conducting its own investigation into allegations of physical abuse. Although the Juvenile Court Act authorizes a judge to direct proceedings so as to "gather information bearing upon the current condition and future welfare of persons subject to the Act" (**705 ILCS 405/1-2(2)**), the court found that this section does not impose an affirmative duty to investigate allegations of abuse or to postpone proceedings while the State seeks to obtain additional evidence.

As these cases suggest, the role of a judge in juvenile court requires equal measures of professional competence, wisdom and commitment. A judge who brings these qualities to the task of decision making will be rewarded with the knowledge that his or her decisions can affect the future course of a child's life.

The Juvenile Court Act gives the judge an additional opportunity, not specifically given judges by authorizing statutes in other areas:

In all proceedings under this Act the court may direct the course thereof so as to promptly obtain the jurisdictional facts and fully gather information bearing upon the current condition and future welfare of persons subject to this Act. **705 ILCS 405/1-2(2)**.

This discretion to initiate the gathering of further information reflects the court's role as the "advocate for the child" or *parens patriae*. While the court is not required to initiate such inquiry, it may do so if the court believes it is in the child's best interest. For example, in ***In re Ashley F.***, 265 Ill. App. 3d 419 (1st Dist. 1994), the reviewing court declined to find that the trial court had abdicated its *parens patriae* responsibility when it entered a finding of no probable cause and dismissed a petition without conducting its own investigation into allegations of physical abuse. Although the Juvenile Court Act authorizes a judge to direct proceedings so as to "gather information bearing upon the current condition and future welfare of persons subject to the Act" (**705 ILCS 405/1-2(2)**), the court found that this section does not impose an affirmative duty to investigate allegations of abuse or to postpone proceedings while the State seeks to obtain additional evidence.

After receiving all information provided, with or without the court's direction, the court's decisions are limited to the authority given by the Juvenile Court Act. *See also* Section 1.15 (C) (2), *infra*.

B) DETERMINING WHETHER A CASE GOES FORWARD

In ***In re J.J.***, 142 Ill. 2d 1, the Illinois Supreme Court held that "[u]nder the Juvenile Court Act, the circuit court has not only the authority but the duty to determine whether the best interests of the minor will be served by dismissing a petition alleging abuse of a minor." *See also* ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132, 441 N.E.2d 54 (1982). Similarly, in ***In re Patricia S.***, 222 Ill. App. 3d 585, 584 N.E.2d 270 (1st Dist. 1991), the reviewing court suggested that a trial court must "act affirmatively, and perhaps at times aggressively, to ferret out information" even if the parties agree about what is in a minor's best interest. *See also* ***In re S.G.***, 175 Ill. 2d 471, 677 N.E.2d 920 (1997) (Justice McMorrow, dissenting).

C) INTERPRETING THE JUVENILE COURT ACT

(1) The Act Should Be Interpreted Consistent with its Purposes and Policies.

Juvenile proceedings are intended to be non-adversarial in nature. They are to be administered in a spirit of humane concern and in a manner which will best serve the needs of the child, his or her family and the community. The Act should be construed liberally to ensure these objectives. **705 ILCS 405/1-2 (4)**. *See* ***In re A.P.***, 179 Ill. 2d 184 (1997) (interpreting section 2-18(4)(c), **705 ILCS 405/2-18(4)(c)**); ***In re Lawrence M.***, 172 Ill. 2d 523 (1996) (no violation of separation of powers for court to order interim services because court and agency share a duty to act in children's best interests); ***In the Interest of M.D.H.***, 297 Ill. App. 3d 181 (4th Dist. 1998) (in interpreting section 2-18(4)(d), **705 ILCS 405/2-18(4)(d)**, trial court was obligated to adopt an interpretation consistent with the purposes and policies of the Act); ***In re A.L.***, 294 Ill. App. 3d 441 (2d Dist. 1998) (court is authorized to enter an order changing a child's foster placement under section 2-23(3), **705 ILCS 405/2-23(3)**, where a change was necessitated by child's best interest).

(2) The Act's Objectives May Be Advanced Only by Authorized Means

Although a judge may believe that certain actions are in a child's best interests, the judge lacks authority to act on that belief unless specifically authorized to do so under the Juvenile Court Act;

In re K.C., 325 Ill. App. 3d 771 (lst Dist. 2001) (court had statutory authority to order the removal and reassignment of alternative caseworkers, as long as discretion remained with DCFS to decide what alternative caseworkers should be assigned);

In re Custody of R.W., 2018 IL App. (5th) 170377 (2018) (court vacated lower court order finding biological parents unfit in action to allocate parenting time stating "We hold that a court may not make findings of parental unfitness absent an allegation of unfitness regardless of whether parental rights are sought to be terminated.")

In re E.F., 324 Ill. App. 3d 174 (3d Dist. 2001) (court lacked statutory authority to place delinquent child with DCFS in absence of a neglect petition prior to entry of the trial court's custody order even if court felt DCFS placement was in juvenile's best interest);

In re M.M., 156 Ill. 2d 53 (1993) (court not authorized by statute to enter a conditional termination order);

In re Rami M., 285 Ill. App. 3d 267 (lst Dist. 1996) (court lacked authority to order DCFS to pay for services for minor who had been returned to parents' custody);

In re Chiara C., 279 Ill. App. 3d 761 (lst Dist. 1996) (court did not have authority to order minor's placement in a specific residential facility);

In the Interest of C.M., 282 Ill. App. 3d 990 (3d Dist. 1996) (court's discretion to decide that it is in a child's best interest that DCFS be named custodian for certain children not improperly interfered with by amendments to Juvenile Court Act limiting placement options);

In re Donte, 259 Ill. App. 3d 246 (lst Dist. 1994) (court lacked authority to order adoption sibling visits as condition of appointment of a guardian with power to consent to adoption);

And see ***In re Marriage of Rhodes***, 326 Ill. App. 3d 386 (2d Dist. 2001) (statutory authority to terminate parental rights is granted only in proceedings under the Juvenile Court and Adoption Acts, and not under the Marriage and Dissolution of Marriage Act).

(3) The Juvenile Justice Reform Act of 1998 (Article V of the Juvenile Court Act) articulates a separate set of policies and purposes in delinquency proceedings. *See* **705 ILCS 405/5-101**. The Illinois Supreme Court recognized that the purpose and policies of article V "represents a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding juvenile offenders accountable for violations of the law." ***In re A.G.***, 195 Ill.2d 313, 317 (Ill. 2001). When construing provisions of article V in delinquency cases, the court should consider the purpose and policies as contained in section 5-101 rather than those of Article I as contained in section 1-2.

CHAPTER 2. RIGHTS OF PARTIES

Article I, section 5 sets forth the rights of parties and other persons in Juvenile Court proceedings. For a more extensive discussion of many of these rights, *see* Article II, section III, *infra.*

2.01 RIGHTS OF MINORS

705 ILCS 405/1-2(3)

A) PROCEDURAL RIGHTS

A minor is entitled to the same procedural rights as an adult unless specifically precluded by laws which enhance the protection of the minor. **705 ILCS 405/1-2(3)(a)**. *See* ***In re A.W.***, 248 Ill. App. 3d 971 (lst Dist. 1993) (minor's right to representation in abuse case almost co-extensive with that of an adult).

B) RIGHT TO SERVICES

Every child has a right to services necessary to his or her proper development, including health, education and social services. **705 ILCS 405/1-2(3)(b)**.

The Juvenile Court Act authorizes the court to provide services to the minor and to his or her family where such services are in the best interest of the child and essential to the reunification of the child with his or her family. *See* ***In re Lawrence M.***, 172 Ill. 2d 523 (1996) (court acted within its powers when it ordered DCFS to pay for in-patient drug treatment to mothers whose children were removed at a temporary custody hearing). *See also* ***In re V.H.***, 197 Ill. App. 3d 52 (1st Dist. 1990) (requiring DCFS to pay for children in out-of-state placement).

For cases discussing limitations on a court's authority to order specific services and distinguishing ***In re Lawrence M.***, *see* ***In re Rami M***., 285 Ill. App. 3d 267 (1st Dist. 1996) (court did not have the authority to require DCFS to pay for in-home services provided to minor who was no longer in DCFS legal custody); ***In re Chiara C.***, 279 Ill. App. 3d 761 (1st Dist. 1996) (court did not have subject matter jurisdiction to order DCFS, as guardian and custodian of minor, to place minor in specific residential facility); ***In the Interest of T.L.C.***, 285 Ill. App. 3d 922 (4th Dist. 1997) (circuit court erred in directing that DCFS place a minor in a specific residential facility subsequent to an original disposition placing the minor with DCFS).

2.05 RIGHTS OF PARTIES RESPONDENT

705 ILCS 405/1-5

A) WHO IS A PARTY RESPONDENT?

705 ILCS 405/1-5(1)

Parties respondent include the minor, his or her parents, guardian, custodian or responsible relative. For a more detailed discussion of necessary parties, *see* Article II, section 3.01, *infra*.

B) RIGHT TO NOTICE

705 ILCS 405/1-5(3)

SEE DELINQUENCY NOTICE OF RIGHTS: APPENDIX

Parties to a proceeding under the Juvenile Court Act have a due process as well as statutory right to notice. All adult parties must be furnished with a written Notice of Rights at or before their first appearance. **705 ILCS05/1-5(1)**. A parents' right to fair notice is required in juvenile proceedings as a matter of due process. ***In re A.H.***, 195 Ill. 2d 408, 424 (2001). The same rights also apply to non-custodial parents. ***In re E.B.***, 314 Ill. App. 3d 712 (4th Dist. 2000). While foster parents are not "necessary parties" under the Act for due process purposes, they have a statutory right to notice under section 1-5(2)(a). ***In re A.H.***, 195 Ill. 2d 408, 424 (2001). However, that right can be waived when the hearing is postponed, the person with a right to notice appears at the subsequent hearing, and the person fails to object to the lack of notice during the hearing. ***Id.*** However, a court will still have subject matter jurisdiction, even though a father was not served with notice by publication in a timely fashion, because he submitted himself to the personal jurisdiction of court by voluntarily appearing at a termination hearing, and because subject matter jurisdiction is conferred by State Constitution, not by statute, which confers subject matter jurisdiction over all "justiciable matters." ***In re Antwan L***., 368 Ill. App. 3d 1119, 859 N.E.2d 1085 (2d Dist. 2006). *See also* ***In re M.P.,*** 401 Ill. App. 3d 742, 928 N.E.2d 1287 (3rd Dist. 2010) (finding jurisdiction over foster grandmother appears). Indeed, ***In re A.P.,*** 2013 IL App (3d) 120672, even though the respondent, who was later identified as the infant's biological father, was not named in the juvenile abuse and neglect petition, the petition nevertheless placed him on notice that his fitness would be at issue at a combined adjudication and dispositional hearing, and he was properly found unfit.

C) RIGHT TO BE PRESENT

705 ILCS 405/1-5 (1), (5)

Parties respondent have a right to be present, except that in the discretion of the court the minor may be excluded from any part of the dispositional hearing, and with the consent of the parent or parents, guardian, counsel, or a guardian ad litem, from any part of an adjudicatory hearing.

If a child's parent is incarcerated, the trial court must make reasonable efforts to ensure that the parent has a meaningful opportunity to participate in a termination proceeding. *See* ***In the Interest of C.J.***, 272 Ill. App. 3d 461 (3d Dist. 1995) (reversing an order to terminate parental rights where the trial court denied mother's request for a continuance so that she could personally attend the hearing and, alternatively, failed to provide a transcript of the State's case prior to requiring mother's attorney to put on evidence in opposition to the termination petition). *See also* ***In re A.M.***, 402 Ill. App. 3d 720 (3d Dist. 2010) (even though father was incarcerated, he had actual notice of the proceedings and the ability to contact his attorney to appear for him and thus his due process rights were not violated). *See also* ***In re B.A.***, 283 Ill. App. 3d 930 (1996).

D) RIGHT TO BE HEARD

705 ILCS 405/1-5(1), (4)

Parties respondent have the right to be heard, except that the minor has a right not to testify in any hearing held prior to final adjudication and the court may apply no sanction against a minor for failure or refusal to testify. However, the court has no obligation to tell a minor with counsel of her right to testify or not testify. ***In re Joshua B.***, 941 N.E.2d 1032 (1st Dist. 2011).

E) RIGHT TO BE REPRESENTED BY COUNSEL

705 ILCS 405/1-5 (1)

Parties respondent have the right to be represented by counsel and to be afforded counsel without cost if financially unable to employ counsel. An indigent parent has a right to be represented by counsel when state action results in the minor child being placed with a person other than a parent, and a subsequent action is brought to terminate the parent's parental rights. ***In re Adoption of K.L.P.***, 198 Ill.2d 448 (2002). Foster parents who have been granted a right to intervene are not entitled to court-appointed counsel.

A minor not only has a right to counsel but the Juvenile Court Act provides that no hearing on any petition may proceed unless the minor who is the subject of the

hearing is represented by counsel.

Once counsel has been appointed for a minor or indigent party, counsel must appear at all stages of the proceeding (including during permanency and termination of parental rights), and must continue to serve until all proceedings are complete or unless leave to withdraw is granted. While the Act provides that if a party fails to appear a judge may require appointed counsel to withdraw his or her appearance in any proceeding following a dispositional hearing, withdrawal must conform to the requirements of Supreme Court Rule 13. ***In re J.P.***, 316 Ill. App. 3d 652 (2d Dist. 2000).

The right to be represented by counsel includes the right to effective representation. The appellate court has used the ***Strickland v. Washington***, 466 U.S. 668 (1984), standard when analyzing a parent's claim of ineffective assistance of counsel in an abuse or neglect proceeding. *See* ***In re D.M.***, 258 Ill. App. 3d 669 (1st Dist. 1994); ***In re Kr. K.***, 258 Ill. App. 3d 270 (2d Dist. 1994).

However, because juvenile court proceedings are explicitly not intended to be adversarial in nature by statute, and because the right to counsel is derived from statute and not the constitution, respondent may not prove ineffectiveness of counsel by claiming failure to subject prosecutor's case to meaningful adversarial testing or where, due to overwhelming evidence of abandonment, no prejudice resulted from defense counsel not responding to requests to admit or making closing argument. ***In re C.C.***, 368 Ill. App. 3d 744 (4th Dist. 2006).

Conflicts of Interest

The Juvenile Court Act does not always require that different attorneys represent the minor and the guardian ad litem. In ***In re J.D.***, 351 Ill. App. 3d 917 (4th Dist. 2004) the appellate court found nothing in record suggested that two-year-old minor was capable of articulating position her attorney would be charged with presenting to court that might result in conflict with attorney's role representing guardian ad litem. In general, though, the roles of guardian ad litem and minor's counsel are not inherently in conflict in juvenile proceeding; both have essentially same obligations to minor and to society. ***Id.***

However, a minor would need to be represented by independent counsel, separate from counsel representing minor's guardian ad litem, if attorney's dual representation creates conflict between his two roles, such as when minor is of age to share with attorney confidences attorney would not be permitted to share with guardian ad litem. ***Id.*** In general, though, the roles of guardian ad litem and minor's counsel are not inherently in conflict in juvenile proceeding; both have essentially same obligations to minor and to society. ***Id.***

While the Act provides that if a party fails to appear a judge may require appointed counsel to withdraw his or her appearance in any proceeding following

a dispositional hearing, withdrawal should conform to the requirements of **Supreme Court Rule 13**.

The court is not always required to appoint counsel for a minor when (1) the court appointed a licensed Illinois attorney as guardian ad litem under section 2-17 for the minor, or (2) the court appoints a court appointed special advocated as guardian ad litem and the court also appoints counsel to represent the court appointed special advocate. If either of those scenarios exist, the court "may not require the appointment of counsel to represent the minor unless the court finds that the minor's interests are in conflict with what the guardian ad litem determines to be in the best interest of the minor." **705 ILCS 504/1-5(1)**.

It was ineffective assistance of counsel by reason of conflict where a particular public defender appeared on behalf of the mother and previously appeared on behalf of the court appointed special advocate for the child at issue and agreed "on behalf of the children" with the proposed dispositions of the abuse and neglect petitions. ***In re Quadaysha C.***, 409 Ill. App. 3d 1020 (2d Dist. 2011). However, even though the same attorney representing *adverse* parties in the same proceeding is a *per se* conflict, representation of a father and mother by attorneys from the same public defender's office presents no conflict of interest. ***In re A.F.***, 2012 IL App (2d) 111079.

A conflict of interest exists where a mother had been represented by ten different attorneys in the trial court, two of which had previously appeared for the minor; the conflict was *per se* and thus required remand on appeal even though the mother did not show prejudice. ***In re Paul F.***, 408 Ill. App. 3d 862 (2d Dist. 2011).

Requesting New Counsel

A minor may motion a trial court to appoint new counsel but only by bringing to the court's attention the pertinent facts, such as that there is an alleged conflict of interest between the minor and the guardian because the minor wanted to return home but the guardian was advocating for private guardianship with foster parents. ***Tasha L.-I.***, 383 Ill. App. 3d 45 (1st Dist. 2008) (petition for new counsel was denied where brought by father, not minor, and father did not call attention to these facts).

On the question of the right to counsel on appeal, *see* Article II, section 12.01(C), *infra.*

F) RIGHT TO PRESENT MATERIAL EVIDENCE AND TO CROSS-EXAMINE WITNESSES

705 ILCS 405/1-5(1)

Parties respondent have the right to present material evidence and to cross-examine witnesses.

In delinquency proceedings, there may be exceptions to the right to cross-examine. For example, a minor victim's account to his mother that a juvenile defendant forced him to perform fellatio was sufficiently corroborated to allow the account to be admitted as an out-of-court statement of a child under 13 years old. ***In re Rolandis G.***, 352 Ill. App. 3d 776 (2d Dist. 2004). The circumstances of the statement provided sufficient safeguards of reliability, child was unavailable as witness, and there was corroborative evidence of the act that was the subject of statement. ***Id.*** The minor victim's statements to his mother concerning sexual assault were not testimonial and, thus, were not rendered inadmissible under the confrontation clause in the absence of an opportunity by the juvenile to cross-examine the victim. ***Id.*** When statements were given, nothing indicated that mother suspected that her son had been a victim of crime and that she was attempting to elicit evidence for future prosecution. ***Id.***

G) RIGHT TO EXAMINE COURT FILES AND RECORDS

705 ILCS 405/1-5 (1); 1-8(A)(1); 2-22 (2)

Parties respondent and their attorneys have a right to examine and copy pertinent court files and records, except that the court may order that the contents of social and psychiatric reports prepared for the court during the dispositional stage of the proceeding may be examined only by the parties' attorneys. However, a court can restrict a mother's access to case documents concerning wardship adjudication, for example, when she was posting damaging, embarrassing, and confidential information about her children on the internet. ***In re D.P. and D.V.***, 2011 IL App (1st) 111631. It is within the court's discretion to take action to prevent the disclosure and publication of confidential information and case materials. ***Id.***

H) RIGHT TO BE INFORMED OF THE PROCEEDING

705 ILCS 405/1- 5(1), (3)

Parties respondent have the right to be informed of the nature of the proceedings and their rights under the Act. All adult parties respondent have a right to written notice of their rights. For a sample notice of rights, *see* Appendix, *infra.*

I) CONFIDENTIALITY AND THE ROLE OF MEDIA

705 ILCS 405/1-5 (6)

Parties respondent have the right to confidentiality at any hearing, except that the news media and victim are entitled to be present. The statute provides that the court may prohibit anyone present in court from publishing the minor's name. *See* ***In re a Minor***, 149 Ill. 2d 247 (1992) (upholding the constitutionality of a judge's order conditioning the media's presence at a neglect/abuse hearing on an agreement not to reveal child's identity when the media did not have previous knowledge of the child's identity and would learn such only through attending the juvenile court proceeding). *Accord* ***In re J.S.***, 267 Ill. App. 3d 145, (2d Dist. 1994) (upholding gag order and relying on ***In re a Minor***).

But see ***In re a Minor***, 127 Ill. 2d 247 (1989) (court is without power to impose a gag order where press has obtained information about a juvenile court proceeding through lawful extrajudicial means).

J) RIGHT TO SUBSTITUTION OF JUDGE

705 ILCS 405/1-5 (7)

The Code of Civil Procedure gives a party the right to a change of venue under certain circumstances, including concern about judicial prejudice. **735 ILCS 5/2-1001**. The Juvenile Court Act, however, provides that a party is not entitled to exercise his or her right to a substitution of a judge without cause under section (a)(2) of the Code of Civil Procedure (**735 ILCS 5/2-1001(a)(2)**) if the judge currently is assigned to a proceeding involving the alleged abuse, neglect or dependency of a minor's sibling or half sibling and that judge has made a substantive ruling in the proceeding involving the minor's sibling or half-sibling.

K) RIGHT TO JURY TRIAL NON-EXISTENT

A jury trial is not required by the federal or state due process clauses in neglect hearings or petitions to terminate parental rights because both the Juvenile Court Act and Adoption Act provide statutory actions unknown at common law. ***In re K.J. and S.J.***, 381 Ill. App. 3d 349 (1st Dist. 2008). Consequently, since the legislature did not include a jury trial provision in either the Adoption Act or the Juvenile Court Act, as it has in other statutes, its intention was for the jury trial right not to extend to proceedings under those acts. ***Id.*** Nor does the Illinois Constitution's general jury trial provision apply because it only applies to statutory proceedings that existed at the time the Illinois Constitution was adopted in 1970. ***Id.***

Nor are jury trials required in delinquency proceedings. However, a minor facing a trial in an Extended Jurisdiction Juvenile Proceeding is entitled to a public jury trial.

2.10 RIGHTS OF PARENTS AND PUTATIVE PARENTS

705 ILCS 405/1.5

The Act requires the Department of Children and Family Services (DCFS) to develop and maintain a system 1) that allows parents and putative parents to determine if their child is in DCFS custody or guardianship; and 2) directs parents to the appropriate court of jurisdiction to obtain information about the case, including the next court date.

2.15 RIGHTS OF FOSTER PARENTS AND AGENCIES

705 ILCS 405/1-5 (1.5)(2)(a)(b)(c)(d)

A) RIGHT TO NOTICE

After an adjudication of abuse, neglect or dependency, any current foster parent or relative caregiver, and the court or DCFS-designated custodial agency has the right to adequate notice of all stages of any hearing or proceeding under the Act. Adequate notice includes:

- a statement regarding the type and nature of the hearing;
- the change of custody sought at the hearing;
- the date, time and place of the hearing.

NOTE: The previous version of **705 ILCS 405/1-5(2)(a)** had required notice from the clerk by certified mail. The present version of this section has eliminated that requirement, and does not indicate whether notice is to be by regular or certified mail, but simply requires "adequate notice." Thus, it may be assumed that, by this amendment, the legislative intent was to allow notice by certified or regular mail, publication or personal service, so long as it is, "adequate," which means "timely." *See* ***In Interest of C.H.***, 277 Ill. App. 3d 32 (3d Dist 1995) (notice in juvenile court proceedings must not only abide by the requirements of the Juvenile Court Act - "adequate" - but also be equivalent to "constitutionally mandated" notice in criminal or civil actions), and the federal cases cited therein, *e.g.,* ***In re Gault***, 387 U.S. 1 (1967) ("adequate notice" is "timely notice" of the information required to be communicated by this decision, which is the same as required under this statute). There do not appear to be any Illinois cases speaking directly to whether certified mail is or is not required under the current statute.

The agency that has placed the minor with the foster parent is responsible for providing the clerk of the court with the particulars of the mailing. **705 ILCS 405/1-5(2)(a)**.

NOTE: Section 428 of the Social Security Act (**42 U.S.C. 629h (b)(1)**) references related notice procedures that have been incorporated into federal grant application requirements.

B) RIGHT TO BE HEARD: FOSTER PARENTS, RELATIVE CAREGIVERS AND AGENCY REPRESENTATIVES

(1) Who Has The Right To Be Heard?

Any current or previously appointed foster parent, relative caregiver, or representative of an agency or association interested in the minor has a right to be heard by the court whether or not that individual has been appointed guardian or legal custodian or otherwise made a party to the proceeding. The right to be heard does not confer party status on the individual. **705 ILCS 405/1-5 (2)(a)**.

(2) Mandamus Action: Foster Parents and Relative Caregivers

A foster parent or relative caregiver who is denied a right to be heard may bring a mandamus action against the court or any public agency to enforce that right. The mandamus action must be initiated within 30 days after denial of the right to be heard. **705 ILCS 405/1-5(2)(a)**.

C) RIGHT TO INTERVENE

705 ILCS 405/1-5(2)(b)

(1) Motion to Request Placement With Foster Parent

If, after adjudication, a motion is filed to return a child to his or her parent, guardian or legal custodian, a foster parent may file a motion to intervene for the sole purpose of requesting that the minor be placed with the foster parent, if the foster parent:

- is the current foster parent or has previously been the child's foster parent for more than one year, and
- has or is eligible for a foster care license, and
- has not been found to have abused or neglected any child.

Under this provision, a trial judge may only enter an order placing the child who is the subject of the motion with the foster parent who brought the motion.

Foster parents may also challenge removal through the administrative review process. ALJ decisions are given deference but appellate courts can consider de novo the question of whether a prior order was a "determination on the issue" decision on the issue on the merits. *See* ***Campbell v. Dept. of Children and Family Services***, 2016 IL App (2d) 150747. Foster parent challenges removal of children from her care, through the administrative review process. Foster parent first sought review by DCFS, who upheld removal. Foster parent then sought a service appeal of the placement review. Foster parent also filed motion to intervene in the children's abuse/neglect proceedings in juvenile court, which was denied. DCFS moved to dismiss the service appeal based on the juvenile court's decision to deny intervenor status in the abuse/neglect proceeding, and the ALJ granted the dismissal. Foster parent then filed a complaint in trial court for administrative review of the dismissal of her service appeal. Trial court affirmed. Appellate court reviewed the administrative decision de novo—on whether the juvenile court's order denying intervenor status was a "judicial determination on the issue" presented in the service appeal under the Administrative Code, which would require the ALJ to dismiss the service appeal (89 Ill. Adm. Code 337.110(a)(4), amended at 36 Ill. Reg. 4388 (eff. Mar. 7, 2012)).

(2) Motion to Challenge Removal of Child from Foster Home

If a minor has been in a foster parent's home for more than one year and if the minor's placement is being terminated, that foster parent has standing and intervenor status unless the reason for removal is based on a reasonable belief that continuing in the care of the foster parent "will jeopardize the child's health or safety or presents an imminent risk of harm to the minor's life." ***In re Desiree O.***, 381 Ill. App. 3d 854 (1st Dist. 2008) (the court did not err in denying intervention by foster parents because reunification with the natural mother was determined to be in the best interest of the child by the manifest weight of the evidence).

D) DISCRETIONARY STANDING AND INTERVENOR STATUS

705 ILCS 405/1-5(2)(d)

The court may grant standing and intervenor status to any foster parent if it finds that such an action would be in a child's best interest.

ARTICLE II

ABUSE, NEGLECT, DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS

CHAPTER 1. INTRODUCTION

1.01 DEFINITIONS

The Juvenile Court Act recognizes three categories of children whose circumstances place them in need of judicial protection: abused, neglected and dependent.

Throughout these materials the terms "minor" and "child" are used interchangeably, as is frequently done in abuse, neglect and dependency cases that are discussed in the Benchbook. The Juvenile Court Act generally uses the term "minor(s)" when referring to children who are subject to proceedings under the Act.

A) ABUSED MINOR

705 ILCS 405/2- 3(2)

An abused minor includes any minor under 18 years of age or a minor 18 years of age or older for whom the court has made a finding of probable cause to believe that the minor is abused, neglected or dependent prior to the minor's 18th birthday whose parent, immediate family member, any person responsible for the child, any family or household member, or a parent's paramour endangers the child's well-being in any of the following ways:

(1) inflicts, causes to be inflicted, allows to be inflicted, or creates a substantial risk of non-accidental physical injury to the child which causes or would be likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function; or

(2) commits or allows to be committed any sex offense against the child; or

(3) commits or allows to be committed an act of torture against the child; or

(4) inflicts excessive corporal punishment; or

(5) commits or allows to be committed involuntary servitude, involuntary sexual servitude, or trafficking; or

(6) allows, encourages, or requires a minor to commit any act of prostitution.

NOTE: A minor shall not be considered abused for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act, **325 ILCS 2/1** ***et seq.***

B) NEGLECTED MINOR

705 ILCS 405/2-3(1)

A neglected minor includes any minor under 18 years of age or a minor 18 years of age or older for whom the court has made a finding of probable cause to believe that the minor is abused, neglected or dependent prior to the minor's 18th who:

(1) is not receiving necessary support, education, medical or other care necessary for his or her well-being, including adequate food, clothing and shelter; or

(2) is abandoned by his or her parents or other person responsible for the child's welfare; or

(3) is in an environment injurious to the welfare of the child; or

(4) is born with any amount of a controlled substance or a metabolite of a controlled substance in his or her blood, urine or meconium, unless it is the product of medical care to mother or child; or

(5) is under the age of 14 and left without supervision for an unreasonable period of time and without regard for the child's mental or physical health, safety or welfare after considering a number of factors set forth in the statute; or

(6) any minor who has been provided with interim crisis intervention services under Section 3-5 of this Act and whose parent, guardian, or custodian refuses to permit the minor to return home unless the minor is an immediate physical danger to himself, herself, or others living in the home.

NOTE: A minor shall not be considered neglected for the sole reason that the minor has been relinquished in accordance with the Abandoned Newborn Infant Protection Act, **325 ILCS 2/1 *et seq.***

C) DEPENDENT MINOR

705 ILCS 405/2-4

A dependent minor includes any minor under 18 years of age or a minor 18 years of age or older for whom the court has made a finding of probable cause to believe that the minor is abused, neglected or dependent prior to the minor's 18th birthday who:

(1) is without a parent, guardian or legal custodian; or

(2) is without proper care because of the mental or physical disability of a parent, guardian or legal custodian; or

(3) is without proper medical or other care necessary for his or her well-being through no fault, neglect or lack of concern by his or her parent, guardian or legal custodian; or

(4) whose parent, guardian or legal custodian with good cause wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian of the person with power to consent to the minor's adoption.

D) OTHER DEFINITIONS

Best Interest Determination

705 ILCS 405/1-3(4.05)

Courts should consider the following factors when determining the best interest of minor in the context of his/her age and developmental needs:

- The physical safety and welfare of the minor
- Development of the child's identity
- The child's background and ties, including family, cultural and religious
- The child's sense of attachment including where the child feels love and value, security, familiarity, affection, and the least disruptive placement
- Child's wishes and long-term goals
- Child's community ties including church, school and friends
- Child's need for permanence
- Uniqueness of every family and child
- Risks attendant to being in temporary care; and
- Preferences of the person available to provide care for the child.

(1) Temporary Custody / Shelter Care

705 ILCS 405/2-7

The temporary placement of the minor outside the custody of his or her parent or guardian, including the following:

• Temporary Protective Custody

Custody in a hospital or other medical facility or place designated for such custody by DCFS, including a licensed foster home, group home or other institution. Temporary protective custody is subject to court review.

- Shelter Care

  A physically unrestrictive facility designated by DCFS, or a licensed child welfare agency, or any other suitable place designated by the court for a minor who requires care away from home.

(2) Adjudicatory Hearing

705 ILCS 405/1-3(1)

The hearing at which the court decides whether the State has proved the allegation in its petition by a preponderance of the evidence.

(3) Dispositional Hearing

705 ILCS 405/1-3(6)

The hearing to determine whether a minor should be made a ward of the court, and if so, what orders should be entered with respect to the minor's custody and well-being.

(4) Permanency Review Hearing

705 ILCS 405/1-3 (11.2)

"A hearing to set the permanency goal and to review and determine (i) the appropriateness of the services contained in the plan and whether those services have been provided, (ii) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal, and (iii) whether the plan and goal have been achieved."

NOTE: 705 ILCS 405/2-28(2),

(5) Parent

705 ILCS 405/1-3(11)

A child's biological or adoptive parent, including a father whose paternity is presumed or has been established by law. The term parent does not include a person whose rights have been terminated.

(6) Guardianship of the Person

705 ILCS 405/1-3(8)

The duty and authority of a court-appointed person or agency other than a child's parent to act in his or her best interests, subject to residual parental rights and responsibilities.

(7) Legal Custody

705 ILCS 405/1-3(9)

The relationship created by court order which gives a person or agency the responsibility of "physical possession" of a child and the duty to protect, care for, train and discipline the child, subject to residual parental rights and the responsibilities of any guardian of the person

(8) Residual Parental Rights & Responsibilities

705 ILCS 405/1-3 (13)

"The rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including, but not necessarily limited to, the right to reasonable visitation (which may be limited by the court in the best interests of the minor), the right to consent to adoption, the right to determine the minor's religious affiliation, and the responsibility for his support."

(9) Ward of the Court

705 ILCS 405/1-3(16)

A minor who, as a result of a finding of abuse, neglect or dependency, is adjudged a ward of the court and therefore subject to the court's dispositional authority.

1.05 OTHER RELEVANT STATUTES

A) ABUSED AND NEGLECTED CHILD REPORTING ACT

325 ILCS 5/1 *et seq.*

Indicated Report: This category is used if there is a determination that the allegation of abuse or neglect is credible **325 ILCS5/3.**

Unfounded Report: This category indicates that, after investigation, it is determined that there is not credible evidence to support the allegation of abuse or neglect **325 ILCS 5/3**.

Undetermined Report: This category applies if DCP is unable to complete an investigation within 60 days or is otherwise unable to determine the credibility of a report **325 ILCS 5/3**.

B) ADOPTION ACT

750 ILCS 50/0.01 *et seq.*

This Act contains the standards for parental unfitness used in Juvenile Court termination of parental rights proceedings.

C) CHILD CARE ACT

225 ILCS 10/1 *et seq.*

The Act establishes licensing requirements for facilities, homes and institutions where children are removed from parental custody and placed in alternative care by DCFS or pursuant to court order.

D) CHILDREN AND FAMILY SERVICES ACT

20 ILCS 505/1 *et seq.*

The Act which creates the Illinois Department of Children and Family Services and sets forth its statutory rights and responsibilities.

E) DOMESTIC VIOLENCE ACT

750 ILCS 60/101 *et seq.*

The Act can be used in Juvenile Court proceedings to provide added protection for children and family members in cases where domestic violence is present.

F) ILLINOIS PARENTAGE ACT

750 ILCS 46/101 *et seq.*

This Act sets out the legal requirements for the establishment of both the mother-child and father-child relationships in Illinois.

G) INDIAN CHILD WELFARE ACT

25 U.S.C. Section 1902 *et seq.*

In the case of Native American children, the federal Indian Child Welfare Act establishes special rules and standards governing the removal of children from their homes and judicial proceedings involving allegations of abuse, neglect, dependency and termination of parental rights. Best practices would be to ask both parents at the first opportunity whether they are aware of any Native American ancestry in their blood line, and if so, are they a member of any tribe.

See ***In re N.L.***, 17 N.E.3d 906 (2014) – ICWA notice requirement not fulfilled; insufficient records for appellate court to determine if State complied with the ICWA. Foster care and termination of parental rights reversed. This Act applies, however, only if the court has corroborating information that a parent is in fact a Native American (registered with a recognized tribe) which then triggers notice and special treatment under the Act. ***In re T.A.***, 378 Ill. App. 3d 1083 (4th Dist. 2008). *See, e.g.,* ***In re Adoption of C.D.***, 751 N.W.2d 236 (N.D. 2008) (evidence of a mother's Indian heritage, her receipt of benefits provided only to Indians but not necessarily from the Tribe, her acceptance in the Indian community, and her mere *application* for enrollment with the Oglala Sioux Tribe did not support a finding that the child was an "Indian child" under the ICWA). *See* ***In re F.O.***, 22 N.E.3d 456 (2014) – held ICWA notice requirements not triggered where the only evidence that F.O. might be an Indian child came from respondent's claim of Native American heritage, but that even if they were triggered, notices were sent and tribes responded (that F.O. was not enrolled or eligible to be enrolled).

H) INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

45 ILCS 15/1 *et seq.*

The Act creates uniform procedures for handling interstate placement of children in adoptive homes, foster homes, childcare facilities and other placements.

I) MARRIAGE AND DISSOLUTION OF MARRIAGE ACT

750 ILCS 5/101 *et seq.*

The Act governs the law of marriage, divorce, allocation of parental responsibilities and parenting time, including cases in which abuse or neglect of a child may be at issue.

J) MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE

405 ILCS 5/1-100 *et seq.*

This Act may be relevant and its provisions useful in cases in which any party is mentally disabled or developmentally delayed. The Act also restricts the production of witnesses, records and information in court proceedings, including those in juvenile court.

K) PROBATE ACT

755 ILCS 5/1-1 *et seq.*

The Probate Act sets forth the rules for establishing legal guardianship of a child.

L) EMANCIPATION OF MINORS ACT

750 ILCS 30/1 *et seq.*

This Act outlines the standards and procedures for partially or completely emancipating a mature minor. Emancipation is one of the dispositional alternatives available to a judge in abuse, neglect and dependency proceedings. *See* **705 ILCS 405/2-23(1)(a), (b)**.

M) UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT

750 ILCS 36/101 *et seq.*

This Act defines the circumstances under which "a court of this State has jurisdiction to make an initial child-custody determination." It may be necessary to interpret this statute when a challenge is made to the Juvenile Court's subject matter jurisdiction to adjudicate wardship of neglected or dependent minors due to, for example, claims that a child was born in another state and that petitions about that child are thus within the subject matter jurisdiction of that other state. Nevertheless, even where a child's parents move back and forth between more than one state, and thus, as statutorily defined, the minor had no home state, the act still permits jurisdiction where the child's mother had "significant connections" with Illinois, *e.g.,* non-parental caretaker lives in Illinois. ***In re Marriage of Diaz***, 363 Ill. App. 3d 1091 (2d Dist. 2006).

N) THE FEDERAL ALIENS AND NATIONALITY LAW

8 U.S.C. Sec 1154(a)(1)(A)(iv) [Petitioning Procedure]

This federal statute provides that an alien child of a U.S. citizen who has been the subject of extreme cruelty perpetrated by his or her U.S. citizen parent, the alien child may file a petition for immigrant status.

CHAPTER 2. HOW THE CASE ARRIVES IN COURT

2.01 IN GENERAL

Typically, a case begins when a child is taken into temporary protective custody by law enforcement or DCFS. A petition is filed, and summons issued. In some cases, a petition is filed before the minor is taken into custody and a warrant is then sought for the minor.

Once a child is placed in temporary protective custody, a hearing must be held within 8 hours, exclusive of Saturdays, Sundays, and court holidays, to determine whether the child should be continued in custody. **705 ILCS 405/2-9**. *See also* section 5.01, *infra.*

When a child is taken into temporary custody, law enforcement personnel must immediately notify the child's parent or legal guardian and immediately notify DCFS. If a child has died, law enforcement should also notify the coroner and medical examiner.

2.05 TAKING A MINOR INTO CUSTODY

705 ILCS 405/2-5

A) WITH A WARRANT

If a petition alleging abuse, neglect or dependency has been filed, a judge may issue a warrant authorizing law enforcement personnel to take the minor into temporary custody.

B) WITHOUT A WARRANT

A law enforcement officer may take a minor into custody prior to the filing of a petition and issuance of a warrant if there is reasonable cause to believe that the minor is an abused, neglected, or dependent child.

2.10 PETITION

705 ILCS 405/2-13

A) IN GENERAL

The court's jurisdiction is invoked by the filing of a petition alleging that a minor is abused, neglected or dependent. Petitions should comply with pleading requirements in civil cases. *See* ***In re J.B.,*** 245 Ill. Dec. 328 (Ill. App. 1999) (petitions are civil in nature, should comply with general rules of civil pleadings). Any deficiency in the petition must be raised at trial or may be considered waived. ***In re Carlenn H.***, 186 Ill. App. 3d 535 (lst Dist. 1989). This includes challenges to the Court's subject matter jurisdiction.

B) WHO MAY FILE A PETITION?

Any adult, agency or association by its representative may file a petition, including a GAL. **705 ILCS 405/2-13 (1)**; ***In re D.S.***, 198 Ill. 2d 309 (2001) Minors cannot file a petition in their own name. ***In re Marriage of Thompson***, 272 Ill. App. 3d 257 (2d Dist. 1995) (child had neither a statutory nor constitutional right to petition for change of custody in a divorce proceeding).

DCFS is required to ask the State's Attorney to file a petition or motion for termination of parental rights and appointment of a guardian with authority to consent to adoption under certain circumstances. **705 ILCS 405/2- 13(4.5)**. If the State's Attorney determines that the statutory circumstances for a filing a petition for termination are met, the State's Attorney must file the requested petition or motion.

A court has the power to order the State's Attorney to file a petition alleging abuse, neglect or dependency. **705 ILCS 405/2-13(1)**. ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982); ***In re J.M.***, 245 Ill. App. 3d 909 (2d Dist. 1993). For a case discussing the court's authority in cases where the State seeks to dismiss its petition, *see* ***In re J.J.***, 142 Ill. 2d 1 (1991), discussed at subparagraph I, *infra.*

Only the State's Attorney can prosecute a petition, ***In re D.S.***, 198 Ill. 2d 309 (2001) (The Court ruled a child's guardian *ad litem* has the right to file a petition but does not have authority to prosecute the petition. That power is vested solely in the discretion of the State's Attorney.) *See* **705 ILCS 405/1-6** authorizing the State's Attorney to represent the State of Illinois in juvenile court proceedings.

C) SUFFICIENCY OF THE PETITION

(1) Required Information.

The petition must contain the following information:

- An allegation that the minor is abused, neglected or dependent, with citation to the relevant provisions of the Act.

- Facts sufficient to bring the minor under the Act's abuse, neglect or dependency provisions and to inform the parties of the cause of action, including a plain and concise statement of the factual allegations that form the basis for the filing of the petition.

- The name, age and residence of the minor.

- The name and residence of his or her legal guardian or the person(s) having custody or control of the minor, or of the nearest known relative if no parent or guardian can be found.

- If the minor is in shelter care, the date on which temporary custody was ordered by the court or the date set for a temporary custody hearing. **705 ILCS 405/2-6(1)(b)**.

- An allegation that it is in the best interest of the minor and the public that he or she be adjudged a ward of the court. **705 ILCS 405/2-13(3)**.

- If termination of parental rights is sought, the petition must so state, and the prayer for relief "shall clearly and obviously state that the parents could permanently lose their rights as a parent." If a request for termination does not appear in the original petition, a petitioner may make a motion requesting termination at any time after entry of a dispositional order. **705 ILCS 405/2-13(4)**.

The petition must be verified, but statements in the petition may be made on information and belief.

(2) Other Information.

The petition may pray generally for relief available under the Act. Subject matter jurisdiction in terms of state of residence must be alleged. *See, e.g.,* ***In re D.S.***, 217 Ill. 2d 306 (2005). The petition need not contain a proposed disposition upon an adjudication of wardship. See ***In re Andrea D.***, 342 Ill.App.3d 233 (2003) ("essential test of the sufficiency of a petition is whether it reasonably informs the respondent of a valid claim against him or her."

D) AMENDMENT

705 ILCS 405/2-13(5)

The Act admonishes the trial court to "liberally" allow petitioner to amend the petition for the purpose of setting forth a cause of action or to add, amend, or supplement factual allegations that form the basis for a cause of action for up to 14 days before the adjudicatory hearing. After that the petition may be amended prior to adjudication upon a showing of cause. *See* ***In re Tyrese J.,*** 376 Ill.App.3d 689 (2007) (held state should have been granted leave to amend pleadings to conform to evidence showing child born exposed to illegal substances; amending petition would cure defect of pleading and conform to proofs). Cites four factors in ***Kupianen v. Graham***, 107 Ill.App.3d 373 (1982) and adopted by Supreme Court in ***Loyola Academy v. S&S Roof Maintenance, Inc.***, 146 Ill.2d 263 (1992): (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified (***Loyola Academy***, 146 Ill.2d at 273). In Tyrese, the appellate court held that the circuit court should have allowed State to correct the mistake or amend the petition, because "[d]oing so would have been in harmony with the purpose of the Act and in accordance with its duty to protect a minor's interest." *But see,* ***In re J.B.***, 312 Ill. App. 3d 1140 (2d Dist. 1999) (if the State fails to amend the petition the Court is barred from entering a finding on any claims other than those that were alleged in the original petition).

If the court grants leave to amend based on new evidence or allegations, it must give respondent "an adequate opportunity to prepare a defense to the amended petition." **701 ILCS 405/2-13(5)**. *See* ***In re Bardin***, 76 Ill. App. 3d 286 (lst Dist. 1979) (State may amend the petition where no surprise or prejudice results).

E) SUPPLEMENTAL MOTIONS

705 ILCS 405/2-13(6)

A party may file motions in the case at any time prior to the time the original petition is dismissed, or the case is closed. Any such motion must be in the minor's best interest and must contain facts necessary to support the requested relief. In ***In re S.B.***, 305 Ill. App. 3d 813 (3d Dist. 1999), the reviewing court ruled that a written motion to terminate parental rights is a prerequisite to a valid termination of parental rights hearing. *See also* ***In re G.L.***, 133 Ill. App. 3d 1048 (3d Dist. 1985).

1) MOTION TO DISMISS A PETITION

In ***In re J.J.***, 142 Ill. 2d 1 (1991), the Court held that the State's Attorney does not have sole discretion to decide whether to dismiss a petition alleging abuse or neglect. Instead, the trial court has an independent duty to determine whether

dismissal is in a child's best interest. *See also* ***In re S.G.***, 175 Ill. 2d 471 (1997); ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982).

In ***In re Justin T.***, 291 Ill. App. 3d 872 (lst Dist. 1997), the court ruled that guardian *ad litem* must be appointed for a minor immediately upon the filing of a petition even in cases where the State has filed a motion to dismiss. The court relied on the language of section **705 ILCS 405/2-17(1)** and on the Court's holding in ***In re J.J.***, 142 Ill. 2d 1 (1991).

2) MOTION FOR EARLY TERMINATION OF REASONABLE EFFORTS

705 ILCS 405/2-13.1

At any time, including at the time of the filing of a petition, the State's Attorney, DCFS, or a child's guardian *ad litem*, may file a motion requesting a finding that reasonable efforts to reunify the family are no longer required or should end. For a more extensive discussion, *see* section 6.15, *infra.*

CHAPTER 3. INITIAL COURT APPEARANCE

SEE INITIAL COURT APPEARANCE CHECKLIST: APPENDIX

3.01 NECESSARY PARTIES

A) IN GENERAL

The Juvenile Court Act is not entirely clear in regard to the question of who is entitled to participate in abuse, neglect and dependency proceedings. ***In the Interest of A.K.***, 250 Ill. App. 3d 981 (4th Dist. 1993) (citing ***In re Winks***, 150 Ill. App. 3d 657 (4th Dist. 1986)). Nonetheless, determining who is a necessary party is important because parties have statutory and constitutional rights that must be respected. Making such a determination is complicated by the increased number of nontraditional family arrangements in which today's children are raised.

(1) Persons Designated Necessary Parties by Statute

705 ILCS 405/1-5(1)

- the minor who is the subject of the proceedings.
- the minor's parents.
- the minor's guardian, legal custodian or responsible relative.

CASES:

See ***In re L.S.*****,** 2022 IL App. (1st) 210824. Requirements under 1-5(1) were met, as remote participation is (implicitly) equivalent to the statutory right to be "present" and that the hearing was conducted "in a manner that safeguarded the integrity of the proceeding and the parties' rights."

See ***In re M.M***., 2022 IL App. (1st) 211505. In dispositional hearing conducted over Zoom during COVID-19 pandemic, mother was expelled from proceeding for being disruptive, and court went on to find mother unable and unwilling to care for child, made child a ward of the court, and placed child under guardianship of DCFS. Appellate court noted other cases in which Zoom use was upheld or endorsed, pointing to courts' safeguarding rights of parent(s) to be present and to confer with counsel. Removal of mother in this case without considering alternatives (including muting her microphone) violated statutory right to due process. Removal was not harmless; while mother was unable to parent while in jail, she still had statutory right to be present and consult with an attorney.

(2) Persons Who May Be Joined as Parties

The Act is silent on the question of a court's authority to join an individual as a party if that person is not a parent, guardian, legal custodian or responsible relative. It appears to be within a judge's discretion to accord an individual party status if that person enjoys an *in loco parentis* relationship with the child and is not expressly precluded from being named a party under the Act. *See generally* ***In re Jennings***, 68 Ill. 2d 125 (1977) (grandmother raised and cared for the children since birth).

(a) Stepparents

A stepparent who has legal custody is entitled to party status. *See* ***In re Anast***, 22 Ill. App. 3d 750 (lst Dist. 1974) (stepfather who had been granted legal custody in a divorce proceeding was entitled to notice and the right to be heard in a child protection proceeding).

(b) Putative Parents

In determining the scope of putative parents' rights in child-related proceedings, the U.S. Supreme Court has distinguished between those who establish custodial, personal or financial relationships with a child and those who fail to do so. *See* ***Lehr v. Robertson***, 463 U.S. 248 (1983).

States may utilize mechanisms such as putative father registries that require affirmative steps to declare such a relationship or run the risk of being excluded from participation in proceedings. Illinois established such a registry in the Illinois Adoption Act (**705 ILCS 50/12.1**). Recent appellate cases have suggested that the requirements of the Putative Father Registry apply in Juvenile Court proceedings. *See* ***In re A.S.B.***, 293 Ill. App. 3d 836 (2d Dist. 1997); ***In re Petition to Adopt O.J.M.***, 293 Ill. App. 3d 49 (lst Dist. 1997).

In addition, the Juvenile Court Act requires DCFS to respond to inquiries from parents, including putative parents, as to whether a child is in DCFS custody or guardianship and, if so, to refer the individual to the appropriate court. **705 ILCS 405/1-5(1.5)**.

(c) Presumed Fathers

In ***In the Interest of A.K.***, 250 Ill. App. 3d 981 (4th Dist. 1993), the court declined to adopt an "equitable parent" rule for Illinois. Such a rule would have given all persons who have functioned as a child's parent party status in cases involving the child's custody. The court held, however, that a father who is presumed by virtue of marriage to the child's mother to be a parent at the time juvenile court

proceedings are commenced is a party in those proceedings. Even after the presumption of parentage is rebutted, the presumed father may remain a party entitled to notice and to present evidence. The presumed father's appeal rights, however, are then limited to denial of procedural rights under the Act and do not extend to the court's substantive rulings with respect to the child.

In ***In re N.C.***, 2014 IL 116532 (it was error to grant a motion for a declaration of non-paternity and dismiss "father" as a party to the neglect proceedings because, as the presumed father, he had the right to be heard and present evidence at the neglect hearing because the allegations of neglect concerned his conduct; thus the trial court's finding that N.C. was neglected due to an injurious environment must be reversed and remanded, which also necessitates reversing the adverse finding against respondent as well).

(d) Foster Parents

705 ILCS 405/1-5 (2)(a)-(d)

In ***Smith v. Organization of Foster Families for Equality and Reform***, 431 U.S. 816 (1977), the Supreme Court discussed but stopped short of holding that foster families have a constitutional liberty interest that entitles them to due process of law in connection with government decisions affecting that relationship.

The Illinois Juvenile Court Act, however, creates a complicated set of statutory rights for foster parents. These rights vary with the nature of the foster parent-child relationship and with the issue before the court. *See* Article I, section 2.15. See ***In re M.W.,*** App. 3 Dist. 1991, 221 Ill.App.3d 550 (1991) – foster parents had right to notice and right to be heard at hearing on biological parents' petitions for return of minor children but were not entitled to intervene as a matter of right, and circuit court did not abuse discretion in denying petition to intervene.

Note: When allowing a foster parent to intervene in a case, the judge should specify on the record the nature and scope of the foster parent's participation. This issue should be revisited at each new hearing. The court should also determine the degree to which foster parents are entitled to access reports, files and other material in the case.

(i) Current or Previous Foster Parents

Any current or previous foster parent has a right to notice at all stages of any hearing under the Act. The Act expressly states that such a right does not confer party status on a foster parent. **705 ILCS 405/1-5 (2)(a)**.

If, after a minor has been found abused or neglected, a parent seeks return of a child, the child's current foster parent and any other foster parent with whom the minor resided for at least one year may file a motion to intervene for the sole purpose of requesting that the minor be placed with the foster parent. **705 ILCS 405/1-5 (2)(b)**.

(ii) Intervenor Foster Parents

If a child has resided in a foster parent's home for more than one year and the minor's placement in the home is being terminated, the foster parent has "standing and intervenor status" unless the basis for removal from the home is concern that the child's health or safety is jeopardized by remaining in the home. **705 ILCS 405/1-5 (2)(c)**. In re R.J., 2022 IL App. (1st) 211542. (Statutory right to intervene is absolute for year-plus long foster parents.) It is not error to deny intervention where, for example, reunification with the natural mother is determined to be in the best interest of the child. ***In re Desiree O.***, 381 Ill. App. 3d 854 (1st Dist. 2008).

The court may grant "standing" and "intervenor status" to any foster parent if the court finds that it is in the child's best interest. **705 ILCS 405/1-5 (2)(d)**.

(e) Plenary Guardians

In ***In re K.C.***, 325 Ill. App. 3d 771 (lst Dist. 2001), the reviewing court ruled that a mentally disabled mother's plenary guardian, who had been appointed by the Probate Court, was a necessary party to a proceeding to terminate the mother's parental rights. The trial court's order was reversed for want of jurisdiction despite the fact that the mother appeared and was represented by counsel.

(3) Persons Who Are Not Parties

(a) Persons with physical but not legal custody

A person who has physical custody of a child is not a party solely by virtue of his or her custodianship. ***In re Winks***, 150 Ill. App. 3d

657 (4th Dist. 1986). *Cf* ***In re D.L.***, 226 Ill. App. 3d 177 (lst Dist. 1992) (aunt and uncle who had physical custody were proper parties by virtue of their appointment as temporary guardians).

(b) Person subject to order of protection

705 ILCS 405/2-25(7)

A person against whom an order of protection is being sought and who is not a necessary party is not a party and does not have rights other than those set out in section 2-25 (**705 ILCS 405/2-25**) of the Act.

(c) Relative or interested person

A person who is related to the child or has an interest in his or her well-being is not automatically entitled to party status. *See* ***In re Jennings***, 68 Ill. 2d 125 (1977); ***In re Dively***, 79 Ill. App. 3d 428 (2d Dist. 1979).

(d) Minor Parents

In child protection cases where a parent is a minor, the minor parent's own parents are not necessary parties. In re C.P., 2018 IL App. (4th) 180310.

(e) Anonymous sperm donors

An anonymous sperm donor is not a party and not entitled to notice in child protection proceedings. ***In re E.S.***, 324 Ill. App. 3d 661 (lst Dist. 2001).

(f) Private Agents

See ***In re N.M.***, 13 N.E.3d 761 (2014) – Section 1-17 of the Juvenile Court Act (**705 ILCS 405/1-17**) allows appearance of private-agency caseworkers; blanket requirement that DCFS staff appear at all hearings is not permitted by plain language of statute. Court must make an individualized finding that DCFS appearance is in the best interests of the particular minor.

3.05 ADMONITIONS

705 ILCS 405/1-5 (1), (3)

At the first appearance of a party, the trial judge must explain the nature of the proceedings and the parties' rights in the case. All adult parties must be furnished a written "Notice of Rights" before or at the first hearing.

In the case of parents, in addition to notifying them of their rights, the court is required to admonish them that if their child is made a ward of the court and DCFS is given custody or guardianship, they must 1) cooperate with DCFS; 2) comply with all service plans; and 3) correct the conditions that resulted in their child being placed in care or risk termination of their parental rights. These same admonitions must be repeated at later stages of the proceeding, *i.e.*, at the time of the adjudication, disposition and permanency hearing stages.

3.10 APPOINTMENT OF COUNSEL

705 ILCS 405/1-5 (1)

A) WHO IS ENTITLED TO REPRESENTATION BY COUNSEL?

The minor, his or her parents, guardian, legal custodian or responsible relative have a statutory right to be represented by counsel. It is important at this early stage to consider and resolve issues involving appointment of counsel, including the possibility of later-arising conflicts between parents. Careful consideration of issues at this stage will avoid complication and possible delay at later stages of the proceedings. A party who is financially unable to employ counsel is entitled to court-appointed counsel. However, there is no prohibition on respondent waiving representation by counsel. *See* ***Interest of Davion R.***, 2019 IL App. (1st) 170426. This right to appointed counsel does not extend to foster parents who are afforded standing and intervenor status.

B) WHO MAY BE APPOINTED AS COUNSEL?

The Act gives the trial court discretion to appoint the public defender or other counsel. **705 ILCS 405/1-5 (1)**.

It is not necessarily a conflict of interest for one public defender to represent the parents and another public defender to represent the minor even if both public defenders work in the same office, provided they are of equal rank. ***In the Interest of A.P.***, 277 Ill. App. 3d 592 (4th Dist. 1996). *But see* ***People v. Lackey***, 79 Ill. 2d 466 (1980) (conflict existed where the chief public defender represented a child, and his assistant represented the child's parents).

Representation of both father and mother by attorneys from the same public

defender's office presented no per se conflict of interest. ***In re A.F.***, 2012 IL App. (2d) 111079.

C) TIMING OF APPOINTMENT

(1) Counsel for the Minor

The Act provides that no hearing on any petition or motion may begin until such time as the minor who is the subject of the proceedings is represented by counsel. **705 ILCS 405/1-5 (1)**. The court should, therefore, appoint counsel for the minor at the time of the initial hearing, including the Temporary Custody / Shelter Care hearing.

(2) Minor's Right to Counsel of Choice

In ***In re A.W.***, 248 Ill. App. 3d 971 (lst Dist. 1993), the court upheld a trial court's order allowing a 13-year-old minor to substitute private counsel of her choosing over the objection of the guardian *ad litem* who had been appointed as attorney and GAL for the child. But a minor's right to select substitute counsel is not absolute. "If the dual role creates an inherent conflict . . . then a separate attorney and a separate guardian *ad litem* should be appointed. If no conflict exists, then separate appointments are not necessary." ***In re B.K.***, 358 Ill. App. 3d 1166, 1173 (5th Dist. 2005). No case law exists on the question of whether a private party may retain counsel for a minor respondent.

(3) Counsel for an Adult Party

Normally the court will appoint counsel for a child's parents or legal guardian at the time of the party's first appearance in court. Cases have held that the court need not continue the temporary custody hearing pending the availability of privately retained counsel. *See* ***In re D.L.***, 226 Ill. App. 3d 177 (lst Dist. 1992); ***In re W.B.***, 213 Ill. App. 3d 274 (4th Dist. 1991). However, these cases also suggest that due process may require the presence of counsel if a party is under a disability that does not permit full participation in the absence of counsel, such as the fact that the parent is a minor or is mentally impaired.

On the other hand, under certain circumstances appointment of counsel for an adult party may not be required. For example, in ***In re Abel C.***, 2013 IL App (2d) 130263, where DCFS took the minor seven-day-old infant into protective custody, and the state filed a petition alleging neglect due to an injurious environment, the respondent mother refused appointed counsel, and the trial court properly allowed mother to proceed pro se, as the court thoroughly explained the procedures for the hearing and advised her of her continuing right to counsel. *See also*, ***In re Travarius O.***, 343 Ill. App. 3d 844 (1st Dist. 2003) (trial court did not abuse it discretion and the father's

due process rights were not violated where the court refused to appoint new counsel for a father, where the father refused to cooperate with three prior appointed attorneys).

If significant state action has resulted in the custody or guardianship of the minor child being placed with a person other than the parent, equal protection requires that the indigent parent be provided with the assistance of counsel in a subsequent action to terminate his or her parental rights. ***In re Adoption of K.L.P.***, 198 Ill. 2d 448 (2002). *See also*, ***In re Adoption of L.T.M.***, 214 Ill. 2d 60 (2005) (Adoption Act's failure to provide father appointed counsel, which he would have had under the Juvenile Court Act, violated father's constitutional right to equal protection where trial court terminated his parental rights under the Adoption Act and he was denied appointed counsel in his appeal as of right from that order, when he would have had it under the Juvenile Court Act).

D) EFFECTIVE REPRESENTATION

The right to representation by counsel includes the right to effective representation. *See* ***In re Kr. K.***, 258 Ill. App. 3d 270 (2d Dist. 1994); ***In re D.M.***, 258 Ill. App. 3d 669 (lst Dist. 1994). This right is supported by provisions allowing for fee petitions. ***In re J. H.***, 384 Ill. App. 3d 507 (1st Dist. 2008) (Circuit Court of Cook County General Order 5-29 interpreted to *not* mandate denial of a fee petition by an attorney, who had been appointed to represent an indigent client in a wardship proceeding, for noncompliance with its deadlines as this would conflict with **Supreme Court Rule 299(a)**; trial court may impose an appropriate sanction for the noncompliance, but may not deny a request for fees simply because the request is untimely under those deadlines).

3.15 APPOINTMENT OF GUARDIAN *AD LITEM*

705 ILCS 405/2-17

A) WHEN IS APPOINTMENT REQUIRED?

Illinois law requires the appointment of a guardian *ad litem* (GAL) in all juvenile court cases in which a child is alleged to have been abused, neglected or the victim of a sex crime. Guardian ad litem should be appointed and present for the Temporary Custody hearing. **705 ILCS 405/2-17(1)**.

In addition, a court may appoint a GAL if it believes that there is a conflict of interest between parent and child or that the appointment is in the child's best interest. **705 ILCS 405/2-17(3)**. A court may also appoint guardian ad litem for a mentally impaired respondent during termination of parental rights hearing, even though respondent already had a plenary guardian of her person, so long as that guardian *ad item* would not be operating under a conflict of interest. ***In re Mark W.***, 383 Ill. App. 3d 572 (1st Dist. 2008). A plenary guardian shall have custody of

the ward's minor and adult dependent children only "to the extent ordered by the court." ***Id.***

B) WHO MAY BE APPOINTED AS GAL?

A judge may exercise discretion in determining who is qualified to serve as a minor's guardian *ad litem*. In order to qualify for appointment in counties of more than 100,000 but less than 3,000,000, a GAL must have received mandatory training through a program approved by DCFS. There is no requirement that the person appointed be an attorney. If not an attorney, however, the court must appoint counsel for the guardian *ad litem*. **705 ILCS 405/2-17(4)**.

For financial and practical reasons, often the same individual is appointed GAL and attorney for a child. This dual appointment may raise ethical issues in certain cases because of the inherently different responsibilities of attorneys and guardian *ad litem*. If an individual holding dual appointment believes that such a conflict exists, the court should allow withdrawal from one of the roles. ***In re J.D.***, 351 Ill. App. 3d 917 (4th Dist. 2004).

C) FEES

Guardian *ad litem* fees are set by the court and charged to the minor's parents to the extent they are able to pay. If the parents are found unable to pay, reasonable fees are to be paid from the general fund of the county. **705 ILCS 405/2-17(5)**.

D) DUTIES OF A GAL

(1) Best Interest

A GAL is obligated to "represent the best interests of the minor and shall present recommendations to the court consistent with that duty." **705 ILCS 405/2-17(1)(b)**. *See also,* ***In re A.P.***, 283 Ill. App. 3d 395 (5th Dist. 1996) (suggesting that a GAL may have violated his duty to represent the child's best interests).

(2) Statutory Duties

The Act sets forth certain duties a GAL must undertake as part of his or her representation and suggests, by inference, that the court is responsible for confirming that these responsibilities have been undertaken.

(3) Interviews

The Juvenile Court Act requires personal interviews and ongoing contacts with minors and foster parents or other care givers. **705 ILCS 405/2-17(8)**.

- The GAL or his or her agent must have a minimum of one in-person contact with the minor and one contact with one of the current foster parents or care givers prior to the adjudicatory hearing; and

- There must be at least one additional in-person contact with the child and one contact with one of the current foster parents or care givers after the adjudicatory hearing but prior to the first permanency hearing; and

- In addition, there must be one additional in-person contact with the child and one contact with one of the current foster parents or care givers each subsequent year; and

- For good cause shown, a judge may excuse face-to-face interviews otherwise required by the Act.

E) ACCESS TO DOCUMENTS

705 ILCS 405/2-17(6)

A guardian ad litem is entitled to receive copies of all classified reports of child abuse and neglect made under the Abused and Neglected Child Reporting Act if the reports relate to the minor represented by the GAL.

F) DURATION OF APPOINTMENT

705 ILCS 405/2-17(7)

Once appointed, the GAL retains that role throughout the entire case, including permanency hearings and termination of parental rights proceedings. A judge, however, may enter an order substituting another person as GAL.

3.20 APPOINTMENT OF COURT-APPOINTED SPECIAL ADVOCATE (CASA)

705 ILCS 405/2-17.1

A) WHAT IS A CASA?

A court-appointed special advocate is community volunteer trained with nationally developed standards, who has been screened and trained regarding child abuse and neglect, child development and juvenile court proceedings according to the standards of the National CASA Association. A court-appointed special advocate may also be appointed a child's guardian *ad litem*. **705 ILCS 405/2-17.1(1), (1.2), (5)**.

B) APPOINTMENT

The court shall appoint a special advocate on the filing of a petition, or at any time during the pendency of the proceeding, if special advocates are available. **705 ILCS 405/2-17.1(1)**.

C) COSTS

Costs associated with the appointment and duties of a CASA are paid by the CASA personally or by an organization of court-appointed special advocates. A CASA is not responsible for the cost of services to a child. **705 ILCS 405/2-17.1(5)**.

D) REMOVAL

The court may remove a CASA if it determines that he or she has not acted in a minor's best interest or because continued service is unwanted or unnecessary. **705 ILCS 405/2-17.1(6)**.

E) IMMUNITY

If a CASA has acted in good faith in connection with the appointment, he or she is immune from all civil or criminal liability. Good faith is presumed but does not extend to willful and wanton misconduct. **705 ILCS 405/2-17.1(8)**.

3.25 NOTICE AND SUMMONS

A) NOTICE

At the Temporary Custody hearing, the court should confirm that the minor's parents received written notice or verbal notice if written notice is not reasonable under the circumstances, of the time and date for the temporary custody hearing. **705 ILCS 405/2-9(2).**

Notice to a parent who has appeared or been served with summons personally or by certified mail, and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with Supreme Court Rule 11. Notice to a parent who was served by publication and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with this Section and Section 2-16.

B) SUMMONS

(1) Summons shall issue to all parties respondent upon the filing of a petition, except that the summons need not be directed to a minor under 8 years of

age if the guardian *ad litem* appears on behalf of the minor in any proceeding under this Act." **705 ILCS 405/2-15**;

(2) Service by Certified Mail

If service by summons is not made within a reasonable time or it appears that a respondent resides outside the State, service may be made by certified mail. The clerk shall mail the summons and a copy of the petition to the respondent by certified mail marked for delivery to addressee only. The regular return receipt for certified mail is sufficient proof of service. The date may be set for not less than five days after the mailing above described. **705 ILCS 405/2-16(1).**

(3) Service by publication

(a) When permissible

If service cannot be made by certified mail or if any person was made a respondent under the designation of "all whom it may concern".

Prior to publication, a petitioner must make diligent efforts to find a respondent's current and last known address. If unable to do so, petitioner must file an affidavit with the clerk's office attesting to this fact. The clerk's office will then issue notice by publication within 3 days of receipt of the affidavit. **705 ILCS 405/2-16(2)**.

(b) When required

When the court enters an order or judgment against a respondent who has not appeared and who cannot be served with process other than by publication.

(c) Contents of publication notice

A notice by publication to any parent whose identity or whereabouts is unknown must advise that "the court has authority in this proceeding to take from you the custody and guardianship of the minor, to terminate your parental rights and to appoint a guardian with power to consent to adoption. You may lose all parental rights to the child," and shall additionally contain the statement that, if the party fails to appear, he or she will "not be entitled to publication notices of the proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights." **705 ILCS 405/2-16(2)**.

[**NOTE:** While there would appear to be no pertinent Illinois case law or statute discussing this issue, notice by publication which identifies minor respondents by initials only, rather than by last name, would seem to best preserve confidentiality and privacy for minors. Check your Circuit Rules on this matter, and if this problem has not yet been addressed, it might be advisable to recommend such a Rule, or institute this publication practice in your court.]

(d) Method of service

The clerk of the court shall cause publication to be made once in a newspaper of general circulation in the county where the action is pending; and the clerk at the time of publication of notice, shall mail to each respondent so notified a copy thereof at his last known address.

(e) Proof of service

The certificate of the clerk that he or she has mailed the notice is sufficient proof thereof.

(f) Time of publication

The date for the adjudicatory hearing may be set for not less than 10 days after publication of notice.

(g) Change of hearing date.

If the date originally set for the adjudicatory hearing must be changed to comply with the notice requirement set forth above, notice of the new date must be given by certified mail or other appropriate means to each respondent who was served personally or by certified mail.

(3) Waiver of Service of Summons

"The appearance of the minor's legal guardian or custodian, or a person named as a respondent in a petition … shall constitute a waiver of service of summons and submission to the jurisdiction of the court, except that the filing of a special appearance does not constitute an appearance …. A copy of the summons and petition shall be provided to the person at the time of his appearance."**705 ILCS 405/2-15(7)**

3.30 CONFIDENTIALITY AND PUBLIC PARTICIPATION

A) THE PUBLIC AND THE PRESS

The general public, except for the news media and crime victim, has no right to to be present in an abuse and neglect hearing. **705 ILCS 405/1-5(6)**; The court can limit information, such as the name of the minor, from being released by the public or the press as a result of their having being present in neglect proceedings. Section **705 ILCS 405/1-5(6)** provides that "the court may, for the minor's safety and protection and for good cause shown, prohibit any person or agency present in court from further disclosing the minor's identity." *See* ***In re a Minor***, 149 Ill. 2d 247, 266 (1992).

Occasionally, and often as early as the initial hearing in a case of great public interest, members of the media may seek to attend neglect, dependency or termination proceedings. It may be appropriate under those circumstances for the court to set parameters for public or press participation or disclosures by parties.

B) PARTIES AND THEIR ATTORNEYS

"Gag orders" prohibiting parties and their attorneys in neglect proceedings from discussing facts in the underlying action with the news media have also been held to be neither an abuse of discretion or unconstitutional, especially where the child has suffered emotional trauma and the airing of facts in the media would exacerbate the child's problems and constitute egregious invasion of the child's privacy. ***In re J. S.***, 267 Ill. App. 3d 145 (2d Dist. 1994).

C) INSPECTION AND COPYING OF JUVENILE COURT RECORDS

Inspection and copying of juvenile court records by persons or agencies is governed by **705 ILCS 405/1-8(A)**. The presiding judge of the juvenile court and the chief executive of the agency preparing said records may permit access to persons engaged in bona fide research, if publication of such research results in no disclosure of a minor's identity and protects the confidentiality of the record. **705 ILCS 405/1-8(A)(8)**; ***In re W.L.***, 293 Ill. App. 3d 818 (2d Dist. 1997).

CHAPTER 4. VENUE

4.01 COUNTY OF VENUE

705 ILCS 405/2-2(1)

Venue lies in any county where the minor resides or is found. Therefore, parental residence does not determine venue.

4.05 WAIVER OF VENUE

750 ILCS 405/1-15

All objections to improper venue are waived unless a motion for transfer is made before the start of the adjudicatory hearing. No order is void because it was entered in the wrong venue unless the claim was raised in accord with this provision. ***Id.*** at 1-15(a). Subsection 1-15(b) states: "A party respondent who either has been properly served, or who appears before the court personally or by counsel at the adjudicatory hearing or at any earlier proceeding on a petition for wardship under this Act leading to that adjudicatory hearing, and who wishes to object to the court's jurisdiction on the ground that some necessary party either has not been served or has not been properly served must raise that claim before the start of the adjudicatory hearing conducted under any Article of this Act."

The Illinois Supreme Court, however, has held subsection 1-15(b) unconstitutional because it violated due process, conflicted with Illinois **Supreme Court Rule 366(a)(5)**, violated the separation of powers clause of the Illinois Constitution, and interfered with the court's ability to override considerations of waiver in furtherance of its responsibility to provide a just result. ***In re C.R.H.***, 163 Ill. 2d 263, 272—75 (1994). (***In re C.R.H.*** has been partially overruled by ***In re M.W.***, 232 Ill. 2d 408 (2009).

4.10 TRANSFER OF VENUE

705 ILCS 405/2-2(2)

A) INTRASTATE TRANSFER

Where a more appropriate county within the State may act upon the matter (*e.g.*, county of residence of all parties) a court may before or after adjudication of wardship transfer the matter at any point in the proceedings by transmitting an authenticated copy of the court record to the other county. The court should examine a motion to transfer venue with care to ensure that the minor's best interest, in fact, will be served by such a transfer. The court should be aware that Department of Children and Family Services (DCFS) service regions do not coincide with the boundaries of judicial circuits and should take that into account when deciding whether to transfer venue.

B) INTERSTATE TRANSFER

For a discussion of interstate transfer after disposition, *see* section 10.05 (E) (7), *infra.*

CHAPTER 5. TEMPORARY CUSTODY

SEE TEMPORARY CUSTODY HEARING CHECKLIST: APPENDIX

5.01 TEMPORARY CUSTODY HEARING

705 ILCS 405/2-10

A) TIMING

Within 48 hours of removal of a child by a physician, police officer or DCFS from the custody of a parent, guardian or legal custodian, the child must be brought before the court and a temporary custody hearing held. The 48-hour statutory time frame is exclusive of Saturdays, Sundays, and court-designated holidays. **705 ILCS 405/2-9(1)**. **In re E.G.-F.,** 2022 IL App. (2d) 210675. Shelter care hearing was scheduled within the time frame but started late due to heavy caseload; It was 12:43 pm, and the 48 hours would have tolled at 12:30 pm. No party was prejudiced by the minimal delay, and mother's motion to vacate temporary custody order based on delay was properly denied.

B) NOTICE

The Act provides that "the petitioner through counsel or such other public officer designated by the court" must provide the child's parent, guardian, custodian or responsible relative with "the best practicable notice" of the temporary custody hearing. Written notice is preferred. The Act permits oral notice "only if provision of written notice is unreasonable under the circumstances." **705 ILCS 405/2-9(2)**.

C) COUNSEL

Although the Juvenile Court Act entitles parties to be represented by counsel at all stages of the proceedings (**705 ILCS 405/1-5**), under certain circumstances, courts have upheld a judge's decision to go forward with a temporary custody hearing in the absence of counsel. *See* ***In re D.L.***, 226 Ill. App. 3d 177 (lst Dist. 1992) (father's counsel had notice and court postponed hearing for two hours); ***In re W.B.***, 213 Ill. App. 3d 274 (4th Dist. 1991) (going forward without counsel did not violate due process).

D) EVIDENCE

The Act provides that "all witnesses present shall be examined before the court in relation to any matter connected with the allegations made in the petition." **705 ILCS 405/2-10** Hearsay evidence is admissible at a temporary custody hearing. ***People ex rel. Jones v. Jones***, 39 Ill. App. 3d 821 (5th Dist. 1976). On the question

of the sufficiency of evidence, the requirement of corroboration and cross-examination of a minor's previous statements relating to allegations of abuse or neglect not subject to cross-examination, is inapplicable to temporary custody hearings. **705 ILCS 405/2-18(4)(c); *In Re I.H.*,** 238 Ill. 2d 430 (2010); ***In re M.B*.,** 241 Ill. App. 3d 697 (1st Dist 1992) (minor's uncorroborated statements, not subject to cross examination, regarding abuse and neglect will not support grounds for temporary custody); ***In re Ivan H.*,** 382 Ill. App. 3d 1093 (2d Dist. 2008) (Section does not apply to temporary custody hearings (also known as "shelter care hearings") as such hearings are intended to be preliminary in nature with a focus on the necessity of removal for the immediate protection of the minor).

If the parents were not given notice of the original shelter care hearing, a rehearing will be held within 10 days. The court must conduct a de novo hearing as if no hearing had occurred in the first instance and is not limited to consideration of evidence that the parents could have presented had they been at original hearing. ***In re Niki K.*,** 374 Ill. App. 3d 795 (2d Dist. 2007).

A DCFS representative must testify concerning indicated reports of abuse and neglect involving the minor's parent, guardian or custodian. **705 ILCS 405/2-10(2)**.

E) FINDINGS

(1) Required Findings

Before a judge may order a minor removed temporarily from the custody of a parent, custodian, or guardian, the judge must find: 1) that there is probable cause to believe that the minor is abused, neglected or dependent; and 2) that there is immediate and urgent necessity for such removal; and 3) the judge must also address whether DCFS has made reasonable efforts to prevent removal. **705 ILCS 405/2-10(2)**.

NOTE: The court is required to obtain documentation from DCFS as to the reasonable efforts made to prevent or eliminate the necessity of removal or why efforts could not be made. **705 ILCS 405/2-10(2).**

(2) Probable Cause Findings

(a) <u>No Probable Cause</u>

If the court finds that the State has not demonstrated probable cause to support the allegation(s) of abuse, neglect or dependency in the petition, it must release the minor and dismiss the petition. **705 ILCS 405/2-10(1)**. *See* ***In re Ashley F.*,** 265 Ill. App. 3d 419 (1st Dist. 1994) (family doctor testified he believed infant's injury was accidental).

(b) Probable Cause

If the court finds probable cause, it must state in writing the factual basis supporting its finding even if the parties agree or stipulate to probable cause. However, it should be kept in mind that a finding of probable cause is not equivalent to a "finding" on the merits of abuse, neglect, or dependency. ***In re Ivan H.*****,** 382 Ill. App. 3d 1093 (2d Dist. 2008), (the state established probable cause at a temporary custody hearing for the implementation of a safety plan though based neither on the daughter's statements that were neither corroborated nor subject to cross-examination, which would *not* be permitted at an adjudicatory hearing).

Even though a trial court finds probable cause of abuse or neglect, if it has not made an actual finding that the minor had actually been abused or neglected; granting permanent custody to a previously unknown father at a temporary custody hearing would be error because it would circumvent the rest of the statute's procedural provisions. ***In re Ashli T.*****,** 2014 IL App (1st) 132504 (1st Dist. 2014).

(3) Release to Parents

After finding probable cause, the court may release a minor upon the request of a parent, guardian or custodian if return home is consistent with the health, safety and best interests of the minor and if the parent, guardian or custodian appears to take custody. For purposes of this section, custodian includes any agency of the State which has been given custody or wardship of the child. **705 ILCS 405/2-10(2)**

A court's order releasing a child to a parent normally includes a protective order pursuant to **705 ILCS 405/2-25**, or an order of supervision pursuant to **705 ILCS 405/2-20**

If, after entry of a release order, the parent, guardian or custodian fails to appear within 24 hours to take custody of the minor, the case must be set for rehearing no later than 7 days from the original release order and the parent, guardian or custodian must be issued a summons to appear. If the parent, guardian or custodian does not appear at the rehearing, the court may "enter an order prescribing that the minor be kept in a suitable place designated by DCFS or a licensed child welfare agency." **705 ILCS 405/2-10(8)**.

In a recent addition to **2-10**: If the minor is being restored to the custody of a parent, legal custodian, or guardian who lives outside of Illinois, and an Interstate Compact has been requested and refused, the court may order the Department of Children and Family Services to arrange for an assessment

of the minor's proposed living arrangement and for ongoing monitoring of the health, safety, and best interest of the minor.

(4) Immediate and Urgent Necessity

(a) In General

After a finding of probable cause, the court may order a child placed outside the home if it determines that shelter care is a matter of immediate and urgent necessity for the safety and protection of the minor. The court must enter a written finding of immediate and urgent necessity that includes the factual basis supporting its findings concerning the immediate and urgent necessity for the protection of the minor. **705 ILCS 405/2-10(2)**

(b) Presumed Immediate and Urgent Necessity

When the court finds that there is probable cause and that there is : immediate and urgent necessity to remove a child who is named in the petition, immediate and urgent necessity will be presumed for any other minor in the same household, provided: (1) an abuse or neglect petition is pending for the other minor; and (2) a party to the petition seeks shelter care for the other minor. **705 ILCS 405/2-10(10)**

(c) Limitation on Return Home After Immediate and Urgent Necessity

Once the court has entered a written finding that it is a matter of immediate and urgent necessity that a minor be placed in shelter care, the minor may not be returned home until the court enters a subsequent order that such a placement is no longer needed for the protection of the minor. **705 ILCS 405/2-10(2)**

(5) Reasonable Efforts

If the court finds that removal from the home is a matter of immediate and urgent necessity, it must also address the question of what reasonable efforts have been made to prevent or eliminate removal of the minor. The Act requires DCFS to document for the record efforts made to prevent the necessity of removal of the minor from home. If reasonable efforts were not made, there must be a showing of good cause why such efforts cannot eliminate the need for removal. The Act requires the court to state in writing that reasonable efforts were made and the reason those efforts were unable to prevent the child's removal from the home. **705 ILCS 405/2-10(2)**

Although the Act is silent as to what constitutes good cause, evidence that a child would be in serious jeopardy if returned home probably constitutes a basis for continuing temporary custody even in the absence of reasonable efforts.

For an extended discussion of the "reasonable efforts" determination and the necessity of making that determination at the temporary custody hearing, *see* ***In re Patricia S.***, 222 Ill. App. 3d 585 (1st Dist. 1991).

5.05 TEMPORARY CUSTODY ORDER

A) WRITTEN FINDINGS AND ORDER

705 ILCS 405/2-10(2)

The court is required to make written findings, including:

- the factual basis supporting its findings concerning the immediate and urgent necessity to remove a child for the protection of the minor; and

- the factual basis supporting its findings that reasonable efforts were made to prevent or eliminate the removal of the minor from the home, or that no reasonable efforts could be made to prevent removal.

The parties, including the minor (or minor's attorney) must each be given a copy of the court's written findings. These findings and the court's temporary custody order are to be placed in the child's case record and entered as a matter of court record.

B) ADMONISHMENT TO PARENTS

705 ILCS 405/2-10

If the court orders temporary custody pending adjudication, it must admonish the child's parents that they must cooperate with DCFS, comply with the terms of the service plans, and correct the conditions which require the child to be in care or risk termination of parental rights.

C) REHEARING ON *EX PARTE* ORDERS

705 ILCS 405/2-10(3)

If a party was not served prior to the temporary custody hearing and did not appear, the hearing may go forward on an *ex parte* basis. Any order entered as a result of that hearing expires in 10 days *unless*:

- prior to the order's expiration it is renewed at a hearing, at which the party who was not previously served appears; or

- the moving party files an affidavit as to all diligent efforts to personally serve the party with written notice of the right to a rehearing.

Notice of rehearing requirements: the nature of the allegations, the nature of the order sought and the consequences of failure to appear at the rehearing, including the fact that the party will not be entitled to further written notices or publication notices of any proceedings in the case, including amended petitions or motions to terminate parental rights, except as required by **Supreme Court Rule 11**. The notice must also set forth the party's rights and the procedures to vacate or modify a temporary custody hearing.

D) PLACEMENT OF MINOR

705 ILCS 405/2-10

(1) In General

In its temporary custody order, the court may:

- place the child in the temporary custody of DCFS and appoint the DCFS Guardian as temporary custodian of the minor; *or*

- place the child in a shelter care facility designated by DCFS or a licensed child welfare agency and appoint an appropriate person as custodian; *or*

- place the child in "a suitable place designated by the court," such as in the home of a friend or relative.

(2) Limitation on Placement with DCFS

The Act, however, does not permit the court to place a minor in the custody of DCFS if the minor is charged with a criminal offense or has been adjudicated a delinquent *unless* the minor is under the age of 15 and committed to DCFS under the provisions of **705 ILCS 405/5-710**, or there is an independent basis for abuse, neglect or dependency as defined in DCFS regulations, which are allegations arising from facts different than the facts resulting in the adjudication of delinquency.

NOTE: Once a court had found a minor to be abused or neglected, it maintains jurisdiction to change the disposition order until the case is closed. Thus, the minor's return to a parent's custody does not render moot the earlier adjudication of neglect. It remains as an independent basis for placing the minor in DCFS guardianship. ***In re S.D.*,** 394 Ill. App. 3d 992 (1st Dist. 2009) (child charged, with aggravated robbery)

(3) Required Visitation Plans When Child is Placed with DCFS

(a) Parent-Child Visitation Plan

When DCFS is appointed as temporary custodian it must file with the court a parent-child visitation plan within 10 days of appointment, excluding weekends and holidays. The plan "shall set out the time and place of visits, the frequency of visits, the length of visits, who shall be present at the visits, and where appropriate, the minor's opportunities to have telephone and mail communications with the parents. A party may request the court review the plan to "determine whether it is reasonably calculated to expeditiously facilitate the achievement of the permanency goal and is consistent with the minor's best interest." The court may waive the requirement of filing a plan or extend the time for filing for good cause.

(b) Sibling Visitation Plan

When the child has siblings in care, DCFS shall create and circulate a sibling placement and contact plan. The Plan must state whether siblings are placed together. If not, it must state efforts to unify, or explain why unification of siblings is contrary to best interest. If siblings remain separated, the Plan shall set forth the sibling visitation plan. If it is contrary to best interest for siblings to have contact, the Plan shall so state and provide rationale.

(4) Placement with Relative

If a minor is placed in the home of a relative, DCFS must complete a background check of the persons in the relative's household within 90 days of the date of placement.

(5) Removal of Child from Placement

See subsection (I), *infra*.

E) OTHER ORDERS

(1) In General

The court may enter any other orders it deems appropriate at the time of the temporary custody order.

(2) *Services*

The court may enter a provision of services to the minor or his family to ameliorate the causes contributing to the finding of probable cause or to the finding of the existence of immediate and urgent necessity. **705 ILCS 405/2-10(2); *In re Lawrence M.*,** 172 Ill. 2d 523 (1996) (a juvenile court judge had authority to enter a temporary custody order directing DCFS to provide and pay for drug treatment for a parent where the judge found such services essential for family reunification)

(3) Medical and Dental Care

At all times during temporary custody or shelter care, the court may authorize a physician, hospital or other health care provider to administer medical, dental or surgical procedures to a minor if such care is necessary to safeguard the minor's health or life. **705 ILCS 405/2-11**.

If the DCFS guardianship administrator is appointed temporary custodian, she/he may consent to testing and release of information regarding a minor's HIV and sexually transmissible disease status in conformity with confidentiality laws governing the release of such information. **705 ILCS 405/2-11.**

In addition, if the court appoints a guardian for the child, the guardian may, subject to residual parental rights and responsibilities, make important decisions in matters having a permanent effect on the life and development of the child, including giving consent to major medical, psychiatric and surgical treatment for the child. **705 ILCS 405/1-3(8)(a)(13)**. The court may consider a guardian's petition to consent to withdrawal of life sustaining medical care in appropriate circumstances. *See* ***In re C.A.***, 236 Ill. App. 3d 594 (lst Dist. 1992).

If not already done, in all cases involving physical abuse the court must – and in cases of neglect and sexual abuse, may – order a medical examination of the child. This requirement is waived if the basis for the petition was a physical examination by a physician. In such cases, the court remains obligated to order colored photographs unless they have already been taken or unless there is no visible trauma to record. **705 ILCS 405/2-19**.

(4) Order of Protection

The court may enter an order of protection as part of any other order authorized by the Act, including a temporary custody order. **705 ILCS 405/2-25**. *See* section 10.15, *infra.*

(5) Visitation

The temporary custody order should address the question of visitation and require DCFS to file parent-child visiting plan or sibling placement and contact plan when appropriate. **750 ILCS 405/2-10(2)**

(6) Support Order

The court may order the county to make monthly payments for the care of the child placed in shelter care for a period of 90 days. **705 ILCS 405/6-8(1)**. The court must notify the county board of the pendency of any proceeding where the county board may be charged with the costs of the minor's care. **705 ILCS 405/6-7(3)**. In addition, if a person legally liable for a child's support is able to contribute to his or her support, the trial court must enter an order requiring that person to pay "a reasonable amount" to the clerk of the court or to the child's guardian or custodian. Failure to pay pursuant to such a court order is subject to a contempt proceeding. **705 ILCS 405/6-9**.

F) CASE PLAN

Whenever a minor is placed in shelter care with DCFS or with another child welfare agency, DCFS or the agency must, within 45 days of placement, prepare and file with the court a service plan for the child which complies with the federal Adoption Assistance and Child Welfare Act of 1980 and is consistent with the health, safety and best interest of the minor. **705 ILCS 405/2-10.1**

G) EFFECT OF TEMPORARY CUSTODY ORDER

Once the court enters a temporary custody order placing a child outside the home, the child may not be returned to the parent, custodian or guardian until the court finds that such placement is no longer necessary for the minor's safety and well-being. **705 ILCS 405/2-10(2)**

H) MOTION TO MODIFY OR VACATE ORDER

705 ILCS 405/2-10(9)

(1) Who May File?

Any interested "party," including the State, temporary custodian, an agency providing services, foster parents and party's respondent, may file a motion to modify or vacate a temporary custody order.

(2) Grounds for Motion

A motion to modify or vacate must be based on one of the following statutory grounds:

- It is no longer a matter of urgent and immediate necessity that the minor remains in shelter care; or
- The child can be safely cared for in his or her home due to a material change in circumstances between the time of the temporary custody order and the motion; or
- A person not a party to the alleged abuse, neglect or dependency -- including a parent, relative, or legal guardian, can assume temporary custody of the child; or
- The child can be safely returned home because services have ameliorated problems that led to the need for temporary custody.

(3) Procedures

A moving party is required to give notice to all persons entitled to notice. Thereafter, the clerk is required to set the matter for hearing **no later than 14 days** after the motion was filed.

(4) Court Order

The court's decision to grant or allow a motion to vacate or modify should be based on the health, safety and best interests of the minor.

If the court does not vacate its finding with respect to probable cause but does vacate or modify its temporary custody order, it may continue to order ongoing or new services consistent with the needs of the child and the purposes of the Juvenile Court Act.

I) REMOVAL OF CHILD FROM FOSTER PLACEMENT

After initial placement of a child outside the home, a court may order a child's removal from a foster home, even over DCFS objection, if removal is determined to be in the child's best interest under the factors outlined in **705 ILCS 405/1-3(4.05)**. The court need not make probable cause, immediate and urgent necessity, or reasonable efforts findings prior to entering a removal order. ***In re A.H.*****,** 195 Ill. 2d 408 (2001); ***See In re C.H.,*** 2018 IL App. (3d) 180089 (2018) (Former foster parents lacked standing to appeal order finding that it was not in child's best interests to return to foster home. Foster parents have a right to be heard but do not become parties; foster parents do not have a liberty interest in their foster children)

J) SETTING THE ADJUDICATORY HEARING DATE

See Adjudicatory Hearing, section 8.01(A), *infra.*

CHAPTER 6. PRETRIAL MOTIONS

6.01 IN GENERAL

Child protection proceedings are civil in nature. The Code of Civil Procedure governs the consideration and disposition of *most* pretrial matters. ***See* 735 ILCS 5/2-101 *et seq*.**

6.05 MOTION FOR DISCOVERY

"Pre-adjudication discovery is not constitutionally mandated in Illinois Juvenile Court proceedings." ***In re C.J.*,** 166 Ill. 2d 264, 272 (1995)

Statutory civil discovery rules are not automatically applicable to Juvenile Court cases. Instead, the decision as to whether a party is entitled to discovery, including discovery under **Supreme Court Rule 201(c)**, is within the discretion of the trial judge. ***In re the Interest of R.V.*,** 288 Ill. App. 3d 860 (lst Dist. 1997) (trial court abused its discretionary discovery powers when it ordered DCFS to videotape all interviews with children who were subject of a sexual abuse petition. Juvenile Court Act does not authorize the trial court to enter an order controlling DCFS's investigation of a child maltreatment case); ***In re F.B.*,** 206 Ill. App. 3d 140173 (lst Dist. 1990)

6.10 MOTION FOR CONTINUANCE

See section 8.01(B), *infra.*

6.15 MOTION FOR EARLY TERMINATION OF REASONABLE EFFORTS

A) TIMING OF MOTION FOR EARLY TERMINATION

At any time, including at the time of the filing of a petition, the State's Attorney, DCFS or guardian *ad litem* may file a motion requesting a finding that reasonable efforts to reunify the family are no longer required or should end. For a discussion of this motion, *see* section 2.10 (J), *supra*.

B) MANDATORY ORDER

705 ILCS 405/2-13.1

After hearing, a trial court must grant a motion for early termination of reasonable efforts if the moving party proves any of the following facts:

- a parent's rights to another child were involuntarily terminated; or
- a parent has been convicted of first- or second-degree murder, attempt or conspiracy to commit murder of another child of the parent; solicitation to

commit murder, solicitation to commit murder for hire, solicitation to commit second degree murder of another child of the parent, aggravated battery, aggravated battery of a child, felony domestic battery which caused serious bodily injury to the child who is the subject of the petition or any other child of the parent; or

- any similar offense in any other state; or

- reunification services would no longer be appropriate, *and* a dispositional hearing has already taken place.

Unless the court sets forth in writing compelling reasons why it would not be in a child's best interests to terminate reasonable efforts at family reunification

C) PERMANENCY HEARING

If the court grants a motion to terminate reasonable efforts, it should hold a permanency hearing **within 30 days** of the date of granting the motion. If the motion is granted prior to an adjudicatory and/or dispositional hearing, one or both such hearings should be conducted prior to the date of the permanency hearing. After the permanency hearing, the court should take steps to finalize a permanent placement as quickly as possible.

6.20 MOTION TO DISMISS PETITION

See section 2.10(I), *supra*.

6.25 MOTION TO ISSUE SUBPOENA

The court may authorize the issuance of a subpoena upon a showing that the person and or records that are the subject of the subpoena may be relevant to an issue in the case.

6.30 MOTION FOR SUMMARY JUDGMENT

A court may consider and rule on a party's motion for summary judgment as in any other civil case. A judgment of conviction in a criminal case related to abuse or neglect of a child may alone support a summary judgment order in favor of the State. *See* ***In re S.W.***, 315 Ill.App.3d 1153 (2000)

CHAPTER 7. CONTINUANCE UNDER SUPERVISION

7.01 IN GENERAL

705 ILCS 405/2-20(1)

At any time in the proceedings prior to entry of a finding of abuse, neglect or dependency and adjudication, the court may continue the case under supervision.

7.05 PREREQUISITES

705 ILCS 405/2-20(1)

The court may enter an order of supervision under the following circumstances:

- Upon an admission or stipulation by the respondents of the facts supporting the petition and before proceeding to findings and adjudication; *or*
- After hearing but before entry of a finding; *and*
- If no party objects to entry of a supervision order.

7.10 OBJECTION BY PARTY

705 ILCS 405/2-20(2)

If the minor, his or her parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney objects in open court and insists upon proceeding to findings and adjudication, the court must proceed in accordance with the objecting party's wishes.

7.15 FINDINGS

705 ILCS 405/2-20(4)

If the court permits a child to remain in his or her home during the time the order of continuance is in effect, the court must make written factual findings that such an order is consistent with the minor's health, safety, and best interests.

7.20 CONDITIONS

The court may attach reasonable conditions with which the parties must comply as part of any supervision order. Conditions typically relate to efforts parents must make during the period of supervision, limits on parental conduct, and orders regarding who may have contact with the child.

7.25 DURATION OF SUPERVISION ORDER

The order must specify a definite period of time for the duration of the continuance under supervision. At the time of entry of the order, the court should continue the case to a given date at which time it should review compliance with conditions and consider further actions as circumstances warrant.

7.30 VIOLATION OF SUPERVISION ORDER

705 ILCS 405/2-20(5)

If a petition is filed alleging that the court's supervision order has been violated, the court must hold a hearing on the allegations of the State's petition. ***In re E.B.***, 314 Ill. App. 3d 712 (4th Dist. 2000) (court may not terminate a supervision order without a petition having been filed and a hearing on the petition held) The hearing must be held **within 15 days** of the date the petition was filed if the alleged violation does not constitute a violation of the criminal laws and if any delay was not caused by the minor. The supervision period is tolled during the pendency of the violation proceedings. ***In re S.P.*,** 323 Ill. App. 3d 352 (4th Dist. 2001) (the 15-day statutory time limit applies only in cases in which automatic tolling is required by the statute.

If the court finds that a condition of supervision has been violated, it may proceed to findings, adjudication and disposition, or it may impose additional conditions in the supervision order.

7.35 SUCCESSFUL COMPLETION OF SUPERVISION

If the period of supervision is successfully completed, the court should terminate the order, dismiss the petition, and close the case. No finding of neglect, abuse or dependency should be made, and the minor should not be made a ward of the court.

7.40 APPEALABILITY

As a general matter, an order of supervision is not a final judgment and cannot be appealed. However, an order of continuance under supervision may be appealed if it is entered under circumstances that make it the functional equivalent of a dispositional order. ***In re J.N.***, 91 Ill. 2d 122 (1983) (supervision order in delinquency case was appealable where court had entered finding of delinquency on the record prior to entry of supervision order).

CHAPTER 8. ADJUDICATORY HEARING

8.01 HEARING DATE

705 ILCS 405/2-14

A) SPEEDY TRIAL REQUIREMENT

The Juvenile Court Act expressly recognizes that serious delay in child protection proceedings can cause grave harm to the minor and the family, is detrimental to the health, safety and best interests of children and frustrates the effort to establish permanent homes for children in need. **705 ILCS 402/2-14(a)**. ***In the Interest of J.H.*,** 304 Ill. App. 3d 188 (4th Dist. 1999) (the best interests of children are served by prompt hearings); ***In re S.H.***, 284 Ill. App. 3d 392 (4th Dist. 1996) (Trial courts should be reluctant to grant continuances in cases, and when a continuance is necessary, it normally should be for the shortest time possible)

To guard against unnecessary delay, the Act provides that an adjudicatory hearing **must be commenced within 90 days** of the date of service of process unless an earlier date is required under **705 ILCS 405/2-13.1** (early termination of reasonable efforts). ***In re D.E.*,** 314 Ill. App. 3d 764 (4th Dist. 2000) (parents' motion to substitute judge as a matter of right under **735 ILCS 5/2-1001(a)(2)** tolled the speedy trial time frame)

Once the hearing has begun, the court may allow subsequent delay only if such delay is necessary to ensure a fair hearing. **705 ILCS 405/2-14(b)**.

B) WAIVER OF SPEEDY TRIAL

There is some indication in the case law that a party waives the speedy trial requirement if he or she fails to object, and the issue is not raised by the court. ***In re S.W.,*** 342 Ill. App. 3e 445 (1st Dist. 2003) (mother waived appellate review of whether circuit court's alleged failure to comply with statutory time limit for conducting adjudicatory proceeding, where mother failed to move, either orally or in writing in the circuit court, to dismiss the petition for adjudication of wardship of the child). ***In the Interest of E.M., Jr.,*** 295 Ill. App. 3d 220 (4th Dist. 1998) (no objection); ***In the Interest of C.S., Jr.,*** 294 Ill. App. 3d 780 (4th Dist. 1998) (no loss of subject-matter jurisdiction where court fails to heed statutory speedy trial requirement).

The statutory time limits in **705 ILCS 405/2-14** may also be waived by consent of the parties with the concurrence of the court. **705 ILCS 405/14(d)** The speedy trial "clock" begins running once the waived period has ended. ***In the Interest of V.Z.,*** 287 Ill. App. 3d 552 (1st Dist. 1997) The Juvenile Court Act's mandatory six-month

(from initial removal of child) time limit will be tolled where a parent waives the adjudicatory hearing and dispositional hearing time limit requirements by not objecting to these hearings being continued beyond the usual time limits. ***In re John C.M.,*** 382 Ill. App. 3d 553 (4th Dist. 2008). Thus a court could enter a dispositional order finding the mother unfit more than six months after child was initially removed from mother's home because trial court still had subject matter jurisdiction. ***Id.***

C) CONTINUANCE OF DATE FOR ADJUDICATORY HEARING

705 ILCS 405/2-14(c)

The court may postpone the commencement date of the adjudicatory hearing for a period **not to exceed 30 days**, but only if the following conditions are satisfied:

- The party requesting the continuance has filed a written motion no later than **10 days** prior to the adjudicatory hearing, *or*

- Upon the court's own motion; *and*

- There is good cause for continuing the hearing. The term "good cause" is to be strictly construed and in accordance with Supreme Court Rule 231 (a)—(f). Neither stipulation by counsel alone nor the convenience of any party constitutes good cause; *and*

- The court has entered specific factual findings to support its order, including factual findings supporting the determination that the continuance is in the best interests of the minor; *and*

- There has been no prior continuance of the hearing *(Only 1 such continuance shall be granted).*

If the adjudicatory hearing is not held within the time limits of the Act, upon motion of any party the petition must be dismissed without prejudice. ***In re S.G.***, 175 Ill. 2d 471 (1997) (speedy trial requirements do not violate separation of powers principles); ***In the Interest of V.Z.*****,** 287 Ill. App. 3d 552 (lst Dist. 1997) (speedy trial provisions are mandatory); *but see* ***In the Interest of C.S., Jr.,*** 294 Ill. App. 3d 780 (4th Dist. 1998), (failure to comply with statutory deadlines does not deprive the court of subject-matter jurisdiction)

For a discussion of who is the appropriate party to file a motion to dismiss based on a speedy trial violation, *see* ***In re Jackson***, 243 Ill. App. 3d 631 (5th Dist. 1993) (parent prior to termination of parental rights); ***In re B.W.***, 216 Ill. App. 3d 410 (lst Dist. 1991) (guardian *ad litem*).

D) TOLLING

(1) Motion for continuance

If a motion for continuance is allowed, the speedy trial period begins to run again on the day of the expiration of the continuance. **705 ILCS 405/2-14(c)**.

(2) Motion for substitution of judge

The 90-day period is also tolled by the exercise of the right to a substitution of judge. ***In re D.E.***, 314 Ill. App. 3d 764 (4th Dist. 2000)

E) POSTPONEMENT PENDING CRIMINAL TRIAL

The appellate court rejected a father's argument that the trial court should have granted his motion to continue the adjudicatory hearing until after conclusion of his criminal prosecution for having shaken his young son. The trial court had denied the motion on grounds that it was in the child's best interest to move forward with the child protection case and the father retained the option to testify or invoke his privilege against incrimination in that case. ***In re D.P.,*** 327 Ill. App. 3d 153 (1st Dist. 2001)

8.05 NOTICE

A) RE-SERVICE

There is no need to re-serve a party who has appeared or been served with a summons personally or by certified mail and who has failed to appear. If, however, a new date for the adjudicatory hearing has been set, parties who were not present then the new date was set should be served with new notice by certified mail or by other appropriate means. **705 ILCS 405/2-16(4)**; ***In re Jerome F.***, 325 Ill. App. 3d 812 (1st Dist. 2001) (mother received appropriate notice of adjudicatory hearing where her attorney was served pursuant to **Supreme Court Rule 11**).

B) NEW PARTIES

If a new party has been joined or if a party appears at the adjudicatory hearing who has not previously been served, the court should serve the party at the time of the hearing.

8.10 RIGHTS OF PARTICIPANTS AT THE ADJUDICATORY HEARING

For a discussion of the rights of parties, foster parents and others, *see* Article I, section 2.01 *et seq.,* and Article II, sections 3.10–3.20, *supra.*

8.15 ADMISSION TO PETITION

SEE ADMISSION CHECKLIST: APPENDIX

Prior to commencement of the adjudicatory hearing a party may offer to admit or stipulate to the allegations in the petition. *See* ***In re April C.*****,** 326 Ill. App. 3d 225 (lst Dist. 2001) (discussing cases involving party stipulations and admissions). To ensure that a party's admission is voluntary, and to safeguard the integrity of any order entered based on the admission, the court may wish to adopt the following approach in accepting a party's admission to the petition:

- Ensure that the parent has received the petition.

- Explain the nature of the allegations and obtain a statement for the record that the parent understands the allegations.

- Determine whether the party is represented by counsel and understands that counsel will be appointed without cost if the party cannot afford counsel fees.

- Explain that an admission of neglect, abuse or dependency could result in:

  The minor being made a ward of the court until age 21, with the court having authority to decide with whom to place the child, and to change custody or enter other orders in the child's best interest.

  Even if the court retains the child in the home, it may appoint DCFS as the child's guardian, with the right to make important decisions in the child's best interests.

  The institution of proceedings to terminate all parental rights, the appointment of a guardian with the power to consent to adoption, and the use of such an admission as proof of unfitness of the person(s) making the admission; and

  The use of the admission of neglect, abuse, or dependency in other proceedings, including criminal proceedings.

- Explain that the parent has a right to a hearing, and what procedural rights he or she is giving up by admitting to the petition.

- Explain the right to deny the allegations and have the State prove them by a preponderance of the evidence, and that if the State fails to meet its burden the petition will be dismissed, and custody returned to the parent.

- After admonishing the party, the court should determine whether there is a factual basis for the admission and should make a finding of voluntariness for the record.

The court should take the admission in the same way it would take a guilty plea in a criminal case. Among other things, this means that the admission should be made by the party and not his or her attorney. The court may wish to inquire of each party to the admission as to the specific allegations to which he or she is admitting. This will avoid later arguments as to a party's understanding of the exact nature of his or her admission.

However, due process did not require a trial court to ensure the existence of a factual basis before accepting a mother's stipulation to allegations of neglect at the adjudicatory hearing where the state had a compelling interest in expediting that hearing so as to expeditiously and justly determine the best interest of the children, the factual allegations to which the mother stipulated were clearly set forth in the petitions, and the mother was afforded a full evidentiary hearing at the *dispositional* stage with an opportunity to correct any errors that might have occurred during the earlier adjudicatory stage. ***In re A.L., B.C., and E.C.***, 2012 IL App (2d) 110992

8.20 BURDEN AND STANDARD OF PROOF

The State bears the burden of proving abuse, neglect or dependency by a preponderance of the evidence. This means that the State must prove that the allegations in the petition are more probable than not. ***In re N.B.***, 191 Ill. 2d 338 (2000); ***In re Urbasek***, 38 Ill. 2d 535 (1967); ***In re N.S.***, 255 Ill. App. 3d 768 (4th Dist. 1994); ***In re Simmons***, 127 Ill. App. 3d 943 (5th Dist. 1984); **705 ILCS 405/2-18(1)**.

8.25 EVIDENCE

A) RULES OF EVIDENCE

705 ILCS 405/2-18 (1)

Unless otherwise provided by statute, the rules of evidence at the adjudicatory stage of an abuse, neglect or dependency proceeding are those used in civil proceedings in Illinois.

If the petition also seeks appointment of a guardian with power to consent to adoption of the minor under **705 ILCS 405/2-29**, the court may consider legally admissible evidence on unfitness as defined by the Adoption Act **750 ILCS 50/1(D)(1)** at the adjudicatory hearing. *See* Termination of Parental Rights, article XIII, *infra*.

B) CHILD'S IN-COURT TESTIMONY

705 ILCS 405/2-18(4)(d)

(1) Competency of Child Witnesses

The Act creates a rebuttable presumption that a minor is competent to testify in these proceedings. The court, however, must determine the weight to be given a child's testimony. If the child's competency is called into question, the court must conduct a hearing to determine whether the child is sufficiently mature to receive and recollect impressions, understand and answer questions and appreciate the duty to tell the truth. For cases discussing these competency standards, ***In re N.S.****, supra*; ***In re M.B.***, 241 Ill. App. 3d 697 (lst Dist. 1992); ***In re E.S.*****,** 145 Ill. App. 3d 906 (5th Dist. 1986). In cases involving credibility of children who testify as to sexual abuse, the trial court must have "broad discretion to reach a just determination, and a finding of abuse by the trial court is entitled to great deference." ***In re D.W.***, 386 Ill. App. 3d 124 (1st Dist. 2008)

(2) Testimony in Chambers

The court may allow the minor to testify in chambers with only the judge, court reporter and attorneys for the parties present. **705 ILCS 405/2-19(4)(d)**. ***In re Brandon L.***, 348 Ill.App.3d 315 (2004) (no due process violation when court permitted to conduct in camera examination of a minor in dependency proceedings, as well as in abuse and neglect proceedings).In addition, the trial court may in its discretion permit a nonparty minor to testify outside a respondent's presence. ***In the Interest of M.D.H.***, 297 Ill. App. 3d 181 (4th Dist. 1998) (no right of confrontation in child protection proceedings).

(3) Exclusion of Parents During Child's Testimony

The court may exclude parents during a child's testimony if the parent is represented by counsel who is given an opportunity to cross-examine the child. ***In re Brandon L.*****,** 348 Ill. App. 3d 315, 319, 809 N.E.2d 763 (2d Dist. 2004) (no statutory or due process violation in excluding mother during child's testimony in a dependency proceeding where guardian *ad litem* and counsel for the parents were present); ***In re R.G.***, 165 Ill. App. 3d 112, 518 N.E.2d 691 (2d Dist. 1988)

(4) Compelling Child's In-Court Testimony

A minor may be called to testify in an adjudicatory hearing by any party, presumably even over the objection of the child's guardian *ad litem*.

(5) Weight To Be Accorded Child's In-Court Testimony

A child's in-court testimony need not be corroborated, nor need it be clear and convincing to form the basis for a finding of abuse or neglect. ***In re T.H.***, 148 Ill. App. 3d 877 (3d Dist. 1986)

(6) Statements by A Child Other than the Minor Respondent

The statements of a child other than the minor who is the subject of the proceedings may be admitted under the special evidentiary standards established in **705 ILCS 405/2-18(4)(c)**. ***In re B.W.***, 216 Ill. App. 3d 410 (lst Dist. 1991) (out-of-court statement of child who was not the alleged victim of abuse was admissible); ***In re DM***, 2016 IL App (1st) 152608, an older sibling's statements were held to be encompassed within the hearsay exception under **705 ILCS 405/2-18(4)(c)**, so long as they were corroborated or subject to cross-examination. The father admitted in a recorded statement to abusing the older sibling (in a separate proceeding), and that statement would have been sufficient to prove allegations by a preponderance of the evidence, independent of the statement of the sibling.

C) VIDEOTAPED STATEMENTS

The Act does not contain a provision expressly authorizing the use of a child's videotaped statements as evidence in a neglect, abuse, or dependency proceeding.

In re the Interest of R.V., 288 Ill. App. 3d 860 (lst Dist. 1997) (the court reversed a trial court's order that DCFS videotape interviews with children who were the subject of an abuse petition, ruling that the court acted beyond the scope of its authority under the Juvenile Court Act)

D) CHILD'S OUT-OF-COURT STATEMENTS

705 ILCS 405/2-18(4)(c)

(1) Admissibility

Generally, hearsay statements are inadmissible at the adjudicatory stage of a child protection proceeding. An exception to this rule is that section of the Act which provides that in abuse and neglect proceedings, previous statements made by the minor relating to any allegations of abuse or neglect shall be admissible in evidence. **705 ILCS 405/2-18(4)(c)**. The constitutionality of this abrogation of traditional hearsay rules was upheld in ***In re Marcus E.***, 183 Ill. App. 3d 693 (1st Dist. 1989), and in ***In re K.L.M.***, 146 Ill. App. 3d 489 (4th Dist. 1986).

(2) Corroboration/Cross-examination

Although a child's previous statements relating to allegations of abuse or neglect are admissible, the Act further provides that "no such statement, if uncorroborated and not subject to cross-examination, shall be sufficient in itself to support a finding of abuse or neglect."
The seminal case interpreting this requirement is ***In re A.P.***, 179 Ill. 2d 184 (1997) which holds:

- Corroboration means "independent evidence which would support a logical and reasonable inference that the act of abuse or neglect described in the hearsay statement occurred." S*ee also* ***In re C.C.***, 586 N.E.2d 498 (lst Dist. 1991)

- Whether there is sufficient corroboration is to be determined on a case-by-case basis, considering all relevant facts.

- The mere fact that a witness testifies that a child repeated claims of abuse or neglect is *insufficient* to satisfy the requirement of corroboration.

- The Act does not require that a child's statement be both corroborated *and* subject to cross-examination – either is sufficient to support a finding of abuse or neglect.

- The *identity* of the abuser *need not be independently corroborated* by other evidence. Only the allegation of maltreatment requires corroboration or cross-examination. This holding overrules ***In re D.P.*****,** 176 Ill. App. 3d 456 (3d Dist. 1988) and affirms the decisions in ***In the Interest of Walter B***., 227 Ill. App. 3d 746 (lst Dist. 1992) and ***In re C.C.*****, 224 Ill. App. 3d 207 (lst Dist. 1991)**.

(a) Cases where corroboration or cross-examination was sufficient to support the child's out-of-court statement include:

In re A.P., 179 Ill. 2d 184 (1997) (medical corroboration).

In re Z.C., 2022 IL App. (1st) 211399. (minors' statements corroborating each other's, was held sufficient); *citing* ***In re Alexis H.,*** 401 Ill. App. 3d 54, 561 (2010); ***In re J.L.,*** 2016 IL App. (1st) 152479 ¶ 92.

In re K.O., 336 Ill. App. 3d 98 (1st Dist. 2002) (hearsay testimony corroborated by stepfather's indictment and conviction for predatory criminal sexual assault of the stepdaughter, her medical assessment, sister's statements regarding instances of abuse that

were consistent with stepdaughter's testimony, and stepdaughter's behavior changes and knowledge of sexual behavior beyond age).

In re R.M., 307 Ill. App. 3d 541 (1st Dist. 1999) (medical evidence supported child's out-of-court outcry).

In re N.S., 255 Ill. App. 3d 768 (4th Dist. 1994) (child's statement subject to cross-examination in chambers).

In re T.L., 254 Ill. App. 3d 230 (4th Dist. 1993) (holding that ***In re Brunken*** has been severely limited and did not apply in case where the child's testimony and that of an expert witness supported child's out-of-court statement).

In re C.C.**,** 224 Ill. App. 3d 207 (lst Dist. 1991) (behavior changes and knowledge of sexual behavior beyond age).

In re Clarence T.B., 215 Ill. App. 3d 85878 (2d Dist. 1991) (in-court testimony at adjudication sufficient to admit out-of-court statements at the unfitness stage of a termination proceeding).

In re Walter B., 227 Ill. App. 3d 746 (1st Dist. 1991) (circumstantial evidence can satisfy corroboration requirement).

In re B.W., 216 Ill. App. 3d 410 (1st Dist. 1991) (out-of-court statement of child who was not the victim of alleged abuse was admissible under section 2-18(4)(c) of the Act).

In re Marcus E., 183 Ill. App. 3d 693 (1st Dist 1989) (corroboration came from child's subsequent testimony in chambers; independent witness testimony and physical or medical evidence not required).

In re E.P., 167 Ill. App. 3d 534 (4th Dist. 1988) (eyewitness corroboration and physical evidence as well as consistency of testimony among victims).

In re K.L.M., 146 Ill. App. 3d 489 (4th Dist. 1986) (minor's increased anxiety, physical evidence and limited opportunity to fabricate).

In re T.H., 148 Ill. App. 3d 877 (3d Dist. 1986) (in camera testimony supported several out-of-court statements).

(b) Cases where corroboration was insufficient include:

In re E.H., 377 Ill. App. 3d 406 (1st Dist. 2007) (statement by three-year old, purported victim to her grandmother held uncorroborated

where statement was given in response to a question, after a statement made by another purported victim and over a year after alleged incident and was therefore unreliable).

In re M.B., 241 Ill. App. 3d 697 (lst Dist. 1992) (minor recanted assertion father was involved in cult activities and no independent evidence supported original statements).

In re Alba, 185 Ill. App. 3d 286 (2d Dist. 1989) (child's drawing and psychologist's redirect testimony that sexual abuse could have caused the child's trauma insufficient).

In re Brunken, 139 Ill. App. 3d 232 (5th Dist. 1985) (corroboration must be objective and requires more than the fact that the child related the claim to more than one witness); *but see* ***In re T.L.***, 254 Ill. App. 3d 230 (4th Dist. 1993), holding that ***Brunken*** is limited to its facts.

E) PARTY ADMISSION

Because parents or guardians are parties to the proceedings, their admissions constitute substantive evidence on the issue of abuse. ***In the Interest of Walter B.***, 227 Ill. App. 3d 746 (lst Dist. 1992) (parent's voluntary statement to police that she knew of father's abuse and did nothing to stop it was admissible as a party admission); ***In re Jackson***, 81 Ill. App. 3d 136 (4th Dist. 1980) (the admission of a custodial parent may alone form the basis for a finding of neglect); ***In re Johnson***, 102 Ill. App. 3d 1005 (1st Dist. 1981); ***In re DM***, 2016 IL App (1st) 152608 (12016) (father's admission of abusing older sibling would have been sufficient to corroborate allegations by a preponderance of the evidence, independent of the statement of the sibling). *But see,* ***In re T.C.,*** 2021 IL App. (2d) 200691 (father's admission of neglect in State's petition not admissible against mother).

Where, for example, a mother argued that her admissions in court were not made knowingly because the state's allegations of abuse were too broad for her to know whether or not her actions were within the statutory parameters, the court held that her admissions *were* made knowingly and, regardless, where the child suffered broken ribs that could not have been accidental, that fact was sufficient to allow support for the finding of abuse in any event. ***In re C.J.***, **355 Ill. Dec. 812 (4th Dist. 2011)** (mother knowingly stipulated to State's allegations and the State provided substantially more than the minimum required evidence to support the admission by submitting for the court's consideration the shelter-care report indicating an independent factual basis for the admission).

F) PRIVILEGE AGAINST SELF-INCRIMINATION

Although parents may be called as adverse witnesses by the State, they may assert the privilege against self-incrimination in those matters where their testimony may lead to criminal prosecution. ***People v. Davis***, 11 Ill. App. 3d 775 (1st Dist. 1973); *but see* ***Baltimore City Department of Social Services v. Bouknight***, 493 U.S. 549 (1990) (parent may not invoke fifth amendment privilege against self-incrimination to resist order to produce child even if the act of production could be incriminating).

In ***In re A.W.***, 373 Ill. App. 3d 574 (3d Dist. 2007) the court a parent's right against self-incrimination was violated when, as a component of his sexual offender therapy, he was compelled to admit to committing a sexual offense, requiring remand to allow the parent to propose sexual offender treatment plan that did not force him to incriminate himself. However, the Supreme Court reversed, ***In re A.W.***, 231 Ill. 2d 92 (2008) and reinstated the dispositional finding that father was "unfit" because, even though father's Fifth Amendment rights were violated, father's caseworker urged him to return to counseling to see if progress was possible without any admission of past abuse and the father refused. ***Id.*** The burden was on the father to show that there were no other programs available that would not have required an admission of sexual abuse, to tell the trial court that he was having difficulty with the sex offender counseling or ask the court to assist him in finding alternative counseling. ***Id.***

On the other hand, in ***In re P.M.C.***, 376 Ill. App. 3d 867 (5th Dist. 2007), the court also initially found a violation of the right against self-incrimination where the State presented testimony of therapists regarding a father's failure to participate in meaningful therapy for sex abuse of minor child during the period of time outside of the nine-month period immediately after removal of child from his care. Thus, the appellate court found, the trial court necessarily based its finding of respondent's failure to make reasonable efforts to correct the conditions that led to the removal of the child solely on defendant's refusal to admit that he had sexually abused his daughter. ***Id.*** The Supreme Court, however, issued a supervisory order directing the Appellate Court to vacate its previous decision and to reconsider its judgment. In ***In re P.M.C. and J.L.C.***, 387 Ill. App. 3d 1145 (5th Dist. 2009), the appellate court held that the determination of parental unfitness based on the father's refusal to admit to sexual abuse was improper. ***Id.***

There is a fine, but important, distinction between terminating parental rights based specifically upon a parent's refusal to admit that which he denies, thereby forcing him to waive the Fifth Amendment privilege against self-incrimination, and terminating parental rights based upon a parent's failure to comply with an order to undergo meaningful therapy or rehabilitation. The former is constitutionally impermissible, while the latter is not. ***Id.***

In ***In re P.M.C. and J.L.C.,*** 387 Ill. App. 3d 1145 (5th Dist. 2009), considering *the lack of evidence regarding how the respondent's refusal to admit the sexual abuse inhibited his meaningful therapy* during the relevant time period, the circuit court's

determination of unfitness was improper because it was, in fact, based on the respondent's refusal to admit to the sexual abuse and had the effect of requiring the respondent to incriminate himself. ***Id.***

In ***In re L.F.***, 306 Ill. App. 3d 748 (3d Dist. 1999), the court ruled that a mother's fifth amendment right had been violated when the permanency goal in the case was changed from return home to termination after she refused to admit she was responsible for maltreatment that resulted in foster child's death.

On the other hand, in ***In re D.P.***, 327 Ill. App. 3d 153 (1st Dist. 2001), where a father sought postponement of the adjudicatory hearing pending conclusion of the criminal trial in which he was alleged to have seriously injured his son by shaking him, he was merely retaining the right to decide whether or not to testify in the child protection proceeding, and his Fifth Amendment rights were not violated because he was not required to make an admission of guilt.

G) PRIOR ARREST AND/OR CONVICTION

A judgment of conviction in a criminal abuse or neglect prosecution is admissible in a juvenile court proceeding and can form the basis of a summary judgment order. ***In re E.L.***, 152 Ill. App. 3d 25 (1st Dist. 1987); ***In re A.C.***, 354 Ill. App. 3d 799 (3d Dist. 2005) (father had been repeatedly incarcerated due to 6 felony convictions and had a previous finding of unfitness regarding another child)

In re D.R., 354 Ill. App. 3d 468, 475 (3d Dist. 2004) (retail theft conviction alone was sufficient to support a finding of an injurious environment where mother engaged in theft with the minor child and willfully made the minor an accomplice, but that fact was insufficient evidence of injurious environment to adjudicate sibling neglected).

In the Interest of E.C. and D.C., 337 Ill. App. 3d 391 (1st Dist. 2003) (the trial court did not err in granting summary judgment for the State during the fitness hearing since uncontradicted evidence supported a finding that the father had been incarcerated, had not visited the children since 1995, the children are in fear of him and do not wish to visit him).

In re D.S., 326 Ill. App. 3d 586 (3d Dist. 2001) (conviction for aggravated kidnapping with a handgun and for the purpose of obtaining a ransom was alone sufficient to support a finding of an injurious environment); *but see* ***In re T.B.***, 324 Ill. App. 3d 506 (3d Dist. 2001) (court erred in entering summary judgment finding of neglect based solely on father's conviction for predatory criminal sexual assault, ruling that mere existence of such a conviction is not alone sufficient to support a finding of injurious environment).

In re L.M., 319 Ill. App. 3d 865 (2d Dist. 2001) (father's status as convicted sex offender could not alone support finding of injurious environment where victim of

abuse child's mother, who had a sexual relationship with father was not under father's care)

The fact that a parent has previously been arrested may be admissible to contradict in-court testimony or to demonstrate familiarity with police proceedings and, therefore, the reliability of statements to police regarding alleged abuse of a child. ***In the Interest of A.M.***, 274 Ill. App. 3d 702 (lst Dist. 1995)

H) ANTICIPATORY NEGLECT – NEGLECT, ABUSE OR DEPENDENCY OF OTHER CHILDREN

705 ILCS 405/2-18(3)

Proof of neglect of one child is admissible on the issue of the abuse or neglect of any other minor for whom the parent is responsible, including children born after the original abuse or neglect occurred. *See* ***People v. Amy C. (In re Kamesha J.)*** 364 Ill. App. 3d 785 (1st Dist. 2006) (all five of the mother's children were found to have been neglected and abused where the oldest child was hospitalized with severe bruises after the mother's husband beat her with a belt with her clothes off, her pleas for help from the mother were ignored, and the second oldest child stated she witnessed the oldest child being sexually abused by an adult family friend; findings of abuse and neglect with regard to the youngest child were not against the manifest weight of the evidence merely because the child was born after the abuse suffered by the oldest child); ***In re A.C.***, 354 Ill. App. 3d 799 (3d Dist. 2005) (the father did not provide support for and an adequate home for the child, she was attached to her foster parents and half-siblings and the foster parents wished to provide subsidized guardianship; moreover, the father had been repeatedly incarcerated due to 6 felony convictions and had a previous finding of unfitness regarding another child); ***In re S.M.***, 171 Ill. App. 3d 361 (2d Dist. 1988); ***In re J.R.***, 130 Ill. App. 3d 6 (3d Dist. 1985) This concept is sometimes referred to as "anticipatory neglect."

The Act creates a presumption that if one child in a home has been maltreated, all children in the home are in an injurious environment. ***In re Daniel R.***, 291 Ill. App. 3d 1003 (lst Dist. 1997) However, relevant and admissible evidence under this section is not limited to evidence concerning minors who are part of the same family unit or to contemporary instances of abuse. ***In re April C.***, 326 Ill. App. 3d 245, 260 (1st Dist. 2001) It is important to note that in determining whether a finding of anticipatory neglect is appropriate, the trial court should consider the current care and condition of the child in question and not merely the circumstances that existed at the time of the incident involving the child's sibling. ***In re R.S.***, 382 Ill. App. 3d 453 (1st Dist. 2008)

There is a disagreement between the districts on whether maltreatment of one child is *prima facie* evidence that another child for whom a parent is responsible is neglected. The First and Second Districts agree that maltreatment of one child may be *prima facie* evidence that another child for whom a parent is responsible is

neglected, but such proof will not support a *per se* finding. Each case must be reviewed on its own facts taking into account not only the prior maltreatment but subsequent events, including the passage of time, evidence of good parenting, and efforts at correcting past behaviors. ***In re J.P.*****,** 331 Ill. App. 3d 220, 235 (1st Dist. 2002); ***In re S.S.***, 313 Ill. App. 3d 121, 127-28 (2d Dist. 2000); ***In re Edricka C.***, 276 Ill. App. 3d 18, 27—28 (1st Dist. 1995) The Fourth District disagrees noting that the anticipatory neglect section 2-18(3) describes such evidence as "admissible evidence," and is separate from "*prima facie* evidence" described in section 2-18(2). It concludes anticipatory neglect evidence is "admissible evidence," that being "some evidence, but not necessarily sufficient evidence to prove the allegation." ***In re S.R.***, 349 Ill. App. 3d 1017, 1021-22 (4th Dist. 2004). The Illinois Supreme Court recognized "there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household" but did not address the *prima facie* vs. *admissible evidence* classification conflict between the districts. ***In re Arthur H.***, 212 Ill. 2d 441, 468 (2004)

(1) Cases upholding a finding based on anticipatory neglect include:

In re Aniylah B., 61 N.E.3d 216, 2016 IL App (1st) 153662. Finding newborn neglected due to injurious environment based on theory of anticipatory neglect was not against the manifest weight of the evidence, where three older siblings had been removed from custody, mother's progress towards service plan was unsatisfactory and goal for older children had been changed to termination of parental rights. While mother was not the perpetrator of the abuse, the court found that she "failed to appreciate the harm domestic violence did to her children" and had not demonstrated that children would be safe with her.

In re Tamesha T., 16 N.E.3d 763 (2014) – upholding finding of neglect due to an injurious environment, under the theory of anticipatory neglect, based on evidence of injurious environment in which his five siblings were living.

In re J.C., 396 Ill. App. 3d 1050 (3d Dist. 2009) (although it had been over ten years since the mother's first two minors were removed from her care due to medical neglect, since that time five other children had been removed from the mother's care at birth, mother had failed to have any children returned to her care, and there was testimony as to current concerns with the mother's parenting capacity without guidance).

In re R.S., 382 Ill. App. 3d 453 (1st Dist. 2008) (sibling abuse may be *prima facie* evidence of neglect, but this presumption weakens over time and can be rebutted by other evidence, thus the trial court should consider the current care and condition of the child in question and not merely the circumstances that existed at the time of the incident involving the child's sibling; here, however, mother had long-standing mental health issues which were unlikely to change).

In re M.W., 386 Ill. App. 3d 186 (5th Dist. 2008) (error to find the mother fit where the minor's older sibling had been severely abused by the mother's paramour, the mother had relinquished her parental rights to that sibling, and mother had not complied with DCFS inquiries and recommendations).

In re Jaber W., 344 Ill. App. 3d 250, 259 (1st Dist. 2003) (prior adjudication of neglect with respect another sibling).

(2) Cases holding that prima facie evidence based on anticipatory neglect was insufficient to support finding include:

***In re Cheyenne S.*,** 351 Ill. App. 3d 1042 (Ill. App. Ct., 3d Dist. 2004) (Second adjudication of child neglect was not proper basis for termination where trial court based second adjudication on finding that mother had violated order for protection that court had ordered her to obtain against father, but, absent finding that mother had neglected child, trial court had no authority to order mother to file such order, and thus violation of order could not, as matter of law, form basis for finding that mother had neglected her children).

In re S.S., 313 Ill. App. 3d 121 (2d Dist. 2000) (mother not responsible for first child's death and cooperated fully in connection with new baby).

In re Edricka C., 276 Ill. App. 3d 18 (lst Dist. 1995) (mother cooperative and specialist testified child not at risk).

I) PRIOR ALLEGATIONS OF ABUSE OR NEGLECT

(1) Hearsay

The fact that an anonymous call was made to DCFS alleging abuse is admissible to show why an investigation was begun, but not to prove the truthfulness of the allegations made during the call. ***In re Wheeler***, 86 Ill. App. 3d 564 (3d Dist. 1980); ***In re J.G.***, 298 Ill. App. 3d 617 (4th Dist. 1998) (suggesting that the proper way to proceed is for the State to offer a proffer of material in DCFS records in the pending case and for the defense to have an opportunity to object, thereby permitting the court to focus on those aspects of the file that would be admissible under applicable rules of evidence). ***In re A.B.***, 308 Ill. App. 3d 227, 237-39 (2d Dist. 1999) (same).

(2) Child's Out-of-Court Statement

A child's out-of-court statement alleging abuse or neglect is admissible under section 2-18(4)(c) even if it resulted in an unfounded report. ***In the Interest of M.D.H.***, 297 Ill. App. 3d 181 (4th Dist. 1998)

(3) Prior DCFS Investigations

While a court erroneously admitted the records of two lengthy prior DCFS investigations into evidence, the error was harmless because there was ample evidence besides the reports to sustain the state's burden to show neglect, including unrebutted testimony from the children concerning hypodermic needs in various residences where they lived as well as testimony about their mother injecting herself in front of the children). ***In re J.C., T.C., B.C., T.K., B.K., A.K., and J.H.***, 359 Ill. Dec. 132 (4th Dist. 2012)

J) MEDICAL OR AGENCY RECORDS

705 ILCS 405/2-18(4)(a)

The Act creates the following exception to the hearsay rule in connection with the admissibility of medical and agency records in child protection proceedings:

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

See ***In re J.H.***, 16 N.E.3d 866 (2014) (mother challenged admission of records from hospital, argued it wasn't an "agency" within the meaning of **705 ILCS 405/2-18(4)(a)**. Court upheld admission of records, having been made in the normal course of business)

Sometimes, however, while it may, for example, be error for a court to consider as evidence lengthy records of two prior DCFS investigations, the error was harmless as there was ample additional evidence, including testimony from the children, concerning hypodermic needs in various residences where they lived as well as testimony about their mother injecting herself in front of the children. ***In re J.C., T.C., B.C., T.K., B.K., A.K., and J.H.***, 359 Ill. Dec. 132 (4th Dist. 2012); *but see,* ***In re A.P. and J.P.***, 358 Ill. Dec. 370 (3d Dist. 2012) (trial court erred in admitting records that were not made in the regular course of business of a hospital or agency but were rather prepared in anticipation of litigation).

A certification by the head or responsible employee of the hospital or agency that the writing, record, photograph or x-ray is the full and complete record of the condition, act, transaction, occurrence or event and that it satisfies the conditions of the paragraph shall be *prima facie* evidence of the facts contained in such

certification. A certification by someone other than the head of the hospital or agency shall be accompanied by a photocopy of a delegation of authority signed by both the head of the hospital or agency and by such other employee. All other circumstances of the making of the memorandum, record, photograph or x-ray, including lack of personal knowledge of the maker, may be proved to affect the weight to be accorded such evidence, but shall not affect its admissibility.

The rationale for this exception to the hearsay rule is that such records are reliable because of the timely and systematic way in which they are kept and relied on in the health care or agency setting. ***In re N.W.***, 293 Ill. App. 3d 794 (lst Dist. 1997) Similarly, a *parent's* medical records may be admitted under this section if they are relevant to determining matters relating to the minor. ***In re M.S.***, 210 Ill. App. 3d 1085 (2d Dist. 1991)

A trial court is not required to place less weight on records introduced under this provision in cases where no staff member provided live testimony in connection with the records. ***In re R.M.***, 307 Ill. App. 3d 541 (1st Dist. 1999).

K) PRIVILEGED COMMUNICATIONS

705 ILCS 405/2-18(4)(e)

Only the attorney-client privilege applies in cases of alleged abuse, neglect or dependency. All other privileges, including professional privileges and the husband-wife privilege, are abrogated. *See* ***In re M.S.***, *supra* (mother's evaluation for chemical dependency admissible in termination proceedings); ***In re Baby Boy Butt***, 76 Ill. App. 3d 587 (2d Dist. 1979) (marital privilege did not apply).

L) EXPERT/OPINION TESTIMONY

705 ILCS 405/2-18(4)(f)

Proof of the impairment of emotional health or impairment of mental or emotional condition as a result of the failure of the respondent to exercise a minimum degree of care toward a minor may include competent opinion or expert testimony and may include proof that such impairment lessened during a period when the minor was in the care, custody or supervision of a person or agency other than the respondent.
705 ILCS 405/2-18(4)(f)

In ***People v. Miller***, 173 Ill. 2d 167 (1996)., the Illinois Supreme Court discussed the qualifications for an expert witness and reaffirmed that the decision as to whether a person is an expert is a matter generally left to the discretion of the trial court. According to the Court, "[a]n individual will be allowed to testify as an expert if his experience and qualifications afford him knowledge which is not common to laypersons, and where such testimony will aid the trier of fact in reaching its conclusions. (citation omitted). An expert need only have knowledge

and experience beyond that of the average citizen. (citation omitted) There is no predetermined formula for how an expert acquires specialized knowledge or experience and the expert can gain such through practical experience, scientific study, education, training or research." *See also*, ***In re Commitment of Simons***, 213 Ill.2d 523 (2004). "[T]rial court's admission of expert scientific testimony is subject … to de novo review. In conducting such de novo review, the reviewing court may consider not only the trial court record but also, where appropriate, sources outside the record, including legal and scientific articles, as well as court opinions from other jurisdictions."

Although expert testimony may aid the court in its assessment, the trier of fact is not required to accept the expert's testimony on an ultimate question of fact. ***In the Interest of A.M.***, 274 Ill. App. 3d 702 (lst Dist. 1995); ***In re J.H.***, 153 Ill. App. 3d 616 (2d Dist. 1987). Nonetheless, a court should not disregard medical evidence that is not overcome by other competent testimony. ***In re Marcus H.***, 297 Ill. App. 3d 1089 (lst Dist. 1998); ***In re Ashley K.***, 212 Ill. App. 3d 849 (lst Dist. 1991).

M) *PRIMA FACIE* EVIDENCE

705 ILCS 405/2-18 (2)

In any hearing the following shall constitute constitutes *prima facie* evidence of abuse or neglect:

(1) Medical diagnosis of battered child syndrome (abuse or neglect).

(2) Medical diagnosis of failure to thrive syndrome (neglect).

(3) Medical diagnosis of fetal alcohol syndrome (neglect).

(4) Medical diagnosis at birth of withdrawal symptoms from narcotics or barbiturates (neglect).

(5) Proof of injuries that ordinarily would not have been sustained except by the acts or omissions of the parent, etc. (abuse or neglect).

(6) Proof that the parent, etc., repeatedly used a drug that did or ordinarily does lead to impaired judgment (neglect).

(7) Proof that a parent repeatedly (more than once) used a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, in the presence of a minor or sibling.

(8) Proof that a newborn was born substance exposed.

(9) Proof that a minor was present in a structure or vehicle in which the minor's parent, custodian, or guardian was involved in the manufacture of methamphetamine.

This provision, which permits certain types of evidence to serve as *prima facie* proof of abuse or neglect, represents legislative adoption of the doctrine of *res ipsa loquitur* for use in abuse and neglect proceedings. Upon introduction of the *prima facie* evidence by the State, the burden shifts to the respondent to introduce evidence rebutting the *prima facie* showing. ***In re Simmons***, 127 Ill. App. 3d 943 (5th Dist. 1984)

N) IMPROVEMENT OF CHILD'S HEALTH

The Act provides that competent opinion or expert testimony is admissible to show that a child's condition improved when outside the control of parents. **705 ILCS 405/2-18(4)(f)**. ***In re Prough***, 61 Ill. App. 3d 227 (4th Dist. 1978) (minor's behavior and schoolwork improved after being removed from the home)

O) REPUTATION AND CHARACTER EVIDENCE

Testimony as to a parent's reputation in the community is admissible. ***In re Morris***, 331 Ill. App. 417 (2d Dist. 1947) However, testimony that a parent does not have the personality traits of a sex offender is not admissible. ***In re J.M.***, 226 Ill. App. 3d 681 (3d Dist. 1992)

P) JUDICIAL NOTICE

(1) Prior Testimony or Evidence

In any hearing under this act the court may take judicial notice of prior sworn testimony or evidence admitted in prior proceedings involving the same minor if (a) the parties were either represented by counsel at such prior proceedings or the right to counsel was knowingly waived and (b) the taking of judicial notice would not result in admitting hearsay evidence at a hearing where it would otherwise be prohibited. **705 ILCS 405/2-18(6); *In re J.R.Y.***, 157 Ill. App. 3d 396 (4th Dist. 1987) (court properly took notice of father's plea in related criminal case).

(2) Court Records

While a court may take judicial notice of its own records, it may not take wholesale notice of the entire court file if doing so results in admitting hearsay and other incompetent matters not otherwise properly admissible. ***In the Interest of J.G.***, 298 Ill. App. 3d 617, 627-29 (4th Dist. 1998); ***In re A.B.***, 308 Ill. App. 3d 227, 237-39 (2d Dist. 1999) (agreed with ***In the Interest of J.G.*** but found the respondent was not prejudiced by the trial court's error); ***In re H.C.***, 305 Ill. App. 3d 869, 8804th Dist. 1999)

(Steigmann J., dissenting) (suggesting the majority failed to follow the requirements of ***In the Interest of J.G.***).

Q) PROOF OF PERSONAL PARTICIPATION

The State need not prove that a parent or other responsible adult personally participated in the acts of abuse or neglect which gave rise to the petition. A parent has an affirmative duty to protect a child from harm. ***In re Carlenn H.***, 186 Ill. App. 3d 535 (1st Dist. 1989); ***In re R.G.***, 2012 IL App (1st) 120193; (abuse may be found even if the actual perpetrator of the injury was a third party who is not a family member.) ***In re Davon H.***, 2015 IL App (1st) 150926 (record supported trial court's finding that mother ignored physical abuse and evidence of abuse, failed to get help for her children, and did not protect them); *but see* ***In re Marcus E.***, 183 Ill. App. 3d 693 (1st Dist. 1989) (finding of abuse against mother in error where State failed to prove mother knowingly allowed children to be abused).

R) RES JUDICATA

The fact that a parent has been acquitted in a criminal case of abuse or neglect does not preclude a juvenile court finding that the child is abused or neglected on the same set of facts. ***In re T.D.***, 180 Ill. App. 3d 608 (4th Dist. 1989); ***In re A.A.***, 307 Ill. App. 3d 403 (lst Dist. 1999) (fact that abuser (victim's brother) was acquitted of sex abuse charge did not collaterally estop State from pursuing a petition alleging neglect.) ***In re J.N.***, 308 Ill. App. 3d 1073 (4th Dist. 1999) (decision to place children in father's custody did not bar State from seeking to terminate mother's rights). A parents' failure to appeal a finding that children were abused minors in a proceeding to determine whether children were abused does not collaterally stop them from denying sexual abuse in a proceeding to terminate parental rights. ***In re Clarence T.B.***, 215 Ill. App. 3d 85 (2d Dist. 1991)

S) PROOF OF SUBSEQUENT PARENTAL CONDUCT

At the adjudicatory hearing, the court may consider evidence as to parental conduct after the filing of a petition for adjudication of wardship if relevant to the allegations of abuse, neglect or dependency. ***In re Edricka C.***, 276 Ill. App. 3d 18 (lst Dist. 1995).

8.30 NEGLECT: SUFFICIENCY OF THE EVIDENCE

A) DEFINITION OF NEGLECT

The term "neglect" does not have a strictly delineated meaning. Generally, it occurs whenever a parent fails to exercise the level of care required under the circumstances. *See* ***In re N.B.***, 191 Il.3d 388 (2000); considering ***In re Zoey L.***, 2021 IL App. (1st) 210063. Court adjudicated child neglected due to an injurious environment; Act doesn't require consideration of fault or whether parent is

neglectful at adjudication, but rather whether the child is neglected. Evidence of mother's hospitalization, stated inability to care for child, drug use, suicide attempts, and domestic violence in the presence of the child all supported finding of neglect.

B) ELEMENTS OF NEGLECT

(1) Mental State

Neglect can be intentional or unintentional. ***In re N.B.***, 191 Ill. 2d 338 (2000); ***In re J.W.***, 289 Ill. App. 3d 613 (lst Dist. 1997).

(2) Personal Participation

The state need *not* prove that a parent personally participated in the alleged act of neglect or abuse. Failure to protect a child from maltreatment itself constitutes neglect. ***In re K.G.***, 288 Ill. App. 3d 728 (lst Dist. 1997); ***In the Interest of M.K.***, *supra*; ***In the Interest of Walter B.***, 227 Ill. App. 3d 746 (lst Dist. 1992); ***In re Marcus E.***, 183 Ill. App. 3d 693 (1st Dist. 1989).

(3) Anticipatory Neglect: Neglect or Abuse of Other Children

The Juvenile Court Act protects not only a child who is the actual victim of abuse or neglect, but also a child who may be subject to maltreatment in the future because he or she resides or may reside with a person who has abused or neglected another child. ***In re L.W.***, 291 Ill. App. 3d 619 (4th Dist. 1997) A child can be found neglected under this provision even if he or she has never resided with the parent. ***In re J.W.***, *supra*.

The concept of "anticipatory neglect" is now codified in **705 ILCS 405/2-3(3)** which provides that proof of the neglect or abuse of one child is *admissible* as proof of the neglect or abuse of any other minor for whom the respondent is responsible.

There is a disagreement between the districts on whether maltreatment of one child is *prima facie* evidence that another child for whom a parent is responsible is neglected. The First and Second Districts agree that maltreatment of one child may be *prima facie* evidence that another child for whom a parent is responsible is neglected. But such proof will not support a *per se* finding. The presumption is rebuttable and weakens with the passage of time and change of circumstances. Each case must be reviewed on its own facts considering not only the prior maltreatment but subsequent events, including the passage of time, evidence of good parenting, and efforts at correcting past behaviors. *See* ***In re D.A.,*** 2022 IL App. (2d) 210676. Evidence of siblings having been neglected, but minor

at issue cared for and healthy. Sufficient time had passed to question the connection between current minor and prior findings.

The Fourth District disagrees noting the anticipatory neglect section 2-18(3) describes such evidence as "admissible evidence," and is separate from "*prima facie* evidence" described in section 2-18(2). It concludes anticipatory neglect evidence is "admissible evidence," that being "some evidence, but not necessarily sufficient evidence to prove the allegation." ***In re S.R.***, 349 Ill. App. 3d 1017, 1021-22 (4th Dist. 2004) The Illinois Supreme Court recognized that "there is no *per se* rule that the neglect of one child conclusively establishes the neglect of another child in the same household" but did not address the *prima facie* vs. *admissible evidence* classification conflict between the districts. ***In re Arthur H.***, 212 Ill. 2d 441, 468 (2004).

(4) Unborn Children

It is as yet undetermined whether a neglect petition can be brought on behalf of an unborn child in Illinois. *But see* ***In re J.W.***, 289 Ill. App. 3d 613 (lst Dist. 1997) (trial court may consider a parent's behavior, excessive alcohol consumption during pregnancy if it bears on the question of whether her present condition disqualifies her from caring for her child).

C) TYPES OF NEGLECT

(1) Failure to Provide Adequate Food, Clothing or Shelter

Parents have a duty to provide a child with "care necessary for his or her well-being, including adequate food, clothing and shelter." **705 ILCS 405/2-3(1)(a);** ***In re E.L.***, 353 Ill. App. 3d 894 (3d Dist. 2004) (parents have a duty to keep their children free from harm, and thus, their failure to provide a safe and nurturing shelter is "statutory neglect"); ***In re S.R.***, 349 Ill. App. 3d 1017 (App. 4th Dist. 2004) ("Neglect" under the Juvenile Court Act generally means the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty); ***In re Arthur H., Jr.***, 338 Ill. App. 3d 1027 (2d Dist. 2003), appeal allowed 205 Ill. 2d 582, *rev'd* 212 Ill. 2d 441 (cases involving an adjudication of parental neglect and wardship of minor are *sui generis*, and each case must ultimately be decided on the basis of its own particular facts); ***In re J.M.***, 245 Ill. App. 3d 909 (2d Dist. 1993) (neglect finding upheld where parents refused to pick up child from hospital on doctor's advice and declared they would not provide him with shelter or care); ***In re Nitz***, 76 Ill. App. 3d 15 (3d Dist. 1979); *but see* ***In re T.W.***, 313 Ill. App. 3d 890 (2d Dist. 2000) (neglect finding reversed where record did not reveal children were "malnourished, sickly, ill-clad, or living in inadequate or filthy housing"); ***In re N.***, 309 Ill. App. 3d 996 (4th Dist. 1999) (fact that

parents and eight children lived in a single motel room did not alone constitute neglect).

(2) Neglect v. Dependency

In re Rayshawn H., 16 N.E.3d 57 (2014) – evidence supported finding of neglect, rather than no-fault dependency, where mother refused to let child come home, failed to help arrange alternative care, and showed no interest in support services from DCFS after child's discharge from mental health facility.

(3) Medical Neglect

A child may be found neglected if a parent fails to ensure that he or she receives a level of medical care appropriate to his or her condition. *See* ***In re Adam B.***, 2016 IL App (1st) 152037 (2016). Neglect adjudication not against the manifest weight of the evidence, where minor was twice psychiatrically hospitalized for increased aggression, mother failed to follow up with his treatment, was difficult to reach during his hospitalization, minor caused injuries to siblings which required treatment in the emergency room. Mother failed to ensure he was taking his medication, failed to comply with discharge plan recommendation that he see a therapist, failed to ensure that he attended all his therapy sessions after his admission to a partial day program for his ADHD, ODD and aggression.

See also ***In re Erin A.***, 2012 IL App (1st) 120050 (minor was neglected due to the mother's failure to have the minor undergo recommended follow-up blood screenings to determine if the minor had sickle cell disease or merely the trait, and because the minor's father stated to a caseworker that he would "shoot up the neighborhood" if anyone tried to take away his children, the court properly determined that the minor's sister was also in an injurious environment and neglected given her father's threatening remarks); *but see* ***In re Edricka C.***, 276 Ill. App. 3d 18 (lst Dist. 1995) (child's medical condition appropriately treated); ***In re Gonzales***, 25 Ill. App. 3d 136 (1st Dist. 1974) (mere proof that a child has suffered a recurrence of a medical condition is not alone a sufficient basis for a finding of medical neglect).

For cases involving medical neglect on grounds that a parent refused to allow a child's treatment for religious reasons, *see* ***People ex rel. Wallace v. Labrenz***, 411 Ill. 618 (1952), *cert. denied* (1952), 344 U.S. 824 (1952) (parent's free exercise of religion does not extend to decisions which will result in substantial risk of harm to the child); ***In re E.G.***, 133 Ill. 2d 98 (1989) (finding of medical neglect reversed where 17 year old minor was mature and had an independent common law right to accept or reject medical treatment).

(4) Abandonment

705 ILCS 405/2-3 (1)(a)

A child is neglected if a parent intentionally relinquishes responsibility for his or her care and custody. ***In re A.B.***, 308 Ill. App. 3d 227 (2d Dist. 1999) (mother's rights properly terminated for moving to Alabama); ***In re R.M.***, 283 Ill. App. 3d 469 (lst Dist. 1996) (mother left child with father who was not a suitable care giver); ***In re J.M.***, 245 Ill. App. 3d 909 (2d Dist. 1993) (parents refused to pick up child at hospital); ***In re B.T.***, 204 Ill. App. 3d 277 (lst Dist. 1990) (mother frequently absent without making arrangements for children).

The Act provides, however, that a "minor shall not be neglected for the sole reason that the minor's parent or other person responsible for the minor's welfare has left the minor in the care of an adult relative for any period of time." **705 ILCS 405/2-3(1)(a)**. On the other hand, when a parent leaves a child with another person under circumstances establishing that the parent no longer wishes to care for the child, this can support a finding of neglect, even where the child is not placed in danger. ***In re S.R.***, 349 Ill. App. 3d 1017 (4th Dist. 2004) To support a finding of neglect due to babysitter leaving the child alone, however, there must be a showing the parent knew or should have known his or her selected babysitter was unsuitable care giver. ***In Interest of M.Z.***, 294 Ill. App. 3d 581, 594 (1st Dist. 1998).

(5) Injurious Environment

705 ILCS 405/2-3 (1)(b)

The term "injurious environment" in the statute providing bases for adjudication of neglect has no static definition and must be defined in terms of the particular facts of a case. ***In re D.R.***, 354 Ill. App. 3d 468 (3d Dist. 2004) A parent neglects her child when the parent's conduct exhibits the failure to exercise the care that circumstances justly demand and encompasses both willful and unintentional disregard of parental duty. ***Id.*** *See also* ***In re E.L.***, 353 Ill. App. 3d 894 (3d Dist. 2004) (children are "neglected" if their environment is injurious to their welfare).

However, a child is neglected only if, as the result of a parent's action or inaction, the child's safety or well-being is endangered. *See* ***In re N.B.***, 191 Ill. 2d 338 (2000) (finding of neglect reversed where record recited mother's hostile behavior but was devoid of evidence that she abused or otherwise mistreated child); ***In re J.B.***, 312 Ill. App. 3d 1140 (2d Dist. 1999) (finding of neglect reversed where petition alleged mother who left children unattended for 30 minutes created an injurious environment).

Sibling abuse may be *prima facie* evidence of neglect based upon an injurious environment, but this presumption weakens over time and can be rebutted by other evidence. *In re R.S.*, 382 Ill. App. 3d 453 (1st Dist. 2008).

Where a child is adjudicated neglected because of an injurious environment, the trial court is authorized to suspend visitation between father and minor child for an indefinite time. ***In re Taylor B.***, 359 Ill. App. 3d 647 (3d Dist. 2005).

705 ILCS 405/2-18(2)(i) provides proof that a minor was present in a structure or vehicle in which the minor's parent, custodian, or guardian was involved in the manufacture of methamphetamine constitutes *prima facie* evidence of abuse and neglect.

(a) Cases finding an environment injurious:

***In re M.D.*,** 2021 IL App. (1st) 210595. Stipulated evidence at adjudication hearing; both parents had history of domestic violence and substance misuse, mother's other children were in DCFS care.

In re K.E.-K., 2018 IL App. (3d) 180026 (In previous termination of parental rights against mother, record showed history of domestic violence, substance abuse and disregard for her children, added to continued use of cannabis while pregnant with minor in present neglect proceeding, fact that she stabbed her paramour, and father's extensive criminal history).

In re Davon H., 2015 IL App (1st) 150926 (Finding injurious environment following the death of one infant from skull fractures, three siblings were removed and examined. The twin of the infant who died was found to have skull fractures, and another sibling a rib fracture, and none of the injuries had been reported nor treatment sought).

In re Tamesha T., 16 N.E.3d 763 (2014) (children minimally dressed in cold weather, children found naked and playing outside on a third-floor window ledge while mother was taking a bath with youngest child, butcher knives on the floor of the home, and mother pled guilty to child endangerment – those alone establish that children were not provided with a "safe and nurturing shelter").

In re J.S., 2013 IL App (3d) 120744 (mother exposed the minor and her sibling to an injurious environment by failing to remove her boyfriend from the home after the minor made allegations of sexual abuse by mother's boyfriend and also by previously failing to remove boyfriend from the home when he had been violent toward the mother).

In re J.B., 2013 IL App (3d) 120137 (father engaged in sexual intercourse with a minor and attempted to sexually assault his own daughter when other minors were present in the home, thus the other three minors in the home were neglected due to the injurious environment).

In re Juan M. and Kihara M., 360 Ill. Dec. 431 (1st Dist. 2012) (fact that pediatrician's expert testimony that nine-month-old infant's skull fractures were caused by intentional abuse was un-rebutted supported a finding of a substantial risk of physical injury to the 28-month-old child, and thus of neglect due to injurious environment as to both children).

In re M.P., 408 Ill. App. 3d 1070 (3d Dist. 2011) (while it was clear that mother was fit, there was a history of domestic violence between mother and father when children were present and mother had previously dismissed order of protection against him, thus it was in the best interests of the children for DCFS to maintain guardianship to improve their home environment).

In re J.C., T.C., B.C., T.K., B.K., A.K., and J.H., 359 Ill. Dec. 132 (4th Dist. 2012) (while it was error for the court to consider as evidence lengthy records of two prior DCFS investigations, the error was harmless, as there was ample additional evidence, including testimony from the children concerning hypodermic needs in various residences where they lived as well as testimony about their mother injecting herself in front of the children).

(b) Cases finding no injurious environment:

In re A.P., 2012 IL 113875 (2012) (finding of neglect due to an injurious environment, based on a single incident in which the minor sustained second-degree burns by hot water in a bath while under the supervision of the respondent mother's boyfriend was error where the mother left her children with her boyfriend at his home while she went to a doctor's appointment; there was no indication that the boyfriend could not provide a safe and nurturing shelter for her children for the duration of the appointment, that the children had previously been injured in her boyfriend's presence, or that the mother had any reason to be concerned about him looking after children).

In re Barion S., 2012 IL App (1st) 113026 (1st Dist. 2012) (trial court improperly adjudicated the minor neglected due to a lack of care and an injurious environment because although the minor was hospitalized multiple times and diagnosed with failure to thrive,

there was evidence that the mother was proactive in seeking medical treatment, the home was clean, and there was food available).

In re A.P. and J.P., 358 Ill. Dec. 370 (3d Dist. 2012) (neglect finding was against the manifest weight of the evidence because, although the youngest child suffered a burn on his face from hot water while respondent's boyfriend was preparing him for a bath, the boyfriend immediately tended to child's injuries and notified mother, minors were not left in boyfriend's care after that incident, and minors did not live with him).

Julie Q. v. DCFS, 357 Ill. Dec. 448 (2d Dist. 2011) (DCFS indicated finding that a child was subject to an "environment injurious" under the Abused and Neglected Child Reporting Act exceeded the authority of the DCFS because the Act had been amended to remove phrase "environment injurious" because of its lack of specificity, thus using this ground as a basis for a finding of neglect was in error).

In re R.W., 341 Ill. Dec. 556 (3d Dist. 2010) (child was erroneously found neglected when the injurious environment that child was allegedly subjected to, the mother's hoarding tendencies and large amounts of debris around house and yard, was corrected by the time that the petition was filed, so removal of child was unwarranted).

In re E.M., 328 Ill. App. 3d 633, 640-41 (4th Dist. 2002) (mother's alleged words to her daughter were not enough to prove emotional abuse; evidence of any words spoken must be presented in context, and there should be evidence of the harm or distress caused by the words).

In re L.M., 319 Ill. App. 3d 865 (2d Dist. 2001) (father's status as a sex offender based on his conviction for sexually abusing the minor mother of his infant daughter, without more, did not establish that placing the infant in father's care was injurious to the infant's welfare, and, thus, infant could not be adjudicated neglected for that reason, where father was not related to the minor mother, did not live with her, and was not entrusted with her care at time of the sexual abuse).

In re N.B., 191 Ill. 2d 338 (2000) (state failed to meet burden of showing that mother's angry outburst created a physically or psychologically harmful environment).

In re T.B., 324 Ill. App. 3d 506 (3d Dist. 2001) (error to enter summary judgment solely on basis of father's conviction for predatory criminal sexual assault).

In re L.M., 319 Ill. App. 3d 865 (2d Dist. 2001) (father's status as sex offender not alone basis for finding of injurious environment).

In re S.S., 313 Ill. App. 3d 121 (2d Dist. 2000) (mother had not engaged in earlier abuse, had complied with service plans and had regularly visited child).

In re T.W., 313 Ill. App. 3d 890 (2d Dist. 2000), (an incident where mother's blood alcohol level was high, and she was combative and required hospitalization did not constitute neglect in the absence of other evidence that the children were malnourished or not adequately cared for).

In re K.G., 288 Ill. App. 3d 728 (lst Dist. 1997) (no neglect or abuse despite fact mother rolled over on baby after drinking and mother had previously given birth to two substances involved infants).

In re Ashley F., 265 Ill. App. 3d 419 (lst Dist. 1994) (no probable cause to believe baby's skull fracture resulted from neglect).

In re M.B., 241 Ill. App. 3d 697 (lst Dist. 1992) (brother's statement to friend that father was abusing sister was not corroborated).

(6) Substance-exposed Newborns

705 ILCS 405/2-3 (1)(c)

A newborn is neglected if his or her blood, urine or meconium contains any amount of a controlled substance that was not the product of medical treatment administered to the mother or infant.

In re Jamarqon C., 338 Ill. App. 3d 639 (2d Dist. 2003) (state must show by clear and convincing evidence that mother was given the opportunity to get drug treatment yet still subsequently gave birth to another child who tested positive for drugs).

In re D.A., 2022 IL App. (2d) 210676. Neglect finding reversed. "state did not meet its burden of proving D.A. was born with THC in his system or that the use of marijuana during pregnancy poses risks to the unborn child" Mother's admitted almost-daily use of cannabis was source of State's allegation that child was born with THC in his system; Evidence did not support finding that child's environment was injurious to his welfare based on that allegation. No evidence that parents were using drugs as provided in **405/2-18(2)(f))**.

(7) Inadequate Supervision

705 ILCS 405/2-3 (1)(d) and (e)

A child under the age of 14 is neglected if a parent or other person responsible for his or her welfare leaves the child without supervision for an unreasonable period of time. In deciding whether a parent's actions were unreasonable, the Act directs the court to consider the following factors:

- age of the minor;
- number of minors left unsupervised;
- special needs of the minor (*e.g.*, medical needs, physically or mentally disabled);
- length of time left unsupervised;
- condition and location of place minor was left;
- the time of day or night;
- weather conditions and any precautions taken to protect;
- location and physical distance of the parent or guardian;
- whether the child's movements were restricted;
- whether the child had a contact number;
- whether food and drink were provided;
- parent's circumstances, including illness or financial hardship;
- age, physical and mental capacity of any care giver left with the child;
- whether arrangements were made for supervision by someone else;
- any other factor relating to the minor's safety or welfare.

Cases:

In ***In the Interest of M.Z.***, 294 Ill. App. 3d 581 (lst Dist. 1998), the court rejected the State's argument that leaving a child with a babysitter who in turn left the child unsupervised constituted *per se* neglect. The court emphasized that the circumstances of each case are relevant in determining

whether the State has met its burden of demonstrating neglect by a preponderance of the evidence. The court also rejected the State's reading of ***In re R.M.***, 283 Ill. App. 3d 469 (lst Dist. 1996) as requiring a *per se* finding of neglect in circumstances where a child is intentionally or unintentionally left unsupervised by a parent. *See also* ***In re J.B.***, 312 Ill. App. 3d 1140 (2d Dist. 1999) (discussing relationship between injurious environment and inadequate supervision).

(8) Failure to Support

In re Y.C., 206 Ill. App. 3d 730 (lst Dist. 1990) (under prior statute focusing on parental failure to act, parental failure to provide necessary support for a child can constitute neglect without any showing of resulting harm to child).

(9) Educational Neglect: Chronic Truancy

705 ILCS 405/2-18 (5) provides that proof that a minor under age 13 is a chronic truant as defined in the School Code constitutes *prima facie* evidence of *educational neglect*. In the case of a minor 13 or older, proof of chronic truancy creates a rebuttable presumption of neglect. This provision, however, does not apply in Cook County.

In re Tatiana C., 2013 IL App (1st) 131573 (In that case, a mother, as result of lengthy history of substance abuse and physical and mental illness, was unable to properly care for daughter or consistently take her to school, failed to make alternative arrangements to ensure that child's education was not disrupted, and the child missed exorbitant number of school days, thus finding of neglect is appropriate where minor is not receiving the proper or necessary support and education as required by law).

(10) Parent's Mental Illness

It is not enough for the State to show simply that the parent suffers from mental illness. The State must also show that the mental illness places the children in an injurious environment." ***In re Faith B.***, 216 Ill. 2d 1, 14 (2005) (finding such injurious environment existed); *See* ***In re S. G.***, 2022 IL App. (1st) 210899. Mother's suicide attempt; abuse finding reversed (citing ***In re Faith G.,*** regarding mental illness explaining that State must show that mental illness creates substantial risk of physical injury to the minor by other than accidental means. ***In re Cornica J.***, 351 Ill. App. 3d 557 (2d Dist. 2004) (evidence did not support finding in termination proceeding because while psychologist testified that it was her opinion that mother and father were unfit, such opinion was based on a total of three interactions with mother and father, witnesses stated that mother and father interacted with children and had a bond with them, and evidence indicated that mother and father were fully oriented to reality).

8.35 PHYSICAL ABUSE: SUFFICIENCY OF THE EVIDENCE

A) DEFINITION

705 ILCS 405/2-3(2)(i)

A child under the age of 18 is physically abused if any person responsible for the child, parent, immediate family member or any other person residing in or frequenting the child's home inflicts, causes to be inflicted, or allows to be inflicted on the child, other than by accidental means, serious physical harm or sexual abuse. Serious physical harm includes death, disfigurement, impairment of physical or emotional health or loss or impairment of any bodily function.

B) INTENT TO HARM

To prove abuse, the State need not prove a specific intent to harm the child. ***In re J.F.***, 325 Ill. App. 3d 812 (1st Dist. 2001); ***In re Marcus H.***, 297 Ill. App. 3d 1089 (1st Dist. 1998); ***In re Hollis***, 135 Ill. App. 3d 585 (4th Dist. 1985) Nor need the state prove which of two parents both of whom had custody of a child actually caused the abuse. ***In re Juan M. and Kihara M.***, 360 Ill. Dec. 431 (1st Dist. 2012).

C) CASES

(1) Cases Finding Physical Abuse

In re Adam B., 53 N.E. 3d 134 (2016) (delay in getting medical treatment for minor's burns supported findings that he was abused due to substantial risk of physical injury).

In re Audrey B., 31 N.E.3d 892 (2015) (evidence supported finding of medical neglect, where child had fractured collarbone and it was not plausible that her primary caregiver would not notice. Court did not impermissibly rely on "constellation of injuries" theory; medical experts "did not dispute the existence of the injuries, only whether it was more likely than not they were accidental." And "[t]hat the trial court relied on the symmetry of the injuries is not the same as relying on the existence of multiple injuries).

In re R.G., 2012 IL App (1st) 120193 (mother unfit as minor sustained many permanent injuries after his father shook him as an infant and, several years later, while living with his mother and her boyfriend, the minor was hospitalized and diagnosed with multiple fractures of his lower extremities in different stages of healing; furthermore, the minor's younger half-sibling was also at risk, because she resided in the same home as the minor, and the minor's mother and her boyfriend were responsible for her also).

In re J.C., 356 Ill. Dec. 436 (1st Dist. 2012) (medical records showed the child's burns were diagnosed as non-accidental, severe, and life-threatening injuries; the substantial risk of injury was not created by the hot shower but rather the mother's delay in taking the child to the hospital).

In re R.R and K.R., 409 Ill. App. 3d 1041 (3d Dist. 2011) (physician who treated child's head wound testified that they were inflicted and a result of abusive head trauma and minors were adjudicated neglected because they were solely in the custody of respondent and her husband and notwithstanding the fact that the caseworker testified that respondent should be considered fit).

In re I.B., 397 Ill. App. 3d 335 (3d Dist. 2009) (father, age 15, properly found unfit parent of 7-month-old child found to have bruising and fractures inflicted by mother, and evidence of biting, shaking, and squeezing by father, notwithstanding father's minority).

In re D.W., et al., 386 Ill. App. 3d 124 (1st Dist. 2008) (affirming the trial court's findings that the minors were abused and neglected by reason of sexual abuse, that both parents were unable to care for them, that they had made no progress toward correcting or addressing the sexual abuse or domestic violence issues, continuing to deny that the sexual abuse had occurred, and that the father had not completed a sexual perpetrator assessment).

In re F.S. 347 Ill. App. 3d 55 (1st Dist. 2004) (undisputed evidence that child was beaten by son of his legal guardian was sufficient to support child's adjudication as abused based on substantial risk of physical injury, despite contention of child's legal guardian that she had not been present at time injuries were inflicted, where injuries sustained by child were nonaccidental, both old and fresh marks were observed on child's body, indicating that injuries were inflicted on more than one occasion, and guardian's son was member of same household as child, within scope of child protection statutes).

In re C.M., 351 Ill. App. 3d 913 (4th Dist. 2004) (evidence corroborating minor's out-of-court statement that he saw father hit son was sufficient to support finding that father abused son; hearing was civil proceeding that did not implicate father's Sixth Amendment right to confront witnesses and thus, minor's out-of-court statement that he saw father hit son was admissible; physician's report stated that son's injuries were consistent with physical abuse, mother admitted that she saw father hit son, and father stipulated to evidence of abuse).

In re Jaber W., 344 Ill. App. 3d 250 (1st Dist. 2003) (trial court's finding of neglect due to an injurious environment and abuse due to a substantial risk of injury was not against the manifest weight of the evidence;

caseworker and child's teacher testified that child told them he was sometimes hit by father of child's siblings and did not always know why he was hit, child's statements were corroborated by evidence that witnesses observed bruises and a scratch on child's face, and court's finding was supported by evidence that, approximately four months prior, another child who had been in mother's care had been found to be neglected by mother).

In re J.F., 325 Ill. App. 3d 812 (lst Dist. 2001) (although children's burns were accidental, trial court properly found that placement of the children at substantial risk of injury for the burns justified a finding of abuse).

In re A.G., 325 Ill. App. 3d 429 (lst Dist. 2001) (statutory definition of torture "includes conduct that involves solely the infliction of emotional harm, mental pain and suffering, mental anguish and agony" in addition to the infliction of physical abuse).

In re R.M., 307 Ill. App. 3d 541 (lst Dist. 1999) (three-year old's statements sufficiently reliable to support finding that she had been burned by cigarettes despite delay in reporting).

In re Marcus H., 297 Ill. App. 3d 1089 (lst Dist. 1998) (severe burns from waist down constituted abuse without regard to specific intent to harm).

In re L.W., 291 Ill. App. 3d 619 (4th Dist. 1997) (the trial court was required to conduct an adjudicatory hearing to determine whether the deceased child had been abused even though the parents had no living children).

See also discussion of injurious environment, section 8.30(C)(5), *supra.*

(2) Cases Finding No Physical Abuse

In re Yohan K., 2013 IL App (1st) 123472 (in child abuse proceeding as to minor with numerous medical problems, the trial court erred by relying on the state's "constellation of injuries" theory to issue a finding of child abuse in the absence of any evidence of an abusive action by the minor's caretakers, and by finding abuse when there was a lack of evidence proving an abusive causation as to each separate injury, particularly in light of the substantial evidence that the minor had a preexisting medical condition known to mimic the signs of abuse).

In re P.P., 261 Ill. App. 3d 598 (lst Dist. 1994) (finding that burn injury was unintentional was not against the manifest weight of the evidence under the circumstances of the case).

In the Interest of B.M., 248 Ill. App. 3d 76 (lst Dist. 1993) (inadequate proof that child's serious stomach wound from father's knife was intentional).

In re M.B., 241 Ill. App. 3d 697 (lst Dist. 1992) (minor's statement to psychiatrists about abuse that allegedly occurred several years earlier was itself insufficient to support petition for temporary custody).

8.40 CORPORAL PUNISHMENT: SUFFICIENCY OF THE EVIDENCE

705 ILCS 405/2-3(v)

A) EXCESSIVE CORPORAL PUNISHMENT

Parents are permitted to use corporal punishment as a method of discipline. *See* ***In the Interest of F.W.***, 261 Ill. App. 3d 894 (4th Dist. 1994) A child is abused, however, if the corporal punishment is "excessive." The Act does not define "excessive corporal punishment" and the case law does not create any bright line rule. Instead, the trial court must weigh the facts of each case in determining "excessiveness."

In ***In re S.M.***, 309 Ill. App. 3d 702, 705 (4th Dist. 2000) the court suggested that the following factors be considered in determining whether corporal punishment is excessive:

- whether an injury resulted;
- whether the punishment was imposed arbitrarily;
- whether the punishment was disproportionate to the circumstances that gave rise to the need for discipline;
- whether the court heard corroborating medical or expert opinion testimony.

In ***In the Interest of J.P.***, 294 Ill. App. 3d 991 (lst Dist. 1998), the court reviewed cases in which Illinois courts have confronted the question of whether corporal punishment was excessive. The court also cited to administrative rules relied on by DCFS to determine whether physical abuse has occurred. These rules suggest that the following factors be considered: the child's age, severity of the injury, location of the injury, the method of discipline (hand/object and clothed/unclothed), the child's medical and/or psychological condition, the parents' history, and the "pattern and chronicity of similar incidents of harm to the child." *See* Illinois Administrative Rules, 89 Ill. Admin. Code 300 Allegation #11/61, "Cuts, Bruises and Welts."

B) CASES

(1) Cases Finding Excessive Corporal Punishment

In re B.H., 389 Ill. App. 3d 316 (1st Dist. 2009) (proper finding of excessive corporal punishment where mother hit daughter in the face and pulled her hair, leading to a physical altercation in which the younger children pulled minor off of mother and mother scratched and bit the minor, and rejection of the mother's argument that this was just a fight between her and her 15-year-old daughter leading to mere punishment "calmly administered" and within "the bounds of reasonableness").

In the Interest of F.W., 261 Ill. App. 3d 894 (4th Dist. 1994) (repeated corporal punishment with objects such as bats, extension cords, ropes, and board with metal brackets).

In re D.L.W., 226 Ill. App. 3d 805 (4th Dist. 1992) (father's rights terminated for disciplinary techniques that included punching son in face, kneeing in groin and smacking with a plank in response to bed wetting).

People v. Sambo, 197 Ill. App. 3d 574 (2d Dist. 1990) (child hit with plastic bat and alcohol thrown in face).

In re L.M., 189 Ill. App. 3d 392 (1st Dist. 1989) (seven-year-old beaten with belt and stick, medical testimony presented and other showed no remorse).

In re Weber, 181 Ill. App. 3d 702 (5th 1989) (two-year old child abused despite absence of direct evidence that repeated bruises were inflicted by mother).

People v. Tomlianovich, 161 Ill. App. 3d 241 (3d Dist. 1987) (doctor testified that bruising to 11-year old's buttocks was worst he had seen).

In re D.M.C., 107 Ill. App. 3d 902 (5th Dist. 1982) (100 strokes with a leather belt not appropriate discipline for hyperactivity).

See also discussion of injurious environment, section 8.30 (C)(5), *supra.*

(2) Cases Finding No Excessive Corporal Punishment

In re S.M., 309 Ill. App. 3d 702 (4th Dist. 2000) (stepfather's whipping of 13-year-old with a belt, leaving marks, was not excessive when it was used as a last resort in response to minor's harmful behavior and it was administered out of concern rather than vengeance).

In the Interest of J.P., 294 Ill. App. 3d 991 (lst Dist. 1998) (trial court's finding of excessiveness reversed despite mother's practice of using a wooden spoon to discipline daughter, resulting in bruised buttocks on one occasion).

In re Aaronson, 65 Ill. App. 3d 729 (3d Dist. 1978) (paddling child with a board for disciplinary purposes acceptable).

8.45 SEXUAL ABUSE: SUFFICIENCY OF THE EVIDENCE

A) DEFINITION

705 ILCS 405/2-3(2)(iii)

A child under the age of 18 is a victim of sexual abuse if a parent, immediate family member, any person responsible for the minor's welfare, any person who is in the same family or household or a parent's paramour commits any sex offense covered in the Criminal Code, **720 ILCS 5/1-1 *et seq.*** In cases involving credibility of children who testify as to sexual abuse, the trial court must have "broad discretion to reach a just determination, and a finding of abuse by the trial court is entitled to great deference." ***In re D.W., et al.***, 386 Ill. App. 3d 124 (1st Dist. 2008).

B) PRIMA FACIE EVIDENCE

705 ILCS 405/2-18(2)(j)

proof that a parent, custodian, or guardian of a minor allows, encourages, or requires a minor to perform, offer, or agree to perform any act of sexual penetration as defined in Section 12-12 of the Criminal Code of 1961 for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification . . . ;

705 ILCS 405/2-18(2)(k)

proof that a parent, custodian, or guardian of a minor commits or allows to be committed the offense of involuntary servitude, involuntary sexual servitude of a minor, or trafficking in persons for forced labor or services defined in Section 10-9 of the Criminal Code of 1961, upon such minor . . . .

C) CASES

(1) Cases Finding Sexual Abuse

(*See also* discussion of injurious environment, section 8.30 (C)(5), *supra*.)

In re L.S., 2014 IL App (4th) 131119 (where an off-duty sheriff's deputy saw live-feed web cam showing a young boy performing oral sex on adult male in bed with him and with his mother, and where the mother presented no evidence of tampering, the court properly admitted deputy's testimony, and found that the child was neglected and abused, since the evidence established that technology allowed deputy to truly and accurately observe what was happening at source end of webcast).

In re J.S., 2013 IL App (3d) 120744 (3d Dist. 2013) (mother exposed the minor and her sibling to an injurious environment by failing to remove her boyfriend from the home after the minor made allegations of sexual abuse by mother's boyfriend and also by previously failing to remove boyfriend from the home when he had been violent toward the mother).

In re Alexis H., 401 Ill. App. 3d 543340 Ill. Dec. 901 (1st Dist. 2010) (children either resided with or were members of a household that contained an alleged sex abuser, even though mother testified that she did not intend on living with him permanently; children testified that they lived with the abuser and detailed the abuse for the court).

In re D.W., et al., 386 Ill. App. 3d 124 (1st Dist. (2008) (affirming the trial court's findings that the minors were abused and neglected by reason of sexual abuse, that both parents were unable to care for them, had made no progress toward correcting or addressing the sexual abuse or domestic violence issues, continued to deny that the sexual abuse had occurred, and the father had not completed a sexual perpetrator assessment).

In re A.W., 373 Ill. App. 3d 574 (3d Dist. 2007) (parent unfit on the basis that the parent had been previously indicated for molestation and exploitation and had not completed sex offender training therapy; collateral estoppel barred parent from raising defense to previous molestation allegations).

In re A.P., 179 Ill. 2d 184 (1997) (corroboration of child's out-of-court statement regarding sexual abuse does not require the identity of the sexual abuser).

In re A.A., 307 Ill. App. 3d 403 (lst Dist. 1999) (fact that victim's brother was acquitted of criminal sex abuse did not bar finding of abuse in child protection proceedings).

In re A.M., 296 Ill. App. 3d 752 (lst Dist. 1998) (trial court not required to name perpetrator of sexual abuse).

In the Interest of M.D.H., 297 Ill. App. 3d 181 (4th Dist. 1998) (father touched penis of child's sibling).

In re A.P., 283 Ill. App. 3d 395 (5th Dist. 1996) (state need not prove that actions were intended to arouse sexually).

In re Kr. K., 258 Ill. App. 3d 270 (2d Dist. 1994) (medical evidence and interview with victim supported finding of sexual abuse against father despite fact that allegation arose in the context of a contested divorce).

In re D.M., 258 Ill. App. 3d 669 (lst Dist. 1994) (child's abuse by uncle led to removal of custody from mother where child said family members knew of abuse).

In re T.L., 254 Ill. App. 3d 230 (4th Dist. 1993) (child's detailed description supported finding of abuse).

In re S.D., 220 Ill. App. 3d 498 (lst Dist. 1991) (child witnessed sexual abuse of sister by stepfather, and mother failed to take steps to learn of abuse).

In re T.D., 180 Ill. App. 3d 608 (4th Dist. 1989) (children's statements sufficient to prove abuse despite father's acquittal in criminal case).

In re Carleen H., 186 Ill. App. 3d 535 (1st Dist. 1989) (stepfather regularly abused child and mother failed to protect).

In re S.M., 171 Ill. App. 3d 361 (2d Dist. 1988) (abuse finding upheld despite inconsistencies in child's statements and absence of corroboration).

In re R.G., 165 Ill. App. 3d 112 (2d Dist. 1988) (father convicted of aggravated criminal sexual assault).

(2) Cases Finding No Sexual Abuse

In re Ivan H., 382 Ill. App. 3d 1093 (2d Dist. 2008) (minor's report of sexual abuse was hearsay, and therefore insufficient to support a probable cause finding of neglect, even though the report was admissible, and without corroboration and being subject to cross-examination, it cannot alone support a finding of neglect or abuse).

In re Brunken, 139 Ill. App. 3d 232 (1987) (evidence weak and uncorroborated).

In the Interest of Monica S., 263 Ill. App. 3d 619 (lst Dist. 1994) (swollen genitalia and physician's diagnosis of abuse did not support sex abuse finding where child denied that sexual abuse occurred and physical evidence did not corroborate allegation).

In re M.B., 241 Ill. App. 3d 697 (lst Dist. 1992) (brother's statement that father was abusing sister was not corroborated and was denied by sister and father).

In re Alba, 185 Ill. App. 3d 286 (2d Dist. 1989) (child's out-of-court statement regarding father's abuse was not sufficiently corroborated).

In re J.H., 153 Ill. App. 3d 616 (2d Dist. 1987) (child's out-of-court statements to several individuals regarding abuse did not corroborate allegation).

8.50 DEPENDENCY: SUFFICIENCY OF THE EVIDENCE

A) DEFINITION

705 ILCS 405/2-4 (1)

(1) Who Is a Dependent Minor?

A dependent minor is defined as any minor under the age of 18

- who is without a parent, guardian or legal custodian;
- who is without proper care because of the physical or mental disability of his or her parent, guardian or custodian;
- who is without proper medical or remedial care through no fault, neglect or lack of concern on the part of his parents, guardian or custodian;
- who has a parent, guardian or legal custodian who, with good cause, wishes to be relieved of all residual parental rights and responsibilities, guardianship or custody, and who desires the appointment of a guardian with power to consent to the minor's adoption.

(2) Who Is Not a Dependent Minor

A child is not a dependent minor solely for the purpose of qualifying for financial assistance or solely because his or her parent or guardian has left the minor for any period of time in the care of an adult relative.

Cases:

In re Charles W., 2014 IL App (1st) 131281 (respondent, diagnosed with dementia and Alzheimer's, became adoptive father of his two minor grandsons because the adoptive mother was deceased, was found significantly impaired in his ability to provide necessary care and parenting of minors, and thus court did not err in finding minors dependent and in making minors wards of the court).

B) PARENTAL CUSTODY IS NOT A PRECONDITION

705 ILCS 405/2-4(1)(b)

Courts have rejected the argument that a child cannot be "without proper care because of the physical or mental disability of a parent" unless his or her parent has had an opportunity actually to care for the child. ***In the Interest of J.J.***, **246 Ill. App. 3d 143 (4th Dist. 1993)**; ***In re Joseph B.***, **243 Ill. App. 3d 339 (lst Dist. 1993)**. These cases distinguish earlier cases reversing neglect findings on the ground that neglect focuses on the child's condition and needs, whereas dependency focuses on the parent's circumstances and actions. ***In re Gates***, 57 Ill. App. 3d 844 (5th Dist. 1978); ***In re Nyce***, 131 Ill. App. 3d 481 (lst Dist. 1971).

C) NO-FAULT DEPENDENCY

705 ILCS 405/2-4(1)(c)

(1) Six Month Time Frame

In circumstances where a child is found dependent through no fault of his or her parent, he or she cannot be removed from the parent's custody for more than 6 months unless there is a finding that it is in a child's best interest that the 6-month period be extended. Where the issue arose as to whether the phrase "unless it is found to be in [the child's] best interest by the court" modified only the last antecedent phrase "nor may a minor be removed from the custody of his or her parents for longer than 6 months," or whether it also modified the earlier phrase "no order may be made terminating parental rights," the Supreme Court looked to the legislative history and concluded that the intent was only to expand the six month period of removal, and did not intend to alter the pre-amendment prohibition of a termination of parental rights based on a no-fault dependency finding. ***In re E.B.***, 231 Ill. 2d 459 (2008).

In re Rayshawn H., 16 N.E.3d 57 (2014) (neglect finding upheld; mom's petition for no-fault dependency rejected because evidence supported finding of neglect, rather than no-fault dependency. Mother refused to let child come home, failed to help arrange alternative care, and showed no

interest in support services from DCFS after child's discharge from mental health facility).

(2) ***Termination Order***

The court may not enter a termination order after a finding of no-fault dependency unless the trial court finds that such a petition would be in a child's best interest. **705 ILCS 405/2- 4 (1)(c)**.

D) STANDARD OF PROOF

Dependency of a child need only be proved by a preponderance of the evidence. ***In re S.W.***, 342 Ill. App. 3d 445, 450 (1st Dist. 2003); ***In re Jackson,*** 243 Ill. App. 3d 631 (5th Dist. 1993) (same).

E) CASES

(1) Dependency Finding Proper

In re Z.L., 379 Ill. App. 3d 353 (4th Dist. 2008) (adoptive parents had good cause to be relieved of parental duties in regard to their child, allowing child to be designated as a "dependent minor," where they went through "considerable efforts" to maintain their relationship with the minor despite his psychological issues, and the parents had a responsibility to the other children in their home).

In re Christopher S., 364 Ill. App. 3d 76 (1st Dist. 2006) (no-fault dependency was alleged in addition to neglect, and court rightly took into account not only that the minor was in fact neglected, but evidence established no-fault dependency of minor who began having altercations with adoptive parents after they found suspected stolen items in the house, used verbal and physical intimidation toward adoptive mother on more than one occasion, and where adoptive parents made numerous attempts to mend their relationship with minor and tried to provide alternative care for minor, but were unable to find an affordable agency willing to take him, and minor indicated he did not wish to return to home of adoptive parents or want any contact with them).

In re S.W., 342 Ill. App. 3d 445 (1st Dist. 2003) (evidence established no-fault dependency of child where child was diagnosed with intermittent explosive disorder, attention deficit hyperactivity disorder, pervasive developmental disorder, and mild to moderate mental retardation, she had been hospitalized several times for emotional and psychological problems, and mother, in connection with taking child to emergency room of hospital, refused to allow child to return home and admitted she could not take care of child).

In re A.D.W., 278 Ill. App. 3d 476 (4th Dist. 1996) (dependency finding upheld where both parents were incarcerated).

In re Powers, 94 Ill. App. 3d 646 (2d Dist. 1981) (dependency finding appropriate even where parents are motivated to assume a positive role).

In re Hill, 102 Ill. App. 3d 387 (1st Dist. 1981) (parents' emotional disability made adequate parenting unlikely).

Bryant v. Lenza, 90 Ill. App. 3d 275 (3d Dist. 1980) (long term incarceration of parent made care impossible).

In re Charles W., 6 N.E.3d 399 (2014) (upholding dependency based on physical or mental disability of adoptive father).

(2) Dependency Finding Improper

In re Diamond M., 353 Ill. Dec. 923 (1st Dist. 2011) (while there was some evidence that minor was physically aggressive and that mother feared for her safety, there was enough evidence to show that mother failed to provide minor with a place to live and showed a lack of concern about minor sufficient to adjudicate her neglected by reason of an injurious environment rather than dependent).

In re Christina M., 333 Ill. App. 3d 1030 (1st Dist. 2002) (evidence was insufficient to support mother's argument that child should be classified as a dependent minor rather than as neglected based on lack of necessary care, in child dependency proceeding; mother locked child out of the house, she refused to allow child back into her house, and she refused to participate with the Department of Children and Family Services (DCFS) to create a care plan for child).

In re J.M., 245 Ill. App. 3d 909 (2d Dist. 1993) (parents could not require State to prosecute their dependency petition instead of going forward on a neglect petition where court found parents did not satisfy good cause requirement for surrendering their parental rights).

CHAPTER 9. FINDINGS AND ADJUDICATION

SEE ADJUDICATORY HEARING CHECKLIST: APPENDIX

9.01 DEFAULT PROCEEDINGS

705 ILCS 405/2-21(1)

If a parent has been properly served and fails to appear at the adjudicatory hearing, a default order may be entered against the parent. Prior to entry of such an order, however, the court must make a record as to the manner in which the party received service of process and the type of return of service, if any, must be made part of the court record. In addition, the caseworker must testify about the diligent search conducted for the parent.

Once these requirements are satisfied, the court may enter a default order against a parent on all issues relevant to the adjudicatory phase of the proceeding.

To satisfy the statutory requirement of written findings (*see* Section 9.05, *infra*) and to create a baseline for termination of parental rights on grounds that the parent failed to make reasonable progress or efforts to correct conditions that led to the finding, the court should hear evidence as to the party's conduct. Such evidence may be introduced by verified proffer. Upon entry of a default order, the court may vacate any prior order appointing counsel for a party.

No further service of process is required in any subsequent proceeding for a parent who was properly served except as required by **Supreme Court Rule 11**.

9.05 WRITTEN FINDINGS

705 ILCS 405/2-21

At the close of an adjudicatory hearing, the court must make written findings in the minutes of the proceeding as to whether the State has met its burden of showing that a minor child is abused, neglected or dependent. The court's written findings must contain a factual basis supporting its determination.

A) FINDING OF NO ABUSE, NEGLECT OR DEPENDENCY

If the court finds that the State has not met its burden, the court must dismiss the petition. However, in one interesting case, ***In re Aaron R.***, 387 Ill. App. 3d 1130 (4th Dist. 2009), the trial court found insufficient evidence of neglect, *nunc pro tunc* and, without considering the best interests of minor or finding the parents to be fit, returned the minor to parents. This was held to be an improper use of the *nunc pro tunc* procedure, which is only to correct clerical errors, and the evidence was found to not support the trial court's findings. The appellate court found that

the family needed further court supervision and DCFS guardianship, and thus found that termination of the case was an abuse of discretion. ***Id.***

B) FINDING OF ABUSE, NEGLECT OR DEPENDENCY

(1) Factual Basis

The court's finding that a minor is abused, neglected or dependent must be in writing, must contain the factual basis for the finding, and to the extent possible, must specify the acts or failure to act of each parent, guardian or legal custodian that form the basis for the finding. The finding must appear in the court's order. Where there is a finding that both parents are unfit, the trial court should specify, "to the extent possible, "which parent's actions formed the basis for the finding of neglect to inform the court at the dispositional hearing. ***In re J.W.***, 386 Ill. App.3d 847 (4th Dist. 2008).

Cases:

In re R.W., 371 Ill. App. 3d 1171 (3d Dist., 2007) (court's oral pronouncement reserving the issue of a father's fitness will take precedence over the court's written and unauthorized order that father was "fit but reserved" because, when a court's oral pronouncement is in conflict with its written order, the oral pronouncement prevails).

In re Timothy T., 343 Ill. App. 3d 1260 (4th Dist. 2003) (while preferred practice is for trial courts to immediately enter written orders of adjudication at the conclusion of adjudicatory hearings, trial courts are not required under the Juvenile Court Act to enter written adjudicatory orders before conducting dispositional hearings, and this is true even though the Act provides that if a court determines and puts in writing the factual basis supporting a determination that a minor is neglected the court shall then set a time for a dispositional hearing; the overarching goal of this section of the Act is that the judicial process be accelerated when decisions regarding the custody of children are at issue).

In re J.B., 332 Ill. App. 3d 316 (1st Dist. 2002) (regardless of the party status of father of one of three siblings adjudicated wards of the court, father was afforded with both notice and an opportunity to be heard, and thus, trial court's finding naming father as perpetrator of sexual abuse on one of his child's siblings did not deprive father of due process, where father was served with petition in his child's case alleging the sexual abuse, and he was present at consolidated hearing of the three cases, was represented by counsel, and was afforded the opportunity to cross examine witnesses and object to admission of evidence).

In the Interest of M.Z., 294 Ill. App. 3d 581 (lst Dist. 1998), the appellate court remanded a case to the trial court with directions to state the factual

bases for its findings that a child was neglected for lack of care and injurious environment. The trial court's original findings were recorded only by checking the relevant "findings" boxes on an order form and a brief oral statement on the record. In explaining the basis for remand, the Appellate Court stated: "We cannot determine whether its [the trial court's] findings were against the manifest weight of the evidence." *Accord,* ***In re Dependency of Bartha***, 87 Ill. App. 2d 263 (2d Dist. 1967); *but see* ***In re Z.Z.***, 312 Ill. App. 3d 800 (2d Dist. 2000), distinguishing ***M.Z.*** and declining to remand a case where the trial court had made detailed oral findings on the record and where the appellant neither alleged that the oral findings were insufficient or resulted in prejudice. While agreeing with the State's position that "it would be a waste of judicial resources to remand this cause solely to allow the trial court to reiterate its findings," the reviewing court emphasized the importance of written findings, noting that in cases where the State seeks to terminate parental rights for lack of reasonable efforts (*see* **750 ILCS 50/1 D(m)**), "placing an order of record constitutes the benchmark for rehabilitation and progress in each particular case." This case highlights the importance of findings of fact and possible consequences for later stages of the proceeding.

In ***In re A.M.***, 296 Ill. App. 3d 752 (lst Dist. 1998), the First District found that the trial court had not abused its discretion by refusing to name the perpetrator of sexual abuse in the court findings where the alleged perpetrator was a paramour who was not a party to the proceedings. The reviewing court affirmed the trial court's reasoning that it would violate due process principles to name a nonparty in court findings.

(2) Finding of Physical or Sexual Abuse

If the court finds that a person has inflicted physical or sexual abuse on a minor, it must report its finding to the Department of State Police. That information in turn is to be conveyed to a school district that requests a criminal background check of that person pursuant to the School Code. **705 ILCS 405/2-21(1)**; *See* **105 ILCS 5/10-21.9; 5/34-18.5**.

(3) Admonishments

Upon a finding of abuse, neglect or dependency, the court must admonish the parents that they must cooperate with the Department of Children and Family Services, comply with the terms of the service plan, and correct the conditions that require the child to be in care or risk termination of parental rights. **705 ILCS 405/2-21(1)**.

If a child is not removed from his or her parents' custody after a finding, the court may wish to advise the parents that they must comply with the court's orders, and that failure to comply with the dispositional process, to

cooperate with DCFS terms of service, or to correct the conditions found by the court, may result in future loss of custody.

9.10 SETTING THE DISPOSITIONAL HEARING

705 ILCS 405/2-21(2)(3)

A) DATE FOR DISPOSITIONAL HEARING

(1) In General

705 ILCS 405/2-21(2)

Upon entry of a finding of abuse, neglect or dependency the court must **set a date** for a dispositional hearing **no later than 30 days** after entry of the finding. The Act admonishes the court to give priority in scheduling dispositional hearings to cases in which children have been removed from their homes. **705 ILCS 405/2-22(4)**. Discrete dispositional hearings are required. ***In re G.F.H.***, 315 Ill. App. 3d 711 (2d Dist. 2000) (error where the trial court failed to hold a dispositional hearing and proceeded directly to a hearing on the State's petition to terminate parental rights; dispositional hearing is a "vital stage" of the child protection process).

705 ILCS 405/2-22(4) also limits the time to hold a dispositional hearing to a **maximum of six months after removal** of the minor from the home. However, this requirement may be waived. ***In re John C.M.***, 382 Ill. App. 3d 553 (4th Dist. 2008) (juvenile Court Act's six-month time limit for holding a dispositional hearing after initial removal of child from mother's home was tolled with mother's agreement).

(2) Early Termination of Reasonable Efforts

If a court finds pursuant to **705 ILCS 405/2-13.1** that reasonable efforts at family reunification are no longer required and there has not yet been a dispositional hearing, then the hearing should be scheduled "as needed" so that it takes place prior to the permanency hearing which must be held within 30 days after the motion for early termination of reasonable efforts is entered.

(3) Continuance

The dispositional hearing may be continued for up to 30 days if the court finds that the continuance is necessary to complete the dispositional report.

(4) Waiver of Dispositional Hearing Time Limits

705 ILCS 405/2-21

The time limits for dispositional hearing may be waived by consent of all parties and after court approval. In making such a determination, the court should consider the effect of waiver on the health, safety, and best interests of the minor.

(5) Failure to Adhere to Statutory Time Limits

A trial court's failure to hold a dispositional hearing within 30 days of the date of the adjudication of neglect, abuse or dependency does not deprive the court of subject-matter jurisdiction and subsequent orders are not automatically void**.** ***In the Interest of C.S., Jr.***, 294 Ill. App. 3d 780 (4th Dist. 1998) *Cf.* For example, in ***In re S.W.***, 342 Ill. App. 3d 445 (1st Dist. 2003), a mother waived appellate review of whether circuit court's alleged failure to comply with statutory time limit for conducting adjudicatory proceeding deprived the circuit court of statutory authority to proceed, where mother failed to move, either orally or in writing in the circuit court, to dismiss the petition for adjudication of wardship of the child.

B) DISPOSITIONAL REPORT

705 ILCS 405/2-21(2)

At the time the dispositional hearing date is set, the court may order that an investigation be conducted and that a dispositional report be prepared. The report should include information concerning the minor's physical and mental history and health, the family situation and background, including economic status, education, occupation, personal history, prior court involvement and any other information that may be helpful to the court.

C) EVALUATIONS

A judge may wish to order reports and/or an evaluation of any party or any nonparty who resides in the household in preparation for disposition. DCFS may be ordered to secure and pay for such evaluations. In addition, such orders may be incorporated into any order of protection the court may enter.

CHAPTER 10. DISPOSITION

SEE DISPOSITIONAL HEARING CHECKLIST: APPENDIX

10.01 DISPOSITIONAL HEARING

A) DATE FOR DISPOSITIONAL HEARING

See section 9.10, *supra.*

B) NOTICE OF DISPOSITIONAL HEARING

The Juvenile Court Act of 1987 requires notice be given to all parties' respondent before a dispositional hearing.

In re Jacob K., 341 Ill. App. 3d 425 (4th Dist. 2003), appeal denied 205 Ill. 2d 583 (one crucial purpose of the dispositional hearing after an adjudication of abuse or neglect is to give parents fair notice of what they must do to retain their rights to their children in the face of any future termination proceedings). However, once all parties responsible have been served in compliance with Sections 2-15 and 2-16; further service or notice is unnecessary prior to proceeding to a dispositional hearing. **705 ILCS 405/2-22(2)**. As such, new notice is not required in every case. For example, in ***In re J.F.***, 325 Ill. App. 3d 812 (1st Dist. 2001), (where a mother did not receive personal notice of dispositional hearing, but was in court when the date was set, and her attorney received notice and was present at the hearings, the court could still properly proceed). When notice is required; it must be provided in accordance with **Supreme Court Rule 11** prior to the dispositional hearing.

New Notice is required:

(1) If the dispositional hearing date is set while a party is present in court and then later continued to a different date without the party being present.

New Notice is not required:

(1) If the dispositional hearing date is set while a party is present in court.

(2) If the dispositional hearing date is set after a party has previously been properly served with summons (notice by SCT Rule 11 is sufficient). **705 ILCS 405/2-15(3)**.

(3) If the disposition hearing date is set after a party has previously been given proper notice by certified mail or publication; there is no need to re-notice with certified mail or publication (notice by SCT Rule 11 is sufficient). **705 ILCS 405/2-16(2)**.

(4) If the dispositional hearing date is set after a party has been properly served with summons and found in default. **705 ILCS 405/2-21(1)**; **Supreme Court Rule 11**.

C) ADJUDICATION OF WARDSHIP

705 ILCS 405/2-22(1)

At the dispositional hearing, the Court must initially decide whether it is in a child's best interest to be made a ward of the Court. The phrase Ward of the Court is defined as-- *a minor who has been so adjudged under section 2-22*, *3-23, 4-20, or 5-705 after a finding of the requisite jurisdictional facts, and thus is subject to the dispositional powers of the court under this Act.* **705 ILCS 405/1-3(16)** Only after a finding that the minor should be made a ward of the Court can the Court issue a dispositional order: (1) affecting the future conduct of the parents and/or (2) finding the parents unfit and placing the minor outside the home pursuant to 2-27. **705 ILCS 405/2-23(1)**; **705 ILCS 405/2-27**; ***In re C.L. and T.L.***, 894 N.E.2d 949 (3d Dist. 2008) (The trial court was correct to close the cases of two minors without making them wards of the court because their father, who had not been responsible for any of the abuse or neglect, was providing appropriate care for them. Nevertheless, since the court had not made a finding that it was in the children's best interests to be made wards of the court, it had no jurisdiction to find the father fit or to name him the guardian of the children.

If the court concludes that it is not in a child's best interest to be made a ward of the court after a finding of abuse, neglect or dependency, the court should enter such a finding and dismiss the petition.

If the court determines that it is in a minor's best interest to be adjudicated a ward of the court, it should hear evidence on the issue of what disposition will best serve "the health, safety and interests of the minor and the public."

A trial court's written preprinted order making the minor a ward of the court will be controlling even if the court did not say anything regarding wardship in its oral order. ***In re G.P.***, 385 Ill. App. 3d 490 (3d Dist. 2008). However, it should be noted; the Court has no authority to order any disposition for wards alleged to be victims of abuse or neglect after they become 18. The court must dismiss petitions against parents of wards who were minors at time of filing petition but who turned 18 before the dispositional hearing. ***In re Ann C.***, 359 Ill. App. 3d 203 (1st Dist. 2005); **705 ILCS 405/2-23(1)(a)**.

D) PROPER DISPOSITION

705 ILCS 405/2-22(1)

After the Court decides to make the minor a ward of the Court; the Court must next

determine the proper disposition best serving the health, safety and interests of the minor and the public.

See section 10.05, *infra*.

E) PERMANENCY GOAL

705 ILCS 405/2-22(1)

Finally, the Court must consider the permanency goal set for the minor, the nature of the service plan for the minor and the services delivered and to be delivered under the plan.

See section 11.01, *infra*.

F) EVIDENCE AT DISPOSITIONAL HEARING

(1) In General

At the dispositional hearing, the court may consider and rely on all evidence that is useful in determining dispositional issues. Hearsay evidence is admissible "to the extent of its probative value." **705 ILCS 405/2-22(1)**; ***In re Jay H.***, 918 N.E.2d 284 (4th Dist. 2009) (The plain language of section 2-22(1) of the Juvenile Court Act shows the legislature's intent to give trial courts wide latitude in admitting evidence at the dispositional hearing).

(2) Plans and Reports

(a) Oral and written reports

The court may receive oral and written reports, such as school records, substance abuse evaluations, mental health reports, DCFS records, etc. These reports are admissible even if they contain hearsay but, may be relied on only to the extent that information contained in the reports is probative**. 705 ILCS 405/2-22(1)**. The author need not testify at the dispositional hearing for the reports to be admissible. ***In re J.H.***, 212 Ill. App. 3d 22 (3d Dist. 1991) (no error to admit DCFS reports containing unsubstantiated hearsay statements as to father's alleged alcoholism and sexual abuse); ***In re L.M.***, 189 Ill. App. 3d 392 (lst Dist. 1989) (report containing psychological evaluation of mother admissible).

(b) Continuance under supervision report

A record of a prior continuance (under supervision under section **705 ILCS 405/2-20**), including whether it was successfully completed, is admissible. **705 ILCS 405/2-22(3)**).

(c) Opportunity to review and controvert reports

Prior to entering a dispositional order, the Court must notify the parties-respondent or their counsel of the "factual contents and conclusions" of reports prepared for and considered by the Court. The Court must then give the parties an opportunity, if requested, to correct or controvert such reports. If the Court has concerns about making the contents of a report known to a party, it may limit disclosure to the attorneys for the parties and bar their further dissemination without a court order after an *in-camera* hearing. **705 ILCS 405/2-22(2)**.

(3) Expert/Opinion Testimony

Any party may introduce expert opinion testimony that bears on a minor's best interest. ***In re D.L.***, 226 Ill. App. 3d 177 (lst Dist. 1992). It should be noted, the Court commits error by "second-guessing" medical experts. ***In re B.D.***, 321 Ill. App. 3d 161 (lst Dist. 2001) (the Court must, consider any qualified and competent medical testimony presented regarding the minor and her custodial situation. And where such medical evidence is not offset or contradicted by other competent medical evidence, the Court cannot disregard it.) However, there must be an adequate foundation for the expert's opinion before it may be offered into evidence. ***In re White***, 103 Ill. App. 3d 105 (4th Dist. 1982) (expert lacked personal knowledge regarding proposed placement). In cases of alleged abuse, neglect, or dependency; the privileged character of communication between any professional person and patient or client; does not apply. **705 ILCS 405/2-18(4)(f)**.

(4) Admissibility of Post-adjudication Evidence

A court need not admit evidence of a parent's conduct between the time of the finding of abuse, neglect or dependency and the date of the dispositional hearing. ***In re White****, supra*.

(5) Testimony from Prior Hearings

While the trial courts have wide latitude in considering evidence at the dispositional stage of juvenile proceedings; if a proper foundation establishing the authenticity and reliability of evidence has not been laid at a prior hearing; the evidence cannot be admitted at a later dispositional hearing. ***In C.H., L.H., and W.H.***, 398 Ill. App. 3d 603 (3d Dist. 2010). (Tape recorded phone calls introduced without proper foundation at permanency review hearing were improperly allowed into evidence at the dispositional hearing; this error was not harmless because the trial court relied solely on the inadmissible tapes to find the mother unfit).

G) MOTIONS

(1) Motion to Exclude Witnesses

A court need not grant a motion to exclude witnesses at the dispositional hearing. ***In re D.L.***, 226 Ill. App. 3d 177 (lst Dist. 1992). (Proceedings under the Juvenile Court Act are civil in nature as such the general rules of civil practice apply. Thus, the exclusion of witnesses from a courtroom is a matter resting in the sound discretion of the trial court).

(2) Motion for Adjournment

705 ILCS 405/2-22(4)

The Court may (on its own motion or that of a party) adjourn the hearing for a reasonable time to receive reports or other evidence if the Court determines that adjournment is in the child's best interest.

The dispositional hearing may not take place more than 6 months from the date of a child's initial removal from his or her home.

H) SETTING THE FIRST PERMANENCY HEARING DATE

705 ILCS 405/2-22 (5)

Unless already ordered at the conclusion of the dispositional hearing, the Court must set the first permanency hearing in the case. In setting the hearing, the following time frames apply:

- within 12 months of the date temporary custody was taken; or
- within 30 days of the date the rights of both parents were terminated at the first dispositional hearing pursuant to section 2-21(5) **705 ILCS 405/2-21(5)**; or
- within 30 days of granting a motion finding that reasonable efforts to reunify a child with his or her parent(s) are no longer required pursuant to **705 ILCS 405/2-13.1(2)(a)-(b**).

I) ADMONISHMENT TO PARENTS

705 ILCS 405/2-22(6)

If, at the conclusion of the dispositional hearing, the Court orders that the child be made a ward of the Court and awards guardianship to DCFS; the Court must admonish the parents that they --- ***MUST COOPERATE WITH DCFS, COMPLY WITH THE TERMS OF THE SERVICE PLAN, AND CORRECT THE***

CONDITIONS THAT LED TO THE CHILD'S REMOVAL FROM HIS OR HER HOME OR RISK TERMINATION OF PARENTAL RIGHTS.

J) ABSENT PARENTS

705 ILCS 405/2-22(6)

At the dispositional hearing the court must also inquire as to whether there is an intent to terminate the rights of any parent whose identity or whereabouts is unknown, or who was found in default at the adjudicatory hearing and has not moved to set aside the default order. If this question is answered in the affirmative, the court should take steps to ensure that such a party is identified or located and properly brought within the court's jurisdiction. Such efforts will facilitate the finality of any future decision to terminate.

10.05 KINDS OF DISPOSITIONAL ORDERS

705 ILCS 405/2-23

A) IN GENERAL

A judge is vested with discretion to decide what dispositional order will best serve the interests of the minor. In the exercise of that discretion, however, the Court is limited by the dispositional choices outlined in the Juvenile Court Act. ***In the Interest of M.V.***, 288 Ill. App. 3d 300 (lst Dist. 1997) (the Court lacked authority to order child be returned from out-of-state placement and placed with former foster parents).

It should be noted, trial courts also maintain discretion concerning whether to issue an order based on agreement of the parties. ***In re D.M.,*** 918 N.E.2d 1091 (Ill. App. 2009). An order based on an agreement is a "substantive" ruling. ***Id.*** Thus the father was not entitled to a substitution of judge as of right where the judge had entered an order for services and assessments based upon an agreement of the parties and had ordered the father to follow the recommendations made as a result of a sex offender assessment. ***Id.*** The court had not violated the parents' right to equal protection by ordering parents to obtain employment. ***Id.***

B) REQUIRED PLANS UPON REMOVE OF MINOR FROM A HOME

See section 5.05 (D), *supra*.

C) PURPOSE OF A DISPOSITIONAL ORDER

The purpose of a dispositional hearing pertaining to placement of abused or neglected minors pursuant to **705 ILCS 405/2-27**; is not to terminate parental

rights; but rather to decide what future actions are in the best interests of the child and whether to make the child a ward of the court. ***In re Madison H.***, 215 Ill. 2d 364 (2005). A dispositional order, therefore, is intended to serve the best interests of the child and to give parents fair notice of what they must do to retain their rights to their child. ***Id.***; ***In re G.F.H.***, 315 Ill. App. 3d 711 (2d Dist. 2000); (2d Dist. 2000); ***In re Jacob K.,*** 341 Ill. App. 3d 425 (4th Dist. 2003).

D) SUMMARY OF DISPOSITIONAL OPTIONS

705 ILCS 405/2-23(1)(a)

A minor found to be neglected, abused or dependent may be:

(1) *continued* in the custody of his or her parents, guardian, or legal custodian; or

(2) *placed* outside the home pursuant to **705 ILCS 405/2-27**; or

(3) *restored* to the custody of his or her parent(s), guardian(s), or legal custodian(s) if certain preconditions are satisfied; or

(4) *emancipated*, partially or completely, under the Emancipation of Minors Act. **750 ILCS 30/1**.

E) ORDER CONTINUING CUSTODY IN PARENT

705 ILCS 405/2-23 (1)(a)(1) gives Court discretion to leave a minor in the custody of his or her parents, guardian or legal custodian. Additionally, there is no error when the Court grants custody of neglected, abused or dependent minors to the parents; and simultaneously grants guardianship to Department of Children and Family Services (DCFS). The trial court can split the guardianship and custody of minors. ***In re E.L.***, 353 Ill. App. 3d 894 (3d Dist. 2004).

But see in ***In re M. M.***, 40 N.E.3d 37 (3d Dist. 2015) – In dispositional proceeding, trial court found mother fit, then appointed DCFS as custodian with no factual basis for that determination as required by **705 ILCS 405/2-27**. The Appellate Court reversed and remanded. Additionally, the Court declined State's request to clarify their opinion to hold that the trial court can award custody to a third party such as DCFS if it is in the child's best interests, even if the Court has not found the parents unfit, unwilling, or unable to care for the child. ***Id.*** The Court then went on to explain that **705 ILCS 405/2-27** requires that the Court to first show that parents are unfit, unwilling, or unable to care for child before awarding custody to DCFS. Removal requires more than "best interest" showing ***In re M.K.***, 649 N.E.2d 74 (4th Dist. 1995).

The Court should consider entering an order of protective supervision **705 ILCS 405/2-24**; whenever it continues custody of the minor with parents. *See* section 10.10, *infra*.

However, there are situations where an order of protective supervision should not be made or should be terminated. ***In the Interest of U.O.***, 377 Ill. App. 3d 964 (1st Dist. 2007) (a minor was in the mother's custody under an order of protective supervision, which was conditioned upon mother ensuring that minor attended school and participated in counseling. Due to the minor's aberrant behavior; including failing to attend school regularly, refusing to cooperate with therapy, refusing to undergo psychiatric evaluation, and being adjudicated delinquent; the Court held. it was not in the best interest of the sixteen-year-old minor to remain with his mother because she was unable to care for and protect minor. Accordingly, the minor was removed from mother's custody.

In re Rico L., 2012 IL App (1st) 113028 (custody of the minor was returned to the adoptive mother under a protective supervision order. Prior to the closure of the case, however, the Court was informed that the minor had been hospitalized again, after multiple previous hospitalizations, for psychiatric problems. After hearing the Court vacated the protective supervision order and returned guardianship of the minor to DCFS. On appeal, the appellate court found that the trial court was within its discretion in deciding that the minor's best interests would be served by returning guardianship to DCFS while additional services are provided, especially where no termination of parental rights is involved).

F) ORDER PLACING MINOR OUTSIDE THE HOME

705 ILCS 405/2-27

Statutes:

NOTE: 705 ILCS 405/2-27 (1)(d) was amended by **P.A. 101–0079,** eff. July 12, 2019, as follows:

"(d) …commit the minor to the Department of Children and Family Services for care and service; however, a minor charged with a criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or adjudicated delinquent shall not be placed in the custody of or committed to the Department of Children and Family Services by any court, except (i) a minor less than 16 years of age and committed to the Department of Children and Family Services under Section 5-710 of this Act, (ii) a minor under the age of 18 for whom an independent basis of abuse, neglect, or dependency exists, or (iii) a minor for whom the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33 of this Act. On and after January 1, 2017, commit the minor to the Department of Children and Family Services for care and service; however, a minor charged with a criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or adjudicated delinquent shall not be placed in the custody of or committed

to the Department of Children and Family Services by any court, except (i) a minor less than 15 years of age and committed to the Department of Children and Family Services under Section 5-710 of this Act(ii) a minor under the age of 18 for whom an independent basis of abuse, neglect, or dependency exists, or (iii) a minor for whom the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33 of this Act. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency. The Department shall be given due notice of the pendency of the action and the Guardianship Administrator of the Department of Children and Family Services shall be appointed guardian of the person of the minor."

NOTE: 750 ILCS 50/1 was amended by **P.A. 101-0529**, eff. January 1, 2020, in subsection (D)(i) adding:

"(8) any violation of Section 11-1.20 or Section 12-13 of the Criminal Code of 1961 or the Criminal Code of 2012; (9) any violation of subsection (a) of Section 11-1.50 or Section 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012; (10) any violation of Section 11-9.1 of the Criminal Code of 1961 or the Criminal Code of 2012; (11) any violation of Section 11-9.1A of the Criminal Code of 1961 or the Criminal Code of 2012; or (12) an offense in any other state the elements of which are similar and bear a substantial relationship to any of the enumerated offenses in this subsection (i)." to the list of criminal convictions that create a presumption that parent is depraved.

(1) Unfit, Unable or Unwilling Finding

705 ILCS 405/2-27(1) allows the Court to place a minor outside the home only if the Court provides a written factual basis supporting a determination that the parents, guardian or legal custodian are unfit, *or* unable, *or* unwilling to care for, protect, train or discipline the minor *and* that the minor's health, safety and best interest will be jeopardized if the minor remains in the custody of his or her parents, custodian or guardian. ***In re Jacob K.***, 341 Ill. App. 3d 425 (4th Dist. 2003); ***People v. Heather M.***, 72 N.E.3d 260 (2016). In Juvenile custody proceedings, a child's best interest is superior to all other factors, including the interests of the biological parents. There is no presumption that a parent has a superior right to the care and custody of a child over the claims of a third party. ***In re J.J.***, 327 Ill. App. 3d 70 (lst Dist. 2001) However, when placing a minor outside the home, the Court may not move on to a best interest determination until it finds parents, guardian or legal custodian unfit, unwilling, or unable to care for the minor child. ***People v. Heather M.***, 72 N.E.3d 260 (2016) Nevertheless, there may be occasions when the Court finds a parent, guardian or legal custodian fit and but finds it is in the minor's best interest to be placed outside the home. ***In re Y.A.***, 383 Ill. App. 3d 311 (3d Dist. 2008) (Even where a father had been found fit; based on evidence from the neglect proceeding; the Court properly concluded that the father was

unprepared to take custody of the minor because there was a legitimate concern that father would not protect the minor from the mother who had been found unfit and threatened violence).

The terms "unfit, "unwilling" and "unable" have separate meanings and are expressed in the disjunctive; therefore, if the Court makes a finding as to at least one category then the Court may enter an order placing a child outside the home. ***Jacob K.***, 341 Ill. App. 3d 425 (4th Dist. 2003). A finding of unfitness, inability or unwillingness **705 ILCS 405/2-27** need only be made by a preponderance of the evidence. ***In re April C.***, 326 Ill. App. 3d 225 (lst Dist. 2001); ***In re P.F.***, 265 Ill. App. 3d 1092 (lst Dist. 1994).

NOTE: The fitness requirement under this section should be distinguished from the issue of parental unfitness required in termination of parental rights proceedings under the Adoption Act, **750 ILCS 50/1 (d)(1)**. ***In re P.F.***, 265 Ill. App. 3d 1092 (1st Dist. 1994) (distinguishing between unfitness finding at disposition and at termination of parental rights stage); ***In re April C***.

(a) Cases addressing the unfit, unable or unwilling requirement include:

In re A.R., 2022 IL App. (3d) 154895. DCFS and agency facilitating visitation testified that mother sent hundreds of threatening texts, expressed beliefs about being followed, accused the state of stealing her daughter, and became physically threatening towards DCFS staff. The court found that the record showed respondent had unresolved mental health issues that placed A.R. at significant risk of harm. Dispositional finding of unfitness upheld. Mother claimed that when father was located and given physical custody, the court didn't need to proceed against her with a fitness finding. Appellate court reiterates that it could not award custody to DCFS or to the father until after it entered a dispositional finding that the mother was no longer fit.

In re N.C., 2021 IL App. (1st) 210141. Following adjudication for abuse and neglect after 3-month-old child suffered "indescribable injuries", juvenile court found mother fit, willing, and able to parent children without entering finding as to the perpetrator of the abuse. Appellate court reversed dispositional finding as against the manifest weight of the evidence. Trial court's finding that the mother engaged in all services was contrary to the evidence presented; court did not follow up on insufficient out of date reports as to mother's progress with services, and mother had dropped protective order against father so that they could reunite. Juvenile Court Act requires courts to "act affirmatively, and perhaps at times aggressively, to ferret out information."

In re Daniel G., 2021 IL App. (1st) 210640. Respondent father, who was non-custodial and not part of the conditions that led to the finding of neglect, appealed order finding him unable to care for, protect, train, or discipline his son. State did not prove respondent was unable where there was no evidence of his inability to parent. DCFS ordered no services for him, admitted no services might be required, hadn't finished their assessment. Appellate court remarked on "the paucity of the investigation that was conducted in this case" and reversed the "unable" finding. Father's home found by DCFS to be very safe: he had purchased all necessary items to care for child, had no criminal background or history of abusing or neglecting a child, and testified that he wanted to bring his child home so he could care for him. Father had other children, including a 3-year-old he co-parented.

In re Davon H., 2015 IL App (1st) 150926 U (Ill. App. 2015). Mother argued that court erred in finding her "unable", arguing that she was not provided services for the purpose of reunification, and that finding she was unable based on her lack of compliance with a service plan was improper. "However, the court did not find her 'unable' due to her failure to participate with a service plan. It found her unable because she subjected her children to an environment in which they were physically and emotionally abused, ignored their evidence injuries and consistently disclaimed any knowledge or responsibility for the children's condition or the reason they were taken from her custody."

In Re Marianna F.-M., 32 N.E.3d 171 (Ill. App. 2015) – Child was adjudicated abused and neglected, and the trial court found that the father was the perpetrator. Trial court conducted a dispositional hearing the same day, finding father fit, willing and able to parent Marianna. Appellate court reversed, as against the manifest weight of the evidence. Appellate court also found that the trial court based its conclusions, at least in part, on an erroneous interpretation of DCFS case manager's recommendations, and that conclusions based on that interpretation are subject to "keener scrutiny." ***Id.*** at 184.

(2) Reasonable Efforts Consideration

Prior to placing a child outside the home, the Act requires the judge expressly to consider whether appropriate services aimed at family preservation and reunification have been offered and have been unsuccessful, or whether such services would be inappropriate. **705 ILCS 405/2-27(1.5)**.

(3) Non-abusing Parent

If the court finds that only one parent was responsible for the circumstances that resulted in the finding of abuse or neglect, the child's other parent is entitled to be awarded custody over the interests of a third party, provided that the non-abusive parent is otherwise fit, able and willing to care for, protect, train and discipline the minor. ***In re S.S.***, 313 Ill. App. 3d 121 (2d Dist. 2000); ***In the Interest of M.K.***, 271 Ill. App. 3d 820 (4th Dist. 1995). *But see*, ***In re C.L. and T.L.***, 894 N.E.2d 949 (3d Dist. 2008) (The trial court was correct to close the cases of two minors without making them wards of the court because their father, who had not been responsible for any of the abuse or neglect, was providing appropriate care for them. Nevertheless, since the court had not made a finding that it was in the children's best interests to be made wards of the court, it had no jurisdiction to find the father fit or to name him the guardian of the children.

(4) Child's Preferences

In making a placement determination, the court should, where appropriate, consider the child's views and preferences. **705 ILCS 405/2-27(1.5)**.

In re Jennifer W., 22 N.E.3d 329 (2014) (upholding finding mother was unable to care for children and giving great weight to teenage children's expressed desires for removal and non-visitation).

(5) General Duties of Legal Guardians or Custodians

705 ILCS 2-27(2)

When an individual or agency representative is named legal custodian or guardian of a minor, he or she has the respective rights and duties set forth in **705 ILCS 405/1-3(9**) unless otherwise ordered by the court. No guardian of the person may consent to adoption of the minor unless that authority has been conferred in accord with the requirements of **705 ILCS 405/2-29**. Under **705 ILCS 405/2-28(2)**, a guardian or custodian appointed by the court must file an updated case plan with the court every 6 months.

(6) Placement Outside the Home Alternatives

(a) Placement with a suitable relative or other person

705 ILCS 405/2-27(1)(a)

In the exercise of his or her discretion, the judge may place a child with a suitable relative or other person. If the Court determines that such a placement is in a child's best interest, the Court should enter an order appointing the relative or other person as custodian or guardian. **705 ILCS 405/2-27 (2)**. *See* ***In re P.F.***, 265 Ill. App. 3d 1092, 638 N.E.2d 716 (lst Dist. 1994) (error to award grandmother long-term placement while allowing DCFS to remain custodian).

(b) Subsidized guardianship

705 ILCS 405/2-27(1) (a-5)

Subsidized guardianship is defined as "a private guardianship arrangement for children for whom the permanency goals of return home and adoption have been ruled out and who meet the qualifications for subsidized guardianship as defined by DCFS administrative rules." A minor may be placed in the subsidized guardianship of a suitable relative or other person if DCFS consents to the placement.

(c) Placement with an agency other than DCFS

705 ILCS 405/2-27(1)(c)

For purposes of this section, an agency is defined as "any public or private childcare facility legally authorized or licensed by this State for placement or institutional care or for both placement and institutional care." **705 ILCS 405/1-3(3)**.

705 ILCS 405/2-27(1)(c) authorizes the Court to commit a child to an agency (other than an institution under the authority of DCFS) when such a placement is in his or her best interest. ***In re White***, 103 Ill. App. 3d 105 (4th Dist. 1988) (court properly placed mentally disabled children in a licensed educational facility). When a minor is committed to an agency, the court should appoint the proper officer or agency representative as legal custodian or guardian of the minor. **705 ILCS 405/2-27(2)**.

705 ILCS 405/2-27(2) authorizes an agency representative, who has been appointed guardian, to place the minor in any childcare facility, but only if it is licensed under the Child Care Act of 1969 (**225 ILCS 10/1 *et seq.***) or has been approved by DCFS. Such a placement must follow DCFS rules and regulations for placement as set forth in Section 5 of the Children and Family Services Act (**20 ILCS 505/1 *et seq.***).

(d) Commitment to DCFS

705 ILCS 405/2-27 (1)(d)

(i) Excluded Children

The Court may not commit a child to DCFS custody if the child is 15 or older; *and* has been charged with an offense under the Criminal Code or adjudicated a delinquent. Once a child has been adjudicated a delinquent; *unless* an independent basis of abuse, neglect, or dependency exists, *or* a minor for whom the court has granted a supplemental petition to reinstate wardship of a minor pursuant to **705 ILCS 405/2-33(2)**.

An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency. **705 ILCS 405/2-27(1)(d)**; ***In re S. D.***, **917 N.E.2d 1044 (1st Dist. 2009)** (The Court properly found an independent basis existed because the minor had previously been adjudicated abused and neglected and taken out of his mother's custody prior to being charged with aggravated robbery).

The constitutionality of this prohibition of DCFS placement was upheld in ***In re A.A.***, **181 Ill. 2d 32 (1998)**.

It should be noted that the Court must determine that the parent is unfit, unable, or unwilling to care for the child, prior to commit the child to the care of DCFS. **705 ILCS 405/2-27(1)(a) and (d)**. ***In re M.T.***, 2018 IL App. (3d) 170009 (Ill.App.2018); ***In re. K.L.S-P.***, 383 Ill. App. 3d 287 (3d Dist. 2008) trial court found a father “fit but reserved” and went on to state that

this was a finding that he was "fit," thus the court could not place the children in the guardianship of the DCFS.

(ii) Limits on Specific Placements, Services or Service Providers

705 ILCS 405/2-23 (3)

Once the Court determines that commitment to DCFS is in a minor's best interest; unless otherwise specifically authorized by law; the Court is not authorized to order specific placements, specific services, or specific service providers to be included in the plan. ***In re M.P.,*** 928 N.E.2d 1287 (3rd Dist. 2010); ***In re Chiara C.***, 279 Ill. App. 3d 761 (lst Dist. 1996); However, if after receiving evidence, the Court determines that the services contained in the plan are not reasonably calculated to facilitate achievement of the permanency goal, the Court shall put in writing the factual basis supporting the determination and enter specific findings based on the evidence. The Court must then enter an order for the Department to develop and implement a new service plan or to implement changes to the current service plan consistent with the court's findings.

The Court may order a specific placement only if a parent, guardian or legal custodian makes a motion for restoration of a child to their custody and the foster parents are allowed to intervene for the purpose of asking that the child remain in their care. **705 ILCS 405/1-5(2)(b)**; ***In re R.M.***, 288 Ill. App. 3d 811 (lst Dist. 1997); ***In the Interest of M.V.***, 288 Ill. App. 3d 300 (lst Dist. 1997). However, the Court may order DCFS to remove a minor from a specific foster home and to select an alternative (non-specific) placement; if the Court believes that such a change will facilitate family reunification. ***In re A.L.***, 294 Ill. App. 3d 441 (2d Dist. 1998).

(iii) Religious Beliefs

The court, where possible, should require DCFS to place a minor in the custody of a person who shares the child's same religious background. **705 ILCS 405/2-27 (1.5)**.

(iv) Appointing DCFS Guardian

705 ILCS 405/2-27 (1)(d)

If a child is placed with DCFS, the DCFS Guardianship Administrator (Guardian) must be appointed guardian of the person of the minor. The Guardian or his or her designee has signature authorization with respect to matters affecting the minor, including consent to marriage, enlistment in the armed forces, legal proceedings, adoption, major medical treatment and application for a driver's license. If DCFS seeks to discharge a minor from its care, the Guardian must petition the court for an order terminating guardianship.

(v) Admonishment to parents

705 ILCS 405/2-23(1)(c)

If a child is placed outside the home and DCFS is awarded guardianship, the court must order the parents to cooperate with DCFS, comply with the terms of the service plan, and correct the conditions that led to the child's removal or risk termination of parental rights.

(e) Secure Child Care Facility

705 ILCS 405/2-27.1

The Act now allows for inpatient treatment of children with such severe mental illness or emotional disturbance that the minor is likely to endanger himself or herself or others and this type of treatment is the least restrictive alternative available. The Act contains detailed procedures for such a placement. It also provides for judicial review of the placement if any party (the minor, the minor's parents, the guardian *ad litem*, or the minor's attorney) objects to the placement. If the judge continues the placement, the issue must be reviewed at each subsequent permanency hearing.

(7) Out-of-State Placements

705 ILCS 405/2-27(3)

All appointed agencies (including DCFS) are precluded from placing a minor in any out of State childcare facility unless the placement complies with the Interstate Compact on Placement of Children Act (ICPC). **705 ILCS 405/2-27(3)** ICPC contains procedures for out-of-state placements of children, including those who are neglected, abused or dependent. **45 ILCS 15/0.01** ***et seq.*** It applies when a sending agency causes to be sent or brought into any other State any child for placement in foster care or for possible adoption. ***In re E.P.***, 167 Ill. App. 3d 534 (4th Dist. 1988).

However, ICPC does not apply to the sending or bringing of a child into a receiving State by a parent, stepparent, grandparent, adult relative or guardian. **705 ILCS 405/2-27(3)** Under the ICPC, the sending agency retains jurisdiction over the child until he or she is adopted, reaches majority or is discharged. Moreover, the sending agency continues to have financial responsibility for the child.

Transfer to another state for matters of adjudication may only be accomplished by dismissing the petition in the local juvenile court and allowing the parties to seek relief elsewhere.

(8) Duration of Custody or Guardianship Order

NOTE: 705 ILCS 405/2-31(1) was amended by **P.A. 101-00078**, eff. July 12, 2019, to the following:

(1) All proceedings under Article II of this Act in respect of any minor automatically terminate upon his or her attaining the age of 21 years.

705 ILCS 405/2-27 (5)

If a minor is placed outside the home and a legal custodian or guardian is named, custody or guardianship continues until the court otherwise directs, but not after the minor reaches age 19 except as permitted by Section 2-31 (**705 ILCS 405/2-31**). ***It should be noted; notwithstanding the current language in 705 ILCS 405/2-27(5); presumably the custody or*** *guardianship* granted under that section can continue to the age of 21 years based on the amendment to **705 ILCS 405-2-31(1**).

See section 11.25 (A), *infra.*

(9) Evidentiary Issues

The trial Court was correct in finding a minor neglected and proceeding to disposition; based on custodial parent's stipulation to allegation of neglect along with her stipulation to a factual basis based on police reports; even though the other parent was unable to cross examine the police officers who authored the reports. ***In re R.B.***, 336 Ill. App. 3d 606 (4th Dist. 2003); (The purpose of juvenile court proceedings is to determine the status of the child on whose behalf the proceedings are brought, not to determine any person's criminal or civil liability. Specifically, at an adjudicatory hearing involving an allegation of neglect or abuse, the issue before the trial court is whether the child is neglected or abused as alleged in the State's petition. If the State proves the neglect or abuse, the issues of causation and remediation should be addressed by the trial court at the dispositional hearing.) *see also* ***In re L.S.,*** 11 N.E.3d 349 (4th Dist. 2014).

(10) Visitation Issues

The trial Court in a child dependency proceeding was authorized to suspend visitation between father and minor child for an indefinite time; order placed reasonable limits on visitation that were in the best interests of the minor. ***In re Taylor B.***, 834 N.E.2d 605 (3d Dist. 2005); **705 ILCS 405/1-3(8)(b)**; **705 ILCS 405/2-23(3)(iii)**.

G) ORDER RESTORING CUSTODY TO PARENT

705 ILCS 405/2-23(1)

(1) Abused or Neglected Minor: Fitness Finding

705 ILCS 405/2-23(1)(a)

The Court is prohibited from returning an abused or neglected minor to the custody of any parent, guardian or legal custodian whose actions or omissions were identified as the basis for the finding of abuse or neglect until the Court conducts a hearing and determines that the parent, guardian or legal custodian is fit to care for the minor, and will not endanger the minor's health or safety, and that return home is in the minor's best interest.

Note: This requirement of parental fitness should be distinguished from the determination of parental unfitness in termination of parental rights proceedings under the Adoption Act, **750 ILCS 50/1D(1)**. *See* section 13.20(A), *infra.*

(a) Cases discussing parental fitness under this provision include:

In re A.D., 199 Ill. App. 3d 158 (4th Dist. 1990) (children should only be returned home if the Court is confident that the harm that led to their removal has been eliminated).

In re S.J., 307 Ill. Dec. 281 (4th Dist. 2006) (even though return of child in foster care to father would be improper as he was unfit, return to the mother was still feasible because mother's circumstances did not prevent return of siblings to her, and such a placement would promote permanency).

In the Interest of Monica S., 263 Ill. App. 3d 619 (lst Dist. 1994) (order restoring custody to parent upheld where evidence supported finding child was not sexually abused).

In re J.S., 208 Ill. App. 3d 602 (lst Dist. 1990) (return home fitness hearing is not required where the minor not found to be abused or neglected).

(2) Dependent Minor: Fitness Finding

705 ILCS 405/2-23(1)(b)

The Court is prohibited from returning a dependent minor to the custody of any parent, guardian, or legal custodian whose actions or omissions were identified as forming the basis for the original finding of dependency; until after the Court conducts a hearing and determines that the parent, guardian, or legal custodian is fit to care for the minor and will not endanger the minor's health or safety.

However, when the finding of dependency is not based upon any fault by a parent, the minor may not be removed from the custody of the parent for more than 6 months unless the court finds such placement to be in the minor's best interest. Otherwise, the case automatically closes. **705 ILCS 405/2-4(1)(c)**.

H) ORDER EMANCIPATING MINOR

705 ILCS 405/2-23(1)(a)(4)

The court may fully or partially emancipate an abused or neglected minor upon a finding that he or she is mature, and that legal emancipation is in the minor's best interest. The Emancipation of Minors Act sets forth standards for determining whether a minor is sufficiently mature to live independently. **750 ILCS 30/1 *et seq.*** In addition to these statutory standards, the court may consider other indicia of maturity in deciding whether to enter a full or partial emancipation order. ***In re***

E.G., 161 Ill. App. 3d 765 (lst Dist. 1987), *aff'd in part, rev'd in part,* 133 Ill. 2d 98 (1989) (17-year-old Jehovah's witness was sufficiently mature to decide whether to accept or reject life-sustaining blood transfusions).

I) ORDER TERMINATING PARENTAL RIGHTS

705 ILCS 405/2-23(7)

Statutes:

20 ILCS 505/5, P.A. 94-215, § 5, eff. Jan. 1, 2006 added to subsection (j) The Department may, subject to federal financial participation in the cost, continue to provide financial assistance and education assistance grants for a child who was determined eligible for financial assistance under this subsection (j) in the interim period beginning when the child's adoptive parents died and ending with the finalization of the new adoption of the child by another adoptive parent or parents.

Pursuant to **705 ILCS 405/2-21(5)**, the Court may terminate parental rights after a dispositional hearing if the following conditions are satisfied:

- the original or amended petition contained a request for termination of parental rights and appointment of a guardian with power to consent to adoption; *and*

- the Court has found by a preponderance of the evidence, after an adjudicatory hearing or stipulation, that the minor comes under the jurisdiction of the Court as an abused, neglected or dependent minor under section 2-18; *and*

- the Court finds, based on clear and convincing evidence admitted at the adjudicatory hearing, that the parent is unfit under the Adoption Act, **750 ILCS 50/1(D)(1)**; *and*

- the Court finds in accordance with the rules of evidence for dispositional proceedings that:

    1) it is in the best interest of the child and the public that the child be made a ward of the court; *and*

    2) reasonable efforts under the Children and Family Services Act **(20 ILCS 505/5)** are inappropriate or that such efforts were made and were unsuccessful; *and*

    3) termination of parental rights and appointment of a guardian with authority to consent to adoption is in the child's best interest pursuant to **705 ILCS 405/2-29**.

Cases:

In re C.J., 2013 IL App (5th) 120474 (5th Dist. 2013) (trial Court terminated father's parental rights after he failed to appear at a dispositional hearing, but on appeal the judgment was vacated and remanded for an evidentiary hearing on the issue of unfitness because no evidence of unfitness was presented in the proceeding for termination of the father's parental rights).

10.10 ORDER OF PROTECTIVE SUPERVISION

705 ILCS 405/2-24

If after the dispositional hearing, the Court releases a minor to the custody of his parents, guardian or legal custodian, or continues such custody; the Court may place the person under the supervision of the probation office if such an order is in the child's best interest. ***In re Rider***, 113 Ill. App. 3d 1000 (4th Dist. 1983) (This includes noncustodial parents who have visitation rights).

Prior to entering an order of protective supervision, the Court should ensure that the person subject to the order had notice and an opportunity for a hearing on the matter. The order of protective supervision should define the terms and conditions of the order and specify the duration of the order. Among other things, the order may require a parent to ensure that a child receives periodic medical exams outside the presence of the parent or other custodial person. The results of these exams are available to DCFS, the guardian *ad litem* and the Court.

An order of protective supervision may be modified or terminated if the Court concludes that it is in the child's best interest.

10.15 ORDER OF PROTECTION

705 ILCS 405/2-25

A) TIMING

The Court may enter an order of protection at any time during the course of any proceeding under the Juvenile Act; if the Court finds the order to be consistent with the health, safety, and best interest of the minor. **705 ILCS 405/2-25(5)**.

B) MANDATORY ORDER OF PROTECTION

705 ILCS 405/2-25(2)

The Court must enter an order of protection prohibiting any contact between a minor or the minor's siblings and any person named in the petition who has:

- been convicted of certain violent crimes;
- been convicted of certain sex crimes;
- been convicted of any crime that resulted in the death of a child; or
- violated a prior order of protection.

C) PROCEDURES

705 ILCS 405/2-25(6)

(1) Notice

Diligent efforts must be made to serve any person against whom an order of protection is sought with written notice of the contents of the petition seeking the order of protection and the date, place, and time at which the hearing on the petition is to be held.

When an order of protection is sought in connection with a temporary custody hearing; the Court may conduct the hearing if the Court finds (1) the person against whom the order of protection is sought has been notified of the hearing or (2) diligent efforts have been made to notify the person.

When an order of protection is not sought in connection with a temporary custody hearing; the Court may conduct the hearing if the Court finds, the person against whom the order is sought has (1) been notified of the hearing at least three (3) days before the hearing or (2) been sent written notice by first class mail at least five (5) days before the hearing. ***In the Interest of A.H.***, 235 Ill. App. 3d 12 (4th Dist. 1992) (the Court erred in awarding possession of home and jointly owned vehicle to wife in the absence of notice to husband because he was denied the opportunity to respond to the potential denial to him of access to his marital home and jointly owned vehicle); ***In re S.A.C.***, 147 Ill. App. 3d 656 (4th Dist. 1986) (failure to provide notice voided order of protection because respondent did not have a meaningful opportunity to object to the trial court's action in issuing the protective order against him).

705 ILCS 405/2-25(5) and (7)

(2) Hearing Rights

(a) Parent, guardian, legal custodian or responsible relative

A parent, guardian, legal custodian or responsible relative against whom an order of protection is sought may retain counsel to represent him at a hearing, and has rights to be present at the hearing, to be informed prior to the hearing in writing of the contents of the petition seeking a protective order and of the date, place and time of such hearing, and to cross-examine witnesses called by the

petitioner and to present witnesses and argument in opposition to the relief sought in the petition.) ***In re S.A.C.***, 147 Ill. App. 3d 656 (4th Dist. 1986) (fundamental fairness requires notice and opportunity to be heard).

(b) All other persons

Individuals against whom an order of protection is sought who are not parents, guardian, legal custodian or relative are not a party to the proceedings and are not entitled to the rights of a party set forth in **705 ILCS 405/1-5**. ***In re A.M.***, 296 Ill. App. 3d 752 (lst Dist. 1998). However, they are entitled to notice of any hearing seeking an order of protection and the right to be present at the hearing. Unless otherwise ordered by the Court, they do not have a right of access to the court file and do not have the right to appointed counsel.

D) CONDITIONS

705 ILCS 405/2-25(1).

After determining that an order of protection is in the minor's best interest, the Court must enter a written order that contains "***reasonable***" ***conditions of behavior*** that must be observed by the person who is subject to the order of protection. Such conditions may include:

- stay away from the home or the minor;
- permit a parent to visit the minor at stated periods;
- abstain from offensive behavior against the minor, parent or other custodial person;
- care properly for the home in which the minor resides;
- cooperate with custodial and referral agencies;
- prohibit specified individuals from having contact with the child who are alleged in a juvenile or criminal proceeding to have injured the child;
- act in a way that makes the home a proper place for the child;
- refrain from contacting the minor and foster parents in ways not permitted in the case plan.

The Court may attach other conditions to an order of protection. ***In re J.C.***, 248 Ill. App. 3d 905 (4th Dist. 1993) (requirement that parents visit a child); ***In re T.H.***, 148 Ill. App. 3d 877 (3rd Dist. 1986) (attend counseling even if not directly related to the child abuse); ***In re N.S.***, 255 Ill. App. 3d 768 (4th Dist. 1994) (cooperate with the child's parent).

E) LENGTH OF ORDER OF PROTECTION

An order of protection must specify the length of time it is in effect. ***In re P.F.***, 265 Ill. App. 3d 1092 (lst Dist. 1994); ***In re S.J.K.***, 149 Ill. App. 3d 663 (5th Dist. 1986).

F) SERVICE OF ORDER OF PROTECTION

(1) Person Subject to the Order

Unless the person against whom the order was obtained was present in court when the order was issued, a designated official must promptly serve the order upon that person and file proof of service. **705 ILCS 405/2-25(8)**.

(2) Department of State Police

When the court issues an order of protection, it must direct a copy to the county Sheriff, who in turn must give a copy of the order to the State Police within 24 hours of receipt. **705 ILCS 405/2-25(3)**.

G) REHEARING ON ORDER OF PROTECTION

A person against whom the order of protection was obtained may seek a modification of the order by filing a written motion within seven (7) days after actual receipt by the person of a copy of the order. **705 ILCS 405/2-25(8)**.

H) MODIFICATION, EXTENSION OR TERMINATION OF ORDER

After notice to the person who is the subject of the order of protection, it may be modified, extended, or terminated at any time if the court finds that such action is in the child's best interest. **705 ILCS 405/2-25(4)**.

I) ENFORCEMENT OF ORDER OF PROTECTION

705 ILCS 405/2-26

A person subject to an order of protection who is alleged to have violated it, may be held in contempt. If the minor's protection requires it, the alleged violator may be taken into custody by warrant pending a hearing. If indigent, the person against whom the enforcement (*e.g.,* criminal contempt) proceeding is brought is entitled to appointed counsel.

705 ILCE 405/2-25

If a petition is filed charging a violation of a condition contained in the protective order and if the Court determines that this violation is of a critical service necessary to the safety and welfare of the minor, the court may proceed to findings and an order for temporary custody.

10.20 ORDER OF VISITATION

A) IN GENERAL

If a child has been removed from the home, the judge must exercise his or her discretion to decide whether to enter a visiting order. ***In re Beatriz S.***, 267 Ill. App. 3d 496 (lst Dist. 1994); ***In re Davon H.,*** 44 N.E.3d 1144 (1st Dist. 2015). The decision regarding visitation depends upon the best interest of the child. ***In re D.S.***, 307 Ill. App. 3d 362 (5th Dist. 1999) (the Court may deny or terminate visitation based on child's best interest). In most cases, especially those where the goal is family reunification, the Court will want to make some provision for visitation in its dispositional order. **705 ILCS 405/2-23(3)(iii)**, expressly authorizes the Court to enter any orders, including visiting orders, "necessary to fulfill the service plan." If visitation is not included in the DCFS service plan, the Court may order and regulate visitation as a condition of an order of protection. **705 ILCS 405/2-25(1)(b)**.

B) SUPERVISED VISITATION

The Court may decide whether such visitation should be supervised or unsupervised. In certain cases, the Court may include in its supervised visitation order a requirement that there be a hearing before allowing unsupervised visits. ***In the Interest of Yolaine J.***, 274 Ill. App. 3d 208 (1st Dist. 1995) (supervised visits required where child's father guilty of incest); ***In re Katrina R.***, 364 Ill. App. 3d 834 (1st Dist. 2006) (case manager testified that she was unable to recommend unsupervised visits because father failed to engage in consistent visitation and failed to participate in necessary services for reconciliation).

C) MANDATORY VISITATION

If a judge determines that visits between parent and child are important to the child's well-being, the Court has the power to order a parent to make such visits over the objection of the parent. ***In re J.C.***, 248 Ill. App. 3d 905 (4th Dist. 1993). ***In the Interest of B.J.***, 268 Ill. App. 3d 449 (4th Dist. 1994), the Fourth District sustained the trial court's order jailing a parent for contempt as a result of the parent's failure to obey a visitation order. Justice Cook dissented on the ground that forced visitation is not in a child's best interest.

D) FOSTER PARENT VISITATION

The Court may, if it is in the best interest of the child, permit former foster parents to visit with a child who is still a ward of the Court. ***In re Ashley K.***, 212 Ill. App. 3d 849 (lst Dist. 1991).

E) MODIFICATION OR TERMINATION OF VISITATION ORDER

Where appropriate to the child's best interest, the Court may modify or suspend visitation at any time. ***In re A.A.***, 315 Ill. App. 3d 950 (4th Dist. 2000) (Court had authority to suspend father's visitation until he finished counseling.

F) APPEALABILITY OF VISITATION ORDER

As a general matter, an order setting or modifying a visitation order is not final and appealable. ***In re T.M.***, 302 Ill. App. 3d 33 (lst Dist. 1998) (no authority under Supreme Court Rule 303 that provides that a supervised visitation order modifying a previous supervised visitation order in a juvenile court proceeding is final and appealable).

10.25 ORDER TO PAY COSTS AND FEES

A) MINOR PLACED OUTSIDE THE HOME

If the Court's dispositional order places the child outside the home, the Court is required to order the child's parent or guardian to pay to the guardian or custodian "such sums as are determined by the custodian or guardian of the person of the minor as necessary for the minor's needs." **705 ILCS 405/2-23(5)**. Payments may not exceed the maximum amounts allowable under the Children and Family Services Act (**20 ILCS 505/9.1**).

B) GUARDIAN *AD LITEM* FEES

Section 2-17(5) (**705 ILCS 405/2-17(5)**) provides that "reasonable fees of a guardian *ad litem* . . . shall be fixed by the Court and charged to the parents of the minor, to the extent they are able to pay."

CHAPTER 11. POST-DISPOSITION PROCEEDINGS

11.01 PERMANENCY PROCEEDINGS

705 ILCS 405/2-28

A) ROLE OF THE COURT IN ACHIEVING PERMANENCE FOR CHILDREN

At one time, the role of the juvenile court judge in child protection proceedings was limited to a determination of whether a child had been abused or neglect and, if so, whether the child needed to be removed from home or placed under court or agency supervision. As the number of children in the foster care system grew, however, Congress and state legislatures became increasingly concerned about "foster care drift," a phrase used to describe the problem of children who were removed from their parents' care and who moved from foster home to foster home with little likelihood that they would be restored to their parents' custody or freed for adoption. In 1980, Congress adopted the Adoption Assistance and Child Welfare Act, **42 U.S.C. §§ 620-28, 670-79(a)**, with a goal of providing incentives to states to respond to the problem of abuse prevention. More recently, Congress passed the Adoption and Safe Families Act of 1997, **42 U.S.C. § 675(5)**. This Act conditions receipt of federal funds on states' compliance with provisions aimed at ensuring permanence for children, including eliminating the reasonable efforts requirement in cases of serious abuse, shortening the period a child remains in foster care, and requiring the filing of termination petitions in most cases where a child has been in foster care for 15 out of 22 months.

At the state level, Illinois has been a leader in adopting legislation aimed at promoting safety and permanence for children. Beginning in the 1990's, the Juvenile Court Act has provided for ongoing judicial oversight of children in care. This oversight is accomplished through permanency proceedings which take place on a regular basis after entry of the dispositional order, and which are designed to ensure that permanency goals are adopted and implemented in a comprehensive and timely fashion **705 ILCS 405/1-2** emphasizes that permanency is a core goal of the Illinois Juvenile Court Act.

As a result of these state and federal legislative changes, the role of the judge in child protection cases has expanded. At present, courts are expected to ensure a safe, permanent, and stable home is secured for each abused, neglected, or dependent child. In fulfilling these responsibilities, judges should be aware that Illinois permanency laws have been amended frequently in recent years, making it especially important to refer to the most recent statutory provisions and to consider appellate decisions in light of these changes.

B) BEST INTEREST IN PERMANENCY DECISIONS

The Court's best interest determination is paramount when deciding if modification of placement or change in permanency goal is appropriate. ***In re C.L.***, 2018 IL App. (1st) 180577(1st Dist. 2018) (After the initial finding of unfitness, unable, of unwilling, the Court is authorized to modify the minor's placement under **705 ILCS 405/2-27(1)**, change minor's permanency goal, or even close a case to private guardianship under **705 ILCS 405/2-28(2)**; without any additional findings as to the parent's fitness, ability, and willingness; as long as the Court finds it in the minor's best interest).

11.05 PERMANENCY HEARINGS

NOTE: 705 ILCS 405/5-745(2) requires the Court to conduct permanency hearings when minors are in the custody of the Illinois Department of Children and Family Services.

SEE PERMANENCY HEARING PROCEDURAL CHECKLIST: APPENDIX

NOTE: 705 ILCS 405/2-28 was amended by **P.A. 101-00063**, eff. October 1, 2019, adding the following:

(1.6) Within 35 days after placing a child in its care in a qualified residential treatment program, as defined by the federal Social Security Act, the Department of Children and Family Services shall file a written report with the court and send copies of the report to all parties. Within 20 days of the filing of the report, the court shall hold a hearing to consider the Department's report and determine whether placement of the child in a qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and if the placement is consistent with the short-term and long-term goals for the child, as specified in the permanency plan for the child. The court shall approve or disapprove the placement. If applicable, the requirements of Sections 2-27.1 and 2-27.2 must also be met. The Department's written report and the court's written determination shall be included in and made part of the case plan for the child. If the child remains placed in a qualified residential treatment program, the Department shall submit evidence at each status and permanency hearing:

(1) demonstrating that on-going assessment of the strengths and needs of the child continues to support the determination that the child's needs cannot be met through placement in a foster family home, that the placement provides the most effective and appropriate level of care for the child in the least restrictive, appropriate environment, and that the placement is consistent with the short-term and long-term permanency goal for the child, as specified in the permanency plan for the child;

(2) documenting the specific treatment or service needs that should be met for the child in the placement and the length of time the child is expected to need the treatment or services; and

(3) the efforts made by the agency to prepare the child to return home or to be placed with a fit and willing relative, a legal guardian, or an adoptive parent, or in a foster family home.

A) PURPOSE OF PERMANENCY HEARINGS

705 ILCS 405/1-3(11.2) and 705 ILCS 405/2-28(2)

The purpose of a permanency hearing is to determine the future status of the child by setting the permanency goal and reviewing and determining the following:

(1) the permanency goal contained in the service plan;

(2) the appropriateness of the services contained in the plan and whether those services have been provided; *and*

(3) whether reasonable efforts have been made by all parties to the service plan to achieve the goal; *and*

(4) whether the plan and goal have been achieved.

Cases:

In re Faith B, 359 Ill. App. 3d 571 (2d Dist. 2005) (the relevant considerations in the setting of a permanency goal include the following: (1) the age of the children; (2) the options available for permanence; (3) the current placement of the children and the intent of the family regarding adoption; (4) the emotional, physical, and mental status or condition of the children; (5) the types of services previously offered and whether the services were successful and, if not successful, the reasons the services failed; (6) the availability of services currently needed and whether the services exist; and (7) the status of any siblings).

B) FIRST PERMANENCY HEARING

705 ILCS 405/2-28(2)

(1) When Is the First Permanency Hearing Held?

The initial permanency hearing must be held:

(a) within 12 months from the date temporary custody was taken, regardless of whether an adjudication or dispositional hearing has been completed within that time frame; *or*

(b) within 30 days of the termination of parental rights of both parties and appointment of a guardian with power to consent to adoption in accordance with **705 ILCS 405/2-21**; *or*

(c) within 30 days of granting a motion for early termination of reasonable efforts in accordance with **705 ILCS 405/2-13.1(2)**.

Cases:

In re Kenneth F., 332 Ill. App. 3d 674 (2d Dist. 2002) (permanency review hearing for mother's neglected children was held within 12 months of date temporary custody of children was taken from mother, whose parental rights were subject to termination, and thus was conducted in a manner required by Juvenile Court Act).

(2) Who Conducts the First Permanency Hearing?

The judge conducts the initial permanency hearing. Later hearings may be conducted by the judge or by hearing officers appointed under **705 ILCS 405/2-28.1**.

C) SUBSEQUENT PERMANENCY HEARINGS

705 ILCS 405/2-28(2)

(1) When Are Subsequent Permanency Hearings Held?

After the initial permanency hearing, subsequent hearings are held every 6 months or more frequently and continue until the Court determines that the permanency plan and goal have been achieved. Once that has occurred, if the minor remains in substitute care, the case must be reviewed at least every 6 months unless the minor is placed in the guardianship of a suitable relative or other person and the Court determines that ongoing monitoring is not necessary for the health, safety, or best interest of the child and that the placement is a stable, permanent placement.

(2) Setting Subsequent Hearings

The Court should set the date for subsequent permanency hearings at the conclusion of each hearing. If the Court has not set a permanency hearing date, a party may move for the setting of a permanency hearing and entry of an order within the statutory time frames.

(3) Postponement of Permanency Hearings

Permanency hearings must be held within the time frame established in the Act and may not be delayed in anticipation of reports or because the agency has not filed its written report in a timely fashion. ***In re K.C.***, 325 Ill. App. 3d 771 (1st Dist. 2001) (if DCFS fails to fulfill its statutory duty to appear at hearing or provide an updated service plan and report, the Court may

appoint a new guardian, employ its contempt power or order DCFS to remove the current caseworkers and reassessing alternative caseworkers).

(4) Who Conducts Subsequent Permanency Hearings?

After the first permanency hearing, which must be conducted by a judge, subsequent hearings may be heard by a judge or by hearing officers appointed or approved by the court in accordance with Section 2-28.1 (**705 ILCS 405/2-28.1**).

D) ADVANCE COPIES OF SERVICE PLAN AND WRITTEN REPORT

705 ILCS 405/2-28(2)

(1) Service Plan

DCFS or another agency responsible for the minor's care is charged with ensuring that all parties are provided a copy of the most recent service plan (prepared within the prior 6 months) at least 14 days in advance of a scheduled permanency hearing.

(2) Written Report

Unless the information is included in the service plan, in addition to providing parties with a copy of the plan, the agency must also provide a written report which includes the following information:

(a) any special physical, psychological, educational, medical, emotional, or other needs of the minor or family members that are relevant to a permanency or placement determination; *and*

(b) in the case of a minor over age 16, a written description of the programs and services needed to enable the minor to prepare for independent living; *and*

(c) a detailed statement or assessment of the following:

what progress or lack of progress the parent has made in correcting conditions that led to placement of the child outside the home;

whether the child can be returned home without jeopardizing his or her health, safety, and welfare;

if the child cannot be returned home, what permanency goal is recommended to be in the best interests of the child and why other permanency goals are not appropriate.

E) CONDUCT OF PERMANENCY HEARINGS BEFORE A JUDGE

705 ILCS 405/2-28(2)

(1) Attendance of Caseworker

The Act requires the child's caseworker to appear and testify at each permanency hearing. ***In re K.C.***, 325 Ill. App. 3d 771 (1st Dist. 2001) (if DCFS fails to fulfill its statutory duty to appear at hearing or provide an updated service plan and report, the Court may appoint a new guardian, employ its contempt power or order DCFS to remove the current caseworkers and reassign alternative caseworkers). Limitations on court's authority are clarified in ***In re B.S.,*** 2021 IL App. (5th) 200039.

The Abused and Neglected Child Reporting Act mandates that DCFS assist the Court during all stages of the court proceedings in accordance with the purposes of the Act and the Juvenile Court Act of 1987 by providing full, complete, and accurate information to the court and by appearing in court if requested by the court. Failure to provide assistance requested by a court shall be enforceable through proceedings for contempt of court. **325 ILCS 5/8.3**.

(2) Admissibility of Evidence

All evidence relevant to determining the future status of the child, including oral and written reports, may be admitted, and relied on to the extent of its probative value at a permanency hearing.

(3) Permanency Goal Considerations

The Act directs the Court to consider the following questions during a permanency hearing:

(a) the permanency goal contained in the service plan; *and*

(b) the appropriateness of the services contained in the plan and whether those services have been provided; *and*

(c) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal; *and*

(d) whether the plan and goal have been achieved.

Cases:

In re T.S., 402 Ill. App. 3d 1159 (5th Dist. 2010). (The Court commits reversible error when guardianship and custody is granted on a permanent

basis without (1) finding that goals of return home and adoption had been ruled out and (2) making written findings as to the reasons why the other goals had been ruled out).

(4) Permanency Goals

At the permanency hearing, the Court must indicate in writing why the goal was selected and why the other goals were ruled out. Where the Court has selected a permanency goal other than a-c, DCFS shall not provide further reunification services.

The Court must set one of the following permanency goals:

(a) The minor will be returned home by a specific date within 5 months; *or*

(b) (1) The minor will be in short-term care with a continued goal to return home pending a status hearing. When the court finds that a parent has not made reasonable efforts or reasonable progress to date, the court shall identify what actions the parent and the Department must take in order to justify a finding of reasonable efforts or reasonable progress and shall set a status hearing to be held not earlier than 9 months from the date of adjudication nor later than 11 months from the date of adjudication during which the parent's progress will again be reviewed.

(2) The minor will be in short-term care with a continued goal to return home pending a status hearing. When the Court finds that a parent has not made reasonable efforts or progress, the Court must identify what actions the parent and agency must take in order to justify a finding of reasonable efforts or reasonable progress and shall set a status hearing to be held not earlier than 9 months nor later than 11 months from the date of adjudication at which time the parent's progress will be reviewed; *or*

(c) The minor will be in substitute care pending court determination on termination of parental rights.

Cases:

In re A.W., 231 Ill.2d at 108 (2008) (a trial court may order a service plan that requires a parent to engage in effective counseling or therapy but may not compel counseling or therapy requiring the parent to admit to committing a crime).

In re T.P., Q.P., and A.P., 381 Ill. App. 3d 226 (4th Dist. 2008). (However, it should be noted that a decision to change the permanency goal to adoption *after* termination of parents' rights was not found invalid because the Court failed to consult with the minor children, where it was unlikely that the court could have had meaningful consultation with three children under four years of age).

NOTE: When parental rights have been terminated for a minimum of 3 years and the child who is the subject of the permanency hearing is 13 years old or older and is not currently placed in a placement likely to achieve permanency, the Department of Children and Family Services shall make reasonable efforts to locate parents whose rights have been terminated, except when the Court determines that those efforts would be futile or inconsistent with the subject child's best interests. The Department of Children and Family Services shall assess the appropriateness of the parent whose rights have been terminated, and shall, as appropriate, foster and support connections between the parent whose rights have been terminated and the youth. The Department of Children and Family Services shall document its determinations and efforts to foster connections in the child's case plan." **705 ILCS 405/2-28(4)**.

NOTE: At least one Appellate Court Judge has expressed the view that it violates due process to allow DCFS to select a goal of substitute care pending court determination on a petition to terminate parental rights and to withdraw services when the selection is not based on clear and convincing evidence. "Once the decision is made to prevent the parent from having any contact with the child, it is inevitable that termination will be the eventual result." ***In the Interest of J.H.,*** 304 Ill. App. 3d 188 (4th Dist. 1999), Justice Cook, specially concurring. This view, however, was rejected in another Fourth District opinion, ***In re K.H.,*** 313 Ill. App. 3d 675 (4th Dist. 2000) (holding that **705 ILCS 405/2-28** does not require the trial court's decision regarding a permanency goal to be determined by clear and convincing evidence).

(d) Adoption, provided that parental rights have been terminated or relinquished; *or*

(e) The guardianship of the minor will be transferred to an individual or couple on a permanent basis if goals (A) through (D) have been **deemed inappropriate and not in the child's best interests. The court shall confirm that the Department has discussed adoption, if appropriate, and guardianship with the caregiver prior to changing a goal to guardianship.**

Cases:

In re V.M., 352 Ill. App. 3d 391 (1st Dist. 2004) (approval of a motion by DCFS to vacate guardianship, terminate wardship, close the case and appoint paternal grandparents as guardians were not in error as the trial court considered the stability of the home environment as a primary factor and had monitored the case for years, considered the current placement of the children and the intent of the foster parents, the emotional physical and mental status of the children, and where the mother was physically abusive, unable to make progress through counseling services provided, and where the permanency goal of private guardianship was set with approval of father).

In re J.J., 327 Ill. App. 3d 70 (lst Dist. 2001) (decision to modify goal from return home to private guardianship with aunt and uncle was proper where children had lived with them for two years, were attached, and even though the mother had completed all services).

(f) The minor over age 15 will be in substitute care pending independence. In selecting this permanency goal, the Department of Children and Family Services may provide services to enable reunification and to strengthen the minor's connections with family, fictive kin, and other responsible adults, provided the services are in the minor's best interest. The services shall be documented in the service plan.

(g) The minor will be in substitute care because he or she cannot be provided for in a home environment due to developmental disabilities or mental illness or because he or she is a danger to self or others, provided that goals (A) through (D) have been **deemed inappropriate and not in the child's best interests**.

(h) The minor will continue in long term foster care.

NOTE: When a minor has lived with his or her foster parent for a year and the foster parent is willing to provide the child "with a stable and permanent environment"; the Court may select continuing foster care as a permanency goal; only if all other goals have been ruled out and the Court finds compelling reasons to do.

(5) Permanency Goal Factors

The court must set a permanency goal that is in the best interest of the child. In determining the goal, the Court must consult with the minor in an age-appropriate manner regarding the proposed permanency plan. The court's determination shall include the following factors:

(a) Age of the child.

(b) Options available for permanence, including both out-of-state and in-state placement options.

(c) Current placement of the child and the intent of the family regarding adoption.

(d) Emotional, physical, and mental status or condition of the child.

(e) Types of services previously offered and whether or not the services were successful and, if not successful, the reasons the services failed.

(f) Availability of services of currently needed and whether the services exist.

(g) Status of siblings of the minor.

Cases:

In re Faith B, 359 Ill. App. 3d 571 (stating the above criteria).

In re T.S., 402 Ill. App. 3d 1159 (5th Dist. 2010). (The Court commits reversible error when guardianship and custody is granted on a permanent basis without (1) finding that goals of return home and adoption had been ruled out and (2) making written findings as to the reasons why the other goals had been ruled out).

In re K.C., 325 Ill. App. 3d 771 (1st Dist. 2001) (if DCFS fails to fulfill its statutory duty to appear at hearing or provide an updated service plan and report, the Court may appoint a new guardian, employ its contempt power or order DCFS to remove the current caseworkers and reassign alternative caseworkers).

In re M.M., 337 Ill. App. 3d 764 (2d Dist. 2003) (if the best interests standard in a child custody proceeding can be attained only by placing the child in the custody of someone other than the natural parent, like the foster parents, it is unnecessary for the Court to find the natural parent unfit to care for the child; children had been out of mother's care for approximately four years, family therapist testified that guardianship was in the best interests of children and that the children stated they wished to remain with their foster parents).

In re C.L., 2018 IL App. (1st) 180577 (1st Dist. 2018) (Best interest determination is paramount when the Court is deciding if a change in permanency goal is appropriate. After the initial finding of unfitness,

unable, or unwilling, the Court is authorized to modify the minor's placement under **705 ILCS 405/2-27(1)**, change minor's permanency goal, or even close a case to private guardianship under **705 ILCS 405/2-28(2)**; without any additional findings as to the parent's fitness, ability, and willingness; as long as the Court finds it in the minor's best interest).

F) JUDICIAL FINDINGS REGARDING INADEQUATE OR INAPPROPRIATE SERVICES

705 ILCS 405/2-28(2)

If, after receiving evidence at a permanency hearing, the Court determines that services contained in the service plan will not reasonably accomplish permanency goal, the court must enter written findings, based on the evidence taken, and order DCFS to develop and implement a new service plan or to implement changes to the existing plan consistent with the court's findings. The Court may not order specific placements, specific services or specific service providers to be included in the plan. However, under **705 ILCS 405/2-28(2.5)**, the Court is authorized to order DCFS to obtain a recommendation for alternative placement by a clinician if the Court finds that the current or planned placement is not necessary.

The new service plan must be filed with the Court and served on the parties within 45 days of the court's order. The Court should continue the hearing until the new plan is filed. ***In re D.S.,*** 317 Ill. App. 3d 467 (4th Dist. 2000) (court erred in evaluating reasonableness of plan and parties' efforts by considering unwillingness to admit to the abuse).

In addition, the Act requires the Court to make findings at the permanency hearing as to whether the services in the service plan require anything from the parent that "is not reasonably related to remedying a condition or conditions that gave rise or which could give rise to any finding of child abuse or neglect." Any tasks the Court requires of the parents, guardian, or legal custodian or child prior to returning the child home, must be reasonably related to remedying a condition or conditions that gave rise to or which could give rise to any finding of child abuse or neglect. ***In re Z.M.,*** 2019 IL App. (3d) 180424. "[r]equiring respondent to complete substance abuse treatment as part of his service plan was reasonably related to remedying the condition that gave rise to Z.M. being removed from the home" Cannabis was being used in the home, and respondent later tested positive for marijuana and cocaine.

G) JUDICIAL ORDERS AFTER PERMANENCY HEARING

705 ILCS 405/2-28(3)

Following the permanency hearing, the Court must enter a written order containing all determinations required under **705 ILCS 405/2-28(2)**, and setting forth the following:

(1) the future status of the minor, including the permanency goal, and any order necessary to conform the minor's legal custody and status to such determination; *or*

(2) if the permanency goal cannot be achieved immediately, the specific reasons for continuing the minor in agency care for short term placement and the following determinations:

(a) whether the services required by the Court and by any service plan prepared within the prior 6 months have been provided and (A) if so, whether the services were reasonably calculated to facilitate the achievement of the permanency goal or (B) if not provided, why the services were not provided;

(b) whether the minor's current or planned placement is necessary and appropriate to the plan and goal, recognizing the right of minors to the least restrictive (most family-like) setting available and in close proximity to the parents' home consistent with the health, safety, best interest and special needs of the minor and, if the minor is placed out-of-state, whether the out-of-state placement continues to be appropriate and consistent with the health, safety, and best interest of the minor.

H) WRITTEN ORDER REQUIREMENT

Cases:

In re Madison H., 215 Ill. 2d 364 (2005) (the trial court's oral statement on the record did not explicitly advise mother of the basis for the Court's placement determination, during dependency proceeding, and thus failed to satisfy the requirement of a factual basis "in writing" for its determination; the court's oral findings only mirrored the statutory language for placing children outside of the home, were not fact-specific to mother, and they did not mention mother's developmental disability, even though mother's disability prompted the Court's finding).

In re S.E., 319 Ill. App. 3d 937 (4th Dist. 2001) (given "the overwhelming volume of cases . . . and the bare-bones support staff . . . , a court's oral pronouncement of its ruling should be viewed as sufficient to comply with section 2-28(2) . . . if (1) those pronouncements appear in the record and (2) they would constitute a sufficient statement of the Court's findings" if they were typed in written form).

In re R.A.L., 746 N.E.2d 317 (4th Dist. 2001) (goal of substitute care after filing of a petition to terminate parental rights was upheld where, unlike in ***In re K.H.***, *supra.*, the Court did not use a form permanency order, but made specific written findings as to why the goal was in the child's best interest).

I) SUFFICIENCY OF EVIDENCE

Cases:

In re V.M., 352 Ill. App. 3d 391 (1st Dist. 2004) (permanency hearing final order granting private guardianship of mother's children to paternal grandparents was in best interests of children where mother made little to no progress in services participated in over extended period of time, mother demonstrated inability to parent children, and children needed continued stability in environment).

In re V.M., *supra* (vacating guardianship, terminating wardship and closing the case and appointing paternal grandparents as guardians were not in error where Court considered the stability of the home environment as a primary factor and had monitored the case for years, considered the current placement of the children and the intent of the foster parents, the emotional physical and mental status of the children, services offered to the mother and reasons for failure, evidence received surrounding trial, lack of progress in services provided to the mother and her inability to parent the 2 children and adoption had been ruled out by the foster parents and DCFS).

In re Robert H., 353 Ill. App. 3d 316 (2d Dist. 2004) (The trial court was not in error, when finding no other options available it selected a permanency goal of subsidized guardianship, but did not terminate parental rights, and appointed the foster parents as guardians, closing the; subsidized guardianship is a statutory alternative to termination of parental rights).

In re Alicia Z., 336 Ill. App. 3d 476 (2d Dist. 2002) (transfer of guardianship from DCFS to foster parents was against the weight of the evidence where DCFS acknowledged that father received inadequate services due to their failure to provide interpreters and recommended that goal for children remain at home, foster parents undermined children's cultural, religious, linguistic, and familial ties, father completed most requirements of his case plan, and father consistently visited his children and spoke with their doctors and therapists; DCFS should have retained guardianship with permanency goal of returning children to father's home).

J) CONDUCT OF PERMANENCY HEARING BEFORE A HEARING OFFICER

705 ILCS 405/28.1

(1) In General

The Act authorizes the chief judge of the circuit court to appoint hearing officers to conduct permanency hearings after the initial permanency hearing.

(2) Qualifications

Hearing officers must be attorneys with at least 3 years of experience in child abuse, neglect, or permanency matters. In addition, in counties with a population of more than 3,000,000, hearing officers must have been admitted to practice for at least 7 years.

(3) Scope of Authority

(a) Actions authorized in all counties

After training, hearing officers may conduct hearings, summon and compel the attendance of witnesses, administer oaths or affirmations, take testimony, require the production of evidence, rule on the admissibility of evidence, cause notices to issue requiring parties and agencies responsible for the minor's care to appear before the hearing officer or court, conduct pre-hearings, conduct *in camera* interviews with children, analyze evidence and prepare written recommended orders, including findings of fact.

(b) Actions authorized in counties of three million

In addition to the above powers, hearing officers in counties with a population of 3,000, 000 or more are authorized to accept specific consents for adoption or surrenders of parental rights, conduct hearings on progress made toward the permanency goal, and perform other duties assigned by the Court.

(c) **705 ILCS 405/2-28.1(d)** limits authorization of the following functions to the judge

(i) review of recommended orders of the hearing officer and entry of orders the Court deems appropriate;

(ii) conduct of judicial hearings on all pre-hearing motions and other matters that require a court order;

(iii) conduct of judicial determinations on all matters in which the parties or DCFS disagree with the hearing officer's recommended orders;

(iv) issuance of rules to show cause, conduct of contempt proceedings and imposition of appropriate sanctions or relief.

(4) Conduct of Permanency Hearing

The hearing officer conducts the hearing as set forth in **705 ILCS 405/2-28(2) and (3)**. As part of this responsibility, he or she must inform participants of their rights and responsibilities and identify the issues to be reviewed. The hearing officer considers all relevant facts and receives or requests any additional information necessary to make recommendations to the Court.

If a party fails to appear at the hearing, the hearing officer may proceed with the parties present and afterwards specifically note for the Court the absence of any parties.

The hearing officer is responsible for ensuring that a verbatim record of proceedings is made and retained for at least 12 months or until the next permanency hearing, whichever date is later and must direct to the clerk of the court all documents and evidence to be made part of the Court file.

(5) Hearing Officer Recommendations

705 ILCS 405/2-28.1(b)

(a) Parties present and in agreement

If all parties are present at the hearing and the parties and DCFS are in agreement that the service plan and permanency goal are appropriate or are in agreement that the permanency goal has been achieved, the hearing officer prepares a recommended order, including findings of fact, to be submitted to the Court and all parties and the Department sign the recommended order at the hearing. The order is then submitted to the court for immediate consideration and action. The Court may enter an order consistent with the recommended order without further hearing or notice to the parties, may refer the matter to the hearing officer for further proceedings, or may hold additional hearings. All parties present at the hearing and the Department are to be given a copy of the Court's order at the conclusion of the hearing.

(b) Parties not present or not in agreement

If any party is not present at the hearing conducted by the hearing officer, or if any party or DCFS objects to the hearing officer's recommended order, including any findings of fact, the hearing officer must set the matter for a judicial determination within 30 days of the permanency hearing for the entry of the recommended order or for receipt of the parties' objections. Any objections must be in writing and must identify the specific findings or

recommendations that are contested, together with the basis for the objection and any law supporting the objection. The recommended order may not be disclosed to anyone other than the parties, DCFS or other agencies unless specifically ordered by a judge.

After an objection is filed with the Court, the Court must make a ruling on the objection and enter an appropriate order. The Court may refuse to review any objections that fail to meet the requirements of the Act.

11.10 MOTIONS TO CHANGE OR RESTORE CUSTODY

705 ILCS 405/2-28(4)

A) IN GENERAL

The Act provides that "[t]he minor or any person interested in the minor" may apply to the court for a change of custody or for restoration of the custody of the minor to his or her parents or former guardian or custodian. **705 ILCS 405/2-28(4)**; ***In re J.S.***, 272 Ill. App. 3d 219 (2d Dist. 1995). A person interested in the minor includes a putative father (***Stanley v. Illinois***, 405 U.S. 645 (1972)) and long-term foster parents (***In re S.J.K.***, 149 Ill. App. 3d 663 (5th Dist. 1986)). It does not include a parent whose rights have been terminated. ***In re P.F.***, 265 Ill. App. 3d 1092 (lst Dist. 1994).

A motion for change or restoration of custody need not conform to pleading requirements that apply to the original petition for adjudication of wardship. The ten (10) day notice provision required for petitions to review guardianship of a child is not applicable to motions to modify dispositional orders. No legal custodian or guardian of the person may be removed without his or her consent until given notice and an opportunity to be heard by the court. **705 ILCS 405/2-28(4)**. At a hearing on a motion for change or restoration of custody, the same rules of evidence that are used in dispositional hearings are applicable. *See* ***In re S.M.***, 223 Ill. App. 3d 543 (4th Dist. 1992).

B) MOTION FOR CHANGE OF CUSTODY

(1) Court Initiated Review

705 ILCS 405/2-28(1)

The court may require any legal custodian or guardian appointed under the Act to report periodically to the court or may summon such person or agency to court to make a full report of actions taken on behalf of the minor. If cited into court, the custodian or guardian must make the report, either in writing verified by affidavit or in open court, within 10 days after the citation. *See* ***In re F.B.,*** 206 Ill. App. 3d 140 (lst Dist. 1990). After hearing

the report, the court may remove the custodian or guardian and appoint another person or agency or may restore the minor to the custody of his parents or former guardian if restoration can be achieved without endangering the minor's health and safety and it is in his or her best interest.

Guardianship of a minor, who had been previously found neglected, may be vacated as a matter of the best interests of the child, even though there had been no prior finding of unfitness of the guardian, because such a finding is not necessary before modifying a previously entered guardianship order. ***In re Terrell L.***, 368 Ill. App. 3d. 1041 (1st Dist. 2006).

(2) Hearing to Remove Child from Foster Home

A party may file a motion to remove a child from a foster home. *See* ***In re A.L.***, 294 Ill. App. 3d 441 (2d Dist. 1998) (court had authority to order DCFS to remove minors from care of foster parents and find alternative placement based on mother's petition). Such a motion is not a permanency hearing and need not comply with the requirements for such a hearing. ***In re R.M.***, 288 Ill. App. 3d 811 (lst Dist. 1997). The question of the appropriateness of a foster care placement may, however, also be raised in a permanency hearing. *See* ***In re M.V.***, 303 Ill. App. 3d 190 (lst Dist. 1999).

C) MOTION FOR RESTORATION OF CUSTODY

A motion for restoration of custody may be filed at any time during the proceedings. After hearing, the court may grant the motion if it finds that the minor can be cared for at home without endangering his or her health or safety and that return home is in the minor's best interest.

If the minor was adjudicated abused, neglected or dependent as a result of physical abuse, the court may not grant a motion for restoration of custody until after it has ordered and received the results of an investigation as to whether the movant has ever been charged with or convicted of any criminal offense that would suggest that the child may be subjected to further physical abuse. **705 ILCS 405/2-28(5)**. Information obtained because of the investigation, together with any recommendations derived from the information, must be provided to the person seeking restoration prior to the hearing and that person must be given an opportunity to refute its accuracy or significance. Normal confidentiality rules apply. **705 ILCS 405/2-28(5)(b)(c)**.

If the original finding of abuse, neglect or dependency was made against both parents or guardians, before the court may restore custody to the parents or guardians, the court must order an investigation of the sort required in cases of physical abuse and, after hearing, must find that the parents are fit to care for the minor and that restoration of custody is consistent with the child's health, safety and best interest. **705 ILCS 405/2-28(4)**. Even where a return of a child in foster care to the father was improper as he was unfit, return to the mother was still

feasible because mother's circumstances did not prevent return of siblings to her, and such a placement would promote permanency. ***In re S.J.***, 368 Ill. App. 3d 749 (4th Dist. 2006).

The Juvenile court is required, in neglect proceedings involving child of unwed parents, to *consolidate* mother's petition to restore her custody rights with family court petition of father, in whose custody minor had been placed at dispositional hearing in neglect proceeding, for permanent custody under Parentage Act. ***In re G.P.***, 385 Ill. App. 3d 490 (3d Dist. 2008). Consolidation protected against inconsistent rulings based on differing factors in Juvenile Court Act and Parentage Act, more investigative tools were available to parents under Parentage Act, and fact that minor had resided with father more than six months created potentially strong argument that father should be viewed as primary custodial parent under Parentage Act. ***Id.*** However, on remand, there was a violation of the appellate court's previous order and of Illinois Supreme Court rules 903 (consolidation of cases) where the court held juvenile proceedings and *then* prepared to transfer matter to family court for a different judge. ***In re G.P.,*** 404 Ill. App. 3d 272 (3d Dist. 2010). All proceedings should have been held in front of the same judge. ***Id.***

11.15 MOTION FOR PRIVATE GUARDIANSHIP

705 ILCS 405/2-28(4)(a)

If, after a permanency hearing, return home is not selected as a permanency goal, DCFS, the minor, or the current foster parent or relative care giver may file a motion for private guardianship of the minor. Appointment of a guardian requires approval of the court. It has been held that the sole standing requirement for guardianship petitioners is stated in **755 Ill. Comp. Stat. Ann. 5/11-5(b) (2004)**. ***In re R.L.S.,*** 218 Ill. 2d 428 (Ill. 2006). Grandparents in that case lacked standing to go forward with a guardianship petition because they could not show that they rebutted the ("superior rights") presumption that the biological father was willing and able to make day-to-day childcare decisions. ***Id.***

It is unclear as to which of the two standards are applicable in guardianship cases: (1) the best interests standard arising from the Juvenile Court Act or (2) the superior rights standard arising from the Probate Act. *See* Sections 11.10(B)(1) and (C) and 10.05(F) of Article II for more information on guardianship matters.

P.A. 98-1082 Allows guardianship orders to incorporate language governing removal of the minor from the state, thereby eliminating the need for a separate proceeding.

11.20 MOTION TO TERMINATE PARENTAL RIGHTS

705 ILCS 405/28(4)(b)

If return home is not selected as a permanency goal, the State's Attorney may file a motion to terminate parental rights of any parent who has failed to make reasonable efforts to

correct the conditions which led to the removal of the child or reasonable progress toward the return of the child as defined in the Adoption Act (**750 ILCS 50/1(D)(m)**), or for whom any other unfitness ground for termination exists.

NOTE: P.A. 94-563, § 5, in subd. (D)(m), eff. January 1, 2006, added "Notwithstanding any other provision, when a petition or motion seeks to terminate parental rights on the basis of item (iii) of this subsection (m), the petitioner shall file with the court and serve on the parties a pleading that specifies the 9-month period or periods relied on. The pleading shall be filed and served on the parties no later than 3 weeks before the date set by the court for closure of discovery, and the allegations in the pleading shall be treated as incorporated into the petition or motion. Failure of a respondent to file a written denial of the allegations in the pleading shall not be treated as an admission that the allegations are true."

11.25 MOTION TO MODIFY OR VACATE DISPOSITIONAL ORDER

Section 2-23(2) (**705 ILCS 405/2-23(2)**) provides that, unless otherwise made a part of the order, the court's dispositional order remains in place until wardship is terminated. This same provision states that the dispositional order is subject to modification "not inconsistent with Section 2-28 (**705 ILCS 405/2-28**). *See* ***In re D.S.***, 307 Ill. App. 3d 362 (5th Dist. 1999) (court has authority to modify a dispositional order based on a change of circumstances). Although a "change of circumstances" may be a significant factor in the decision to modify a dispositional order, particularly about custody, there need not be a *separate finding* of a "change in circumstances" because the question of whether a change has occurred is subsumed in the best-interests inquiry.

A court may vacate a dispositional order if the petition requesting such relief is filed within 30 days of the dispositional order. ***In re B.H.***, 218 Ill. App. 3d 583 (2d Dist. 1991). After the 30 days has passed, a petition to vacate the order must be made pursuant to Section 2-1401 of the Code of Civil Procedure and filed no later than one year after the date of entry of the order. **705 ILCS 405/2-32.**

11.30 DURATION AND TERMINATION OF WARDSHIP

705 ILCS 405/2-31

NOTE: 705 ILCS 405/2-23 was amended by **Public Act 96-581**, effective January 1, 2010, is designated the "Foster Youth Successful Transition to Adulthood Act." This Act amends the Children and Family Services Act and the Juvenile Court Act to provide for reopening cases after a former ward turns 18, to require services for minors that have been in care, even if their cases remain closed, and to require specific findings prior to case closure for wards who are 18 or whose cases are closed on the basis that they are emancipated minors.

The definition of the term "child" is changed to "persons under the age of 21," if such persons had been made wards prior to turning 18. **20 ILCS 505/5(a)(1)**. The Act will allow for minors between 18 and 21 to be made wards of the Department in two situations:

Where the court has granted a supplemental petition to reinstate wardship under the newly enacted section 2-33(2) or where the court has previously made the child a ward of the court, permitted the child to return home under an order of protection, and then makes a finding that it is in the minor's best interest to vacate that order of protection and recommit that minor to DCFS. **705 ILCS 405/2-23(B-1)**. Reinstatement of wardship with the Department can occur even for youth who have been adjudicated delinquent or charged with an offense under the Criminal Code. **705 ILCS 405/2-27 (1)(d)(iii)**.

Section 2-33(2) provides that the court may reinstate wardship for any minor for whom the case was closed automatically upon the minor reaching the age of 19 years before the effective date of this amendatory Act of the 101st General Assembly." P.A. 101-78 Sec. 10 amends **705 ILCS 405/2-33(2)(a)(iii)** (underlined portion added by Sec. 10). Or any minor whose case was closed prior to that age, so long as such reinstatement is in the best interests of the minor. **705 ILCS 405/2-33(2)**. It also requires the Department to provide services to any minor eligible for reinstatement of wardship. The Department must provide said services whether or not reinstatement of wardship is sought or allowed, provided that the minor consents to such services and has not reached the age of 21. Eligible youth shall have access to these services through the Department of Children and Family Services or by referral from the Department of Human Services. Further, the Department shall create a "clear, readable notice of rights of former foster youths" to these child welfare services and how they may be obtained. **20 ILCS 505/5(–1)**.

A) DURATION OF WARDSHIP

Once a court determines that a child should be made a ward of the court and enters a dispositional order, wardship continues until the child reaches age 21 (**705 UKCS 405/2-31(1)**), unless the court makes written findings that health, safety and best interests of the minor and the public no longer require the wardship of the court (**705 ILCS 405/2-31(2)**). Once minors have been made wards of the court, termination of a wardship does not automatically terminate prior orders of custodianship or guardianship.

B) TERMINATION OF WARDSHIP

Whenever the court finds and enters written factual findings, that the health, safety and best interests of the minor and public no longer require wardship, the court should order wardship ended and the proceedings closed. At that time, the court may continue any custodianship or guardianship previously entered or may terminate such a relationship pursuant to the requirements of Section 2-28 **(705 ILCS 405/2-28**. On the other hand, in ***In re Aaron L.***, 2013 IL App. (1st) 122808 (1st Dist. 2013), the court erred in failing to make written findings relating to the health, safety, and best interest of the public and thus failed to explain how it was in the minor's best interest to terminate the minor's wardship and guardianship. Although the minor testified that he wished for the case to remain open so he could participate in drug treatment, and that he would live with his sister if he could not remain at a transitional youth home, the court made no express specific findings of

fact as to the minor's wishes as to case closure or manner of living independently. The minor's lack of cooperation and failure to avail himself of some services was not a sufficient basis to terminate guardianship.

C) SUPPLEMENTAL PETITION TO REINSTATE WARDSHIP

705 ILCS 405/2-33

(1) When May Wardship Be Reinstated?

Prior to a minor's 18th birthday, a court may reinstate wardship and open a previously closed case when:

(a) wardship and guardianship were vacated in conjunction with the appointment of a private guardian under the Probate Act, **755 ILCS 5/1-1 *et seq.***;
(b) the minor is not presently a ward nor is there a petition for adjudication pending; *and*
(c) it is in the minor's best interest that wardship be reinstated.

Any time prior to a minor's 21st birthday, pursuant to a supplemental petition filed under this Section, the court may reinstate wardship and open a previously closed case when wardship and guardianship under this Act was vacated pursuant to:

(a) an order entered under subsection (2) of Section 2-31 in the case of a minor over the age of 18;
(b) closure of a case under subsection (2) of Section 2-31 in the case of a minor under the age of 18 who has been partially or completely emancipated in accordance with the Emancipation of Minors Act; or
(c) an order entered under subsection (3) of Section 2-31 based on the minor's attaining the age of 19 years before the effective date of this amendatory Act of the 101st General Assembly.

(2) Procedure for Reinstating Wardship

The supplemental petition to reinstate wardship must be filed in the same proceeding in which the original adjudication order was entered. Unless excused by the court for good cause, the petitioner must give notice of the time and place of the hearing on the supplemental petition, in person or by mail, to parties to the Juvenile Court proceedings and to the minor if he or she is 14 or older. Notice must be provided at least 3 days in advance of the hearing date.

Cases:

In re Tr.O., 362 Ill. App. 3d 860 (2d Dist. 2005) (trial court retained jurisdiction to rule, on the merits, on a mother's petition to vacate private guardianship and reinstate wardship even though earlier dismissal of the petition was based on belief that jurisdiction was retained only as to visitation issue; trial court used broad language in retaining jurisdiction for "modification and enforcement" of the orders).

In re T.W., 352 Ill. App. 3d 1208 (4th Dist. 2004) (trial court's dismissal of neglect case was the equivalent of "closing" the case, for purposes of allowing a supplemental petition to be filed to reinstate wardship and open a previously closed case; court dismissed case because mother harbored child and refused to return child to court's jurisdiction, not due to anything that state did or did not do).

CHAPTER 12. APPEALS FROM DISPOSITIONAL ORDERS AND PERMANENCY ORDERS

12.01 APPEALS FROM DISPOSITIONAL ORDERS

A) NOTICE OF RIGHT TO APPEAL

705 ILCS 405/1-5(3)

Upon an adjudication of wardship, the court must inform all parties of their right to appeal the adjudication of wardship as well as any other final judgment entered by the court. See ***In re Custody of H.J.***, 2021 IL App. (4th) 200401 (grandparents had standing to appeal order on their petition for custody and guardianship, which was denied but not dismissed) A reviewing court may review a finding because it finds it presents a question of "public importance"). ***In re K.L.S-P***, 383 Ill. App. 3d 287 (3d Dist. 2008).

B) FILING NOTICE OF APPEAL

The notice of appeal must be filed after entry of the written dispositional order. *See* ***In re K.S.***, 250 Ill. App. 3d 862 (4th Dist. 1993) (appeal untimely where party filed after oral announcement of disposition but before entry of written order). An adjudicatory order is not a final order and is therefore not appealable. ***In re M.J.***, 314 Ill. App. 3d 649 (2d Dist. 2000).

C) APPOINTMENT OF COUNSEL ON APPEAL

Section 1-5(1) (**705 ILCS 405/1-5 (1)**) provides that all parties to the Juvenile Court proceeding have a right to be represented by counsel in proceedings under the Act and that counsel must represent a minor.

The Act does not expressly address the right of counsel on appeal. In ***In re Harrison***, 120 Ill. App. 3d 108 (4th Dist. 1983), the court held that Sections 1-5 (**705 ILCS 405/1-5**) provides a statutory basis for requiring the appointment of counsel on appeal in a case where the state appealed a trial court order refusing to terminate parental rights. The court explained its holding as follows:

> "Unquestionably an order concerning the termination of parental rights is a final order and thus appealable. We can discern no logical nor rational reason why the legislature would provide for an admonishment concerning appeal but in the same breath deny counsel on appeal when counsel has been mandated at trial…."

D) TRIAL COURT JURISDICTION AFTER NOTICE OF APPEAL

(1) Status of Proceedings After Disposition

705 ILCS 2-23(2)

Section 2-23(2) (**705 ILCS 2-23(2)**) states that "unless the order of disposition expressly so provides, it does not operate to close proceedings on the pending petition, but is subject to modification, not inconsistent with Section 2-28, until final closing and discharge of the proceedings under Section 2-31." This provision suggests that the court has ongoing jurisdiction over a range of issues that remain to be determined after entry of the dispositional order. For example, if a party appeals a dispositional order placing a minor outside the home, during the pendency of the appeal, the court continues to have authority to consider visitation issues, order of protection violations, medical treatment needs of the child, motions for restoration of custody, etc. In addition, the court must continue to perform its statutory duties under the Act, including conducting permanency hearings. *See* ***In re Johnson***, 102 Ill.App.3d 1005 (1st Dist. 1981).

(2) Jurisdiction Over the Subject of the Appeal

As a general matter, the filing of a notice of appeal operates to end a court's jurisdiction over the subject matter of the appeal. *See* ***In re Johnson***, 102 Ill. App. 3d 1005 (lst Dist. 1981).

12.05 APPEALS FROM PERMANENCY HEARING ORDERS

Section 2-28(3) (**705 ILCS 405/2-28(3)**) provides that a permanency hearing order is immediately appealable as a matter of right under **Supreme Court Rule 304(b)(1)**. ***In re J.J.***, 316 Ill. App. 3d 817 (3d Dist. 2000). The Supreme Court of Illinois, however, has ruled that this provision is unconstitutional on the theory that a permanency goal is not a final order, and that, as a matter of separation of powers, only the Supreme Court can provide, by rule, for appeals from nonfinal judgments. ***In re Curtis B.***, 203 Ill. 2d 53 (2002) (as modified upon denial of rehearing, Feb. 3, 2003) (this would amount to the legislature attempting to make a nonfinal judgments appealable). *See also*, ***In re V.M.,*** 352 Ill. App. 3d 391 (1st Dist. 2004) (permanency goals are not appealable under **Supreme Court Rule 301**).

Parentage determination, on the other hand, are immediately appealable under **Supreme Court Rule 304(b)(1)**.

CHAPTER 13. TERMINATION OF PARENTAL RIGHTS

13.01 INTRODUCTION

A) SIGNIFICANCE OF THE TERMINATION DECISION

The interest of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment of the United States Constitution. ***M.L.B. v. S.L.J.***, 519 U.S. 102, 119 (1996). Few consequences of judicial action are so grave as the severance of natural family ties. ***Id.***

> [A] natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. If the State prevails, it will have worked a unique kind of deprivation. A parent's interest in the accuracy and justice of the decision to terminate his or her parental rights is, therefore, a commanding one.

Santosky v. Kramer, 455 U.S. 745, 758-759 (1982). A parent has a fundamental liberty interest in the care, custody, and management of his or her child that cannot be taken by the state without due process. The parent's right does not evaporate simply because s/he has not been a model parent or has lost temporary custody of the child to the state. Parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, a person faced with forced dissolution of parental rights has a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the state moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures which include proof of unfitness by at least clear and convincing evidence. ***Santosky***, 455 U.S. at 753-754, 769-770. Thus, in Illinois, parental rights cannot be terminated involuntarily unless the parent is found unfit by clear and convincing evidence. **705 ILCS 405/2-29(4)**. Illinois courts apply strict scrutiny on questions of whether statute violated substantive due process. ***In re R.C.***, 195 Ill.2d 291 (2001), Termination of parental rights destroys the parent-child relationship. The effect of a termination of parental rights is made grimly clear by section 17 of the Adoption Act . . . . [A] parent whose rights are terminated no longer has a right to visitation with his or her child. Precisely because of the devastating effect produced by a termination of parental rights, the evidence of a parent's unfitness has to be clear and convincing. ***In re Adoption of Syck***, 138 Ill.2d 255, 274-275 (1990). Although it is less than the criminal standard of proof beyond a reasonable doubt, "clear and convincing evidence" in a termination of parental rights case is a degree of persuasion that is significantly higher than the general civil standard of more probably true than not true. The evidence must produce a firm belief or conviction as to the truth of the proposition. It is that degree of proof which,

considering all the evidence in the case, produces in the finder of fact a firm and abiding belief that it is highly probable that the proposition on which a party has the burden of proof is true. *See* Michael H. Graham, CLEARY & GRAHAM'S HANDBOOK OF ILLINOIS EVIDENCE § 300.6 (10th ed. 2010).

In addition, all parties to a termination proceeding are entitled to be represented by counsel and indigent parties have a right to court-appointed counsel. **705 ILCS 405/1-5(1)**.

While Illinois courts have repeatedly emphasized the seriousness of a decision to terminate parental rights, the Illinois General Assembly has also recognized the importance of establishing permanency for children. Thus, in recent years, the grounds for finding parental unfitness have been amended to shorten the time frame parents have to correct the conditions that originally led to removal of their children from their custody. *See, e.g.*, **750 ILCS 50/1(D)(m)** (parent must make reasonable progress toward return of a child within 9 months from adjudication of neglect, abuse or dependency).

B) THE ROLE OF THE JUDGE IN TERMINATION PROCEEDINGS

(1) In General

Given the potentially serious consequences of termination of parental rights proceedings, the trial judge should ensure that the parties are afforded all procedural safeguards and that the case is managed in a way that is least likely to result in reversal of any decision to terminate parental rights on appeal. Consistent with these concerns, the judge should make every effort to:

- ensure all parties are properly notified in accordance with the requirements of due process, the Juvenile Court Act and the Adoption Act;
- establish paternity at the original adjudicatory hearing and dismiss any putative fathers who are not the biological father at that juncture;
- admonish each parent of the nature and possible consequences of the termination of parental rights hearing and assure either representation by counsel or the knowing and voluntary waiver of counsel.

(2) Judicial Recusal

The Juvenile Court Act authorizes a trial judge to order the State's Attorney to file a petition seeking termination of parental rights. *See* **705 ILCS 405/2-13**. In ***In re T.B.***, 195 Ill. App. 3d 919 (5th Dist. 1990), the court held that disqualification based on judicial bias is not required where the trial judge

only suggests the need for some action but does not actually direct the filing of a termination petition. The trial judge "admonished" the state to file a TPR petition at two review hearings and stated he was ready to terminate parental rights once the petition was filed. The record in T.B. was disconcerting, and it's quite clear that the appellate court bent over backwards to affirm because the father was a mentally ill sexual deviant.

(3) Substitution of Judge

Although there are no reported cases directly on point, it seems clear that the same rules for substitution of judge in civil proceedings apply in termination of parental rights proceedings. *See* Code of Civil Procedure, **735 ILCS 5/2-1001**; ***In re Chelsea H.***, 2016 IL App (1st) 150560 (parents' SOJ motion was properly denied where court previously made substantive ruling by entering paternity finding). In addition, Juvenile Court Act limitations on the right to substitute of judges are presumed to apply at the termination state of the proceeding. *See* **705 ILCS 405/1-5(7)** ("a party shall not be entitled to exercise the right to a substitution of a judge without cause if the judge is currently assigned to a proceeding involving the alleged abuse, neglect, or dependency of the minor's sibling or half sibling and that judge has made a substantive ruling in the proceeding involving the minor's sibling or half sibling").

In addition, the rules for substitution of judge for cause in the Code of Civil Procedure, **735 ILCS 5/2-1001(3)**, apply in neglect/abuse/ dependency proceedings:

> Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition. The judge named in the petition need not testify but may submit an affidavit if the judge wishes. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition.

13.05 JUVENILE COURT PROVISIONS RELATING TO TERMINATION OF PARENTAL RIGHTS

Although the grounds for parental unfitness are contained in the Adoption Act (**750 ILCS 50/1(D)**), the Juvenile Court Act also contains several provisions relating to the issue of termination of parental rights. It specifies a two-stage proceeding whereby parental rights may be involuntarily terminated, and under this bifurcated procedure, there must be a threshold showing of parental unfitness based upon clear and convincing evidence and then a subsequent showing by a preponderance of the evidence that the best interests of the child are served by severing parental rights. ***In re Jamarqon C.***, 338 Ill. App. 3d 639 (2d Dist. 2003).

The purpose of this section is to identify each of the places in the Juvenile Court Act that addresses termination of parental rights. These sections are discussed in detail in other sections of the Bench Book.

705 ILCS 405/1-2(1)(a) - 1-2(1)(c)

This section sets forth standards for expedited termination of parental rights.

705 ILCS 405/2-13(4) (4.5)

This section discusses the circumstances under which a petition or motion to terminate parental rights may or must be filed.

705 ILCS 405/2-13.1

This section sets forth the circumstances under which the state's attorney, guardian ad litem or DCFS may file a motion to terminate reasonable efforts to reunify the minor with his or her parents. Caveat: the provision that the "court *shall* grant this motion with respect to a parent of the minor if the court finds after a hearing that the parent has: (i) had his or her parental rights to another child of the parent involuntarily terminated…" may not be constitutional; but to date, there is no case law on that issue.

705 ILCS 405/2-18

This section addresses the admissibility of evidence regarding parental unfitness at the adjudicatory hearing and should also apply to a proceeding for termination of parental rights.

705 ILCS 405/2-21(5)

This section outlines the conditions that must be satisfied if the court decides to terminate a parent's rights at the initial dispositional hearing.

705 ILCS 405/2-22(5)

This section provides that the first permanency hearing shall be held within 30 days after the termination of parental rights and appointment of a guardian with power to consent to adoption at the dispositional hearing.

705 ILCS 405/2-23(7)

This section reiterates that the court may terminate the parental rights of a parent at the initial dispositional hearing consistent with the requirements of Section 2-21(5).

705 ILCS 405/2-27(1.5)

This section empowers the court to enter an order terminating parental rights and appointing a guardian with power to consent to adoption if the petition or amended petition contains an allegation of parental unfitness, the court's adjudicatory order found that parental unfitness was established by clear and convincing evidence, and the court finds such termination to be appropriate and in the best interests of the minor.

705 ILCS 405/2-28(4)(b)

This section authorizes the State's Attorney to file a motion to terminate parental rights of any parent who has failed to make reasonable efforts to correct the conditions which led to the removal of the child or reasonable progress toward the return of the child or for whom any other unfitness ground for termination exists under the Adoption Act if the court does not select "return home" as the permanency goal.

705 ILCS 405/2-29

This is the most comprehensive section of the Juvenile Court Act relating to termination of parental rights. It includes a discussion of voluntary and involuntary termination of parental rights.

705 ILCS 405/2-30

This section addresses notice to and the rights and duties of a putative father in relationship to termination of parental rights and placement of a child for adoption.

13.10 VOLUNTARY TERMINATION OF PARENTAL RIGHTS

A) JUVENILE COURT ACT

705 ILCS 405/2-29

The Juvenile Court Act expressly provides that a parent or parents whose child is the subject of a petition under the Act may voluntarily surrender the child to an authorized agency for adoption or may consent to his or her adoption. The requirements for voluntary surrenders and consents are governed by the relevant provisions of the Adoption Act, **750 ILCS 50/8 - 50/11**.

B) DEFINITION OF CONSENTS AND SURRENDERS TO AN AGENCY

(1) Consents

A consent is a parent's affirmative decision, formalized in writing and acknowledged before a judge or other authorized person, to relinquish all

legal rights permanently and irrevocably to his or her biological or adopted child and to forever sever the parent-child relationship.

(a) General consents

A general consent is a consent given by a parent without regard to whether his or her child is the subject of an adoption petition and without regard to who may care for or adopt the child in the future. *See* **750 ILCS 50/10**.

(b) Specific consents

(i) In General

A specific consent is parental consent to adoption of a child by a specified person or persons.

(ii) Specific consents by a parent whose child is the subject of a Juvenile Court abuse, neglect, or dependency petition.

Section 50/10(O)(1) (**750 ILCS 50/10(O)(1)**) of the Adoption Act provides that a parent or parents of a child who has a petition pending in Juvenile Court may, with the approval of DCFS, execute a consent to adoption by a specified person if that person is someone:

- in whose physical custody the child has resided for at least 6 months, or
- in whose physical custody at least one of the child's siblings has resided for at least one year, and the child who is the subject of the consent is currently residing in the same foster home with the sibling, or
- in whose physical custody a child under one year of age has resided for at least 3 months.

The court may waive the above time frames for good cause shown if the court finds it to be in the child's best interests.

Although these statutes permit execution of specific consents by Juvenile Court-involved parents, a judge need not accept a parent's consent if he or she determines that it is not in the child's best interest. If a judge does not accept the specific consent, it is rendered void. For example, when a child is found to be neglected and placed under guardianship in a foster home, a parent retains the residual right to request and consent to a particular private placement and

adoption, but only if the best interests of the child are served, and they are not served where the uncle for whom the mother gave consent did not meet statutory elements. ***In re Taylor D.***, 368 Ill. App. 3d 854 (5th Dist. 2006).

Further, a parent from whom custody of a child has been removed may not prevent the completion of a termination proceeding by executing a consent to adoption in favor of a specific person. *See* ***In the Matter of Adoption of L.R.B.***, 278 Ill. App. 3d 1091 (4th Dist. 1996) (an incarcerated parent whose rights were about to be involuntarily terminated could not execute a specific consent to adoption by his family members to control who would be his child's adoptive parents).

The court need not stay a termination proceeding pending resolution of a petition to adopt the minor who is also the subject of the termination proceeding. ***In re Marriage of T.H.***, 255 Ill. App. 3d 247 (5th Dist. 1993) (no requirement to stay termination proceeding pending resolution of adoption by relative pursuant to parent's special consent).

(2) Surrenders

A surrender is a formal decision by a parent to permanently and irrevocably surrender and entrust the entire custody and control of a child to a public or licensed private child welfare agency for the purpose of enabling the agency to care for and supervise the child, to place the child for adoption, and to consent to the child's legal adoption: **750 ILCS 50/10 (C)**. Unlike a consent, a parent is not entitled to surrender a child to an agency conditioned on the child's adoption by a particular person or persons. *See* ***In the Matter of J.D.***, 317 Ill. App. 3d 419 (4th Dist. 2000).

The decision whether to accept a surrender of parental rights rests with the judge, who need not accept the parent's decision if the judge believes that it is not in the best interests of the minor. ***In re J.C.***, 248 Ill. App. 3d 905 (4th Dist. 1993).

C) WHEN IS A CONSENT OR SURRENDER REQUIRED?

Section 50/8 (**750 ILCS 50/8**), provides that consents or surrenders are required in *all* cases *unless* the parent whose rights are to be terminated is in one of the following categories:

(1) parent is found unfit by clear and convincing evidence; or

(2) parent is not the biological parent of the child; or

(3) parent waived parental rights under section 12(a) (**750 ILCS 50/12 (a)**) (notice to putative fathers) or under section 12.1 (**750 ILCS 50/12.1**) (putative father registry); or

(4) parent is the father of the child as a result of criminal sexual abuse or assault.

750 ILCS 50/8 has been amended by **P.A. 94-530, § 5**, **eff. Jan. 1, 2006**, which rewrote subd. (a)(6) and deleted subd. (a)(7). Subd. (A)(6) now specifies the father of the child as someone who:

(i) is a family member of the mother of the child, and the mother is under the age of 18 at the time of the child's conception; for purposes of this subsection, a "family member" is a parent, step-parent, grandparent, step-grandparent, sibling, or cousin of the first degree, whether by whole blood, half-blood, or adoption, as well as a person age 18 or over at the time of the child's conception who has resided in the household with the mother continuously for at least one year; or

(ii) is at least 5 years older than the child's mother, and the mother was under the age of 17 at the time of the child's conception, unless the mother and father voluntarily acknowledge the father's paternity of the child by marrying or by establishing the father's paternity by consent of the parties pursuant to the Illinois Parentage Act of 1984 or pursuant to a substantially similar statute in another state. A criminal conviction of any offense pursuant to Article 12 of the Criminal Code of 1961 is not required.

D) TIME FOR TAKING A CONSENT OR SURRENDER

750 ILCS 50/9

(1) Fathers

A consent or a surrender may be taken prior to or after the birth of the child. It may be revoked within 72 hours after birth of the child by written notice.

(2) Mothers

No consent or surrender shall be signed within the 72-hour period immediately following the birth of the child. The mother may sign a consent or surrender any time after the 72-hour period.

E) FORM OF CONSENT OR SURRENDER

To be valid, a consent or surrender must be in essentially the same form as provided for in Section 50/10 of the Adoption Act (**750 ILCS 50/10**). The purpose of such

formality is to ensure that the parties understand the seriousness of the decision they are making and to provide stability for any future adoptive family. Failure to comply with these requirements can invalidate a consent or surrender. *See* ***In re Joseph B.***, 258 Ill. App. 3d 954 (lst Dist. 1994); ***Peeters v. Chicago Dist. Council of Carpenters Welfare Fund***, 97 Ill. App. 3d 594 (lst Dist. 1980). A consent or surrender, however, need not conform exactly to the statutory form in order to be valid**.** *See* ***Meza v. Rodriguez***, 305 Ill. App. 3d 777 (2d Dist. 1999).

F) PROCESS FOR TAKING CONSENTS AND SURRENDERS

(1) Consents

750 ILCS 50/10 (H)

A consent (other than that given by an agency, or guardian of the person of the child sought to be adopted who was appointed by a court of competent jurisdiction) shall be acknowledged by a parent before a judge of a court of competent jurisdiction or before a representative of an agency, or before a person, other than the attorney for the prospective adoptive parent or parents, designated by a court of competent jurisdiction.

The person taking the consent should question the parent to determine whether the parent understands the consequences of signing the document and whether the parent is doing so as a result of fraud, duress, or undue influence, whether any promises have been made to induce the parent to consent, and whether the parent's ability to consent is compromised by mental illness, drugs or alcohol. The results of such questioning should be memorialized.

A parent need not be represented by an attorney in connection with the execution of a consent. *See* ***Kathy O. v. Counseling and Family Services***, 107 Ill. App. 3d 920 (3d Dist. 1982).

(2) Surrenders

750 ILCS 50/10(I)

A surrender, or any other document equivalent to a surrender, by which a child is surrendered to an agency shall be acknowledged by the person signing such surrender, or other document, before a judge of a court of competent jurisdiction, or before a representative of an agency, or before a person designated by a court of competent jurisdiction.

Most commonly, surrenders are taken by representatives of adoption or child welfare agencies. The person taking the surrender should question the parent in the same manner as is required in the case of a consent and memorialize the results of such questioning.

G) IRREVOCABILITY OF CONSENTS AND SURRENDERS

705 ILCS 50/11

(1) Statute of Limitations for Allegations of Fraud or Duress

A parent's consent to adoption or surrender to an agency which is executed and acknowledged in accordance with the requirements of the Adoption Act is *irrevocable* unless it has been obtained by *fraud or duress* on the part of the person before whom such consent or surrender is acknowledged or on the part of the adopting parents or their agents and a court so finds. **705 ILCS 50/11(a)**.

No action to void or revoke consent to or surrender for adoption, including an action based on fraud or duress, may be commenced ***after 12 months*** from the date the consent or surrender was executed. **705 ILCS 50/11(a)**; ***In re Adoption of J.W.***, 2016 IL App (5th) 150203. *See also* ***In the Matter of J.D.***, 317 Ill. App. 3d 419 (4th Dist. 2000); ***Street v. Hubert***, 141 Ill. App. 3d 871 (lst Dist. 1986) (statute of limitations provision does not violate due process). The parent who executed the consent or surrender bears the burden of proving fraud or duress by clear and convincing evidence. *See* ***Regenold v. The Babyfold, Inc.***, 68 Ill. 2d 419 (1977); ***Meza v. Rodriguez***, 305 Ill. App. 3d 777 (2d Dist. 1999). A parent may not assert ineffective assistance of counsel as a basis for challenging a validly entered consent or surrender. ***In re D.B.***, 246 Ill. App. 3d 484 (4th Dist. 1993).

(2) Specific Consents and Surrenders to an Agency

In ***In re Joseph B***., 258 Ill. App. 3d 954 (lst Dist. 1994), the court held that a final and irrevocable consent to adoption is limited by an express intent that it apply only to a specific prospective adoptive parent. That case was explained in ***In the Matter of J.D.***, 317 Ill. App. 3d 419 (4th Dist. 2000). ***In J.D.***, petitioner, the child's aunt, argued that the child's mother's surrender to an agency was limited by an alleged oral agreement between the parent and DCFS that DCFS would consent to the child's adoption by the aunt. In refusing to enforce the terms of the alleged agreement, the court noted that the Adoption Act provides for specific consents to adoption but contains no similar right to specify an adoptive parent in cases of surrenders to agencies. Further, the court noted that, unlike in ***Joseph B.***, the child in ***J.D.*** was a ward of the court and therefore her parent had no authority to execute a specific consent. *See also* ***In the Matter of Adoption of L.R.B.***, 278 Ill. App. 3d 1091 (4th Dist. 1996).

13.15 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

A) INITIATING THE PROCEEDING

(1) Who May File a Petition or Motion to Terminate Parental Rights?

Any adult person, agency, association by its representative may file, or the court on its own motion may direct the State's Attorney to file, a petition regarding a minor which may include a request for termination of parental rights. **705 ILCS 405/2-13(1)-(4)**. In addition, the petitioner, by motion, may request such termination at any time after entry of a dispositional order. **705 ILCS 405/2-13(4)**.

In ***In re D.S.***, 198 Ill. 2d 309 (2001), the Illinois Supreme Court clarified the above:

- Any adult person, including a child's court-appointed guardian *ad litem*, may file a motion or petition to terminate parental rights;

- A minor has no standing personally to initiate Juvenile Court abuse, neglect, dependency or termination of parental rights proceedings;

- Although a private person or agency, including a guardian *ad litem*, may file a petition or motion, only the State's Attorney may prosecute a pending petition or motion;

  But Note: although the State has exclusive authority in the trial court to *prosecute* a petition, in order to fulfill their duty to protect the best interests of the minor, the minor's attorney and guardian *ad litem* may *appeal,* on the minor's behalf, a trial court's order regarding a petition that they believe is contrary to the minor's best interests. ***In re Gustavo H.***, 362 Ill. App. 3d 802 (1st Dist. 2005).

- *See* ***In re N.C.***, 2014 IL 116532 (2014) – State does not have standing to challenge voluntary acknowledgment of paternity under Parentage Act and cannot bring action seeking disestablishment of parent-child relationship. Child's guardian *ad litem*, on behalf of child, could bring action, and state assumes responsibility for prosecuting, but that does not mean that the state obtains standing.

(2) Timing of Commencement

(a) In general

A petition to terminate parental rights may be filed at any point during the proceeding, including prior to the time a minor is

adjudicated an abused or neglected child; and the child need not be a ward of the court before entry of termination of parental rights. ***In re R.K.***, 247 Ill. App. 3d 512 (3d Dist. 1993). However, the filing of a petition for wardship pursuant to Juvenile Court Act or a petition to adopt pursuant to Adoption Act is a prerequisite for jurisdiction to terminate parental rights. ***In re A.S.B. v. Templeton Sterling Bishop***, 381 Ill. App. 3d 220 (4th Dist. 2008). The child is not required to be in foster care at the time the petition or motion to terminate parental rights is filed**.** ***In re S.B.***, 316 Ill. App. 3d 669 (4th Dist. 2000).

(b) Post-disposition motion or petition to terminate parental rights

A motion or petition to terminate parental rights is usually filed after entry of a dispositional order. Section 2-29 of the Juvenile Court Act confers jurisdiction to terminate parental rights regarding a minor (*i.e.*, a person under age 21 at the time of judgment), provided that the court found the minor is abused, neglected or dependent, and entered a dispositional order prior to the minor's 18th birthday. ***In re A.E.***, 368 Ill. App. 3d 1142 (3d Dist. 2006).

(c) Combined Adjudication and Termination Proceedings

The State may file a petition seeking a combined finding of abuse, neglect or dependency and an order terminating parental rights. If the petition includes such a prayer, it must "clearly and obviously" state that the parents may permanently lose their parental rights at the combined hearing. **705 ILCS 405/2-13(4)**. This procedure codifies the holding in ***People v. Ray***, 88 Ill. App. 3d 1010 (5th Dist. 1980).

If the State proceeds in a combined hearing, it must prove the allegations of parental unfitness in the petition by clear and convincing evidence rather than the normal preponderance of the evidence standard that applies when the State seeks to prove abuse, neglect, or dependency. *See* section 13.20(D), *infra*.

(d) Expedited Termination of Parental Rights

705 ILCS 405/1-2 (1)

The Act permits "fast track" terminations in cases where: 1) the State can prove parental unfitness by clear and convincing evidence, 2) reasonable efforts at family reunification are inappropriate, or have been made and failed, and 3) there are aggravating circumstances, including:

(i) the child or another child of the parent was abandoned, tortured, or chronically abused, or

(ii) the parent is criminally convicted of first- or second-degree murder of any child, or attempted murder or conspiracy to murder any child or aggravated sex crimes against a child in violation of the Code of Criminal Procedure, or

NOTE: A mother found to be unfit parent under statutory provision creating mandatory conclusive presumption of unfitness upon clear and convincing proof of conviction of particular crimes against children, where applied to mother convicted of attempted murder and aggravated battery, will violate equal protection where a parallel statutory provision afforded opportunity for rebuttal to parents convicted of committing more serious, or identical, crimes against children, including first-degree murder, aggravated criminal sexual assault, and attempted murder. ***In re D.W.***, 214 Ill. 2d 289 (2005); ***In re S.F.***, 359 Ill. App. 3d 63 (1st Dist. 2005); ***In re R.S.***, 358 Ill. App. 3d 781 (3d Dist. 2005). See also ***In re Tr. A.,*** --- N.E.3d --- (2020).

(iii) When a parent's rights to another of his or her children have been involuntarily terminated, or

NOTE: Under the Adoption Act (**750 Ill. Comp. Stat. 50/1(D)(t)**), a mother is unfit if (1) a controlled substance was found in the blood, urine, or meconium of her infant at birth, and (2) she previously gave birth to a drug-exposed child, after which she had the opportunity to participate in a clinically appropriate substance abuse treatment program. Termination of mother's parental rights as to the second child does not violate substantive due process because the State has a compelling interest in protecting children from abuse both before and after it occurs. ***In re O.R.***, 328 Ill. App. 3d 955 (2d Dist. 2002).

(iv) In extreme cases in which a parent's incapacity to care for a child, combined with "an extremely poor prognosis for treatment or rehabilitation, supports termination of parental rights."

(e) Mandatory Filing of Petitions to Terminate Parental Rights

NOTE: 705 ILCS 405/2-13(4) provides a petition for wardship may seek to make minor a ward of the court and also terminate parental rights provided the prayer for relief clearly and obviously states the

parents could permanently lose their rights as parents at the hearing. In addition, section 2-13(4) provides the petitioner, by motion, may request termination of parental rights at any time after the entry of a dispositional order. *See* ***In re Andrea D.***, 342 Ill. App. 3d 233 (2d Dist. 2003). *See also* section 3.15(A)(2)(b) above.

705 ILCS 405/2-13(4.5)

(i) Mandatory Request by DCFS

In an effort to end the phenomenon of "foster care drift" and to achieve permanency for children, the Act now requires the Department of Children and Family Services to request the State's Attorney to file a petition or motion to terminate parental rights under the following circumstances:

- a minor has been in foster care for 15 of the most recent 22 months; or

Note: I *See* P.A. 99-836 Sec. 5, amending **750 ILCS 50/1(D)** to remove **(**m-1**).** In ***In re H.G.***, 197 Ill. 2d 317 (2001), the Illinois Supreme Court held that subparagraph (m-1) of the Adoption Act (**750 ILCS 50/1(D)(m-1**)) violated a parent's substantive due process rights under the Fourteenth Amendment and the Illinois Constitution because it created an impermissible rebuttable presumption of unfitness and also required the trial court to consider the child's best interests as part of the fitness determination in violation of ***Santosky v. Kramer***, 455 U.S. 745 (1982). However, ***In re H.G.*** does not affect section 2-13(4.5) of the Juvenile Court Act.

- minor under the age of 2 years has been previously determined to be abandoned at an adjudicatory hearing, or

- the parent is criminally convicted of (A) first degree murder or second degree murder of any child, (B) attempt or conspiracy to commit first degree murder or second degree murder of any child, (C) solicitation to commit murder of any child, solicitation to commit murder for hire of any child, or solicitation to commit second degree murder of any child, (D) aggravated battery, aggravated battery of a child, or felony domestic battery, any of which has resulted in serious injury to the minor or a sibling of the minor, (E) Aggravated criminal sexual assault in violation of subdivision (a)(1) of

Section 11-1.40 or subdivision (a)(1) of Section 12-14.1 of the Criminal Code of 1961 or the Criminal Code of 2012 [**720 ILCS 5/11-1.40** or **720 ILCS 5/12-14.1** or **720 ILCS 5/1-1** et seq.], or (F) an offense in any other state the elements of which are similar and bear a substantial relationship to any of the foregoing offenses unless:

- the child is being cared for by a relative, or
- the Department has documented in the case plan a compelling reason for determining that the filing of a motion or petition would not be in the child's best interest, or
- the court has found within the preceding 12 months that the Department has failed to make reasonable efforts to reunify the child and family.

(f) Mandatory Filing by State's Attorney

705 ILCS 405/2-13(d)

If the State's Attorney determines that the Department's request for filing a petition or motion satisfies the statutory criteria governing the Department's request, it must file the petition or motion to terminate parental rights.

(g) Date for Setting Termination of Parental Rights Hearing

Neither the Juvenile Court Act nor the Adoption Act contains any mandatory time frame for initiating or conducting a hearing to terminate parental rights. *See* subparagraph (E) (5), *infra. See also* ***In re E.M.,*** 295 Ill. App. 3d 220 (4th Dist. 1998) (90 day timing requirement for commencement of abuse, neglect and dependency proceedings contained in 2-14(a) of the Act (**705 ILCS 405/2-14(a)**) does not apply to TPR).

(h) Successive Termination Petitions

A court may hold successive termination hearings involving the same parents without violating principles of *res judicata.* But no termination hearing may be held in the absence of a filed written petition or motion specifically requesting termination of parental rights. **705 ILCS 405/2-13**, **2-29; *In re S.B.***, 305 Ill. App. 3d 813 (3d Dist. 1999) (trial court erred when it held a second-best interest hearing on the basis of an oral request at a permanency planning

hearing following denial of State's supplemental petition to terminate parental rights, even though court had found mother was unfit).

B) PETITION OR MOTION TO TERMINATE PARENTAL RIGHTS

A request to terminate parental rights may be made in the original juvenile petition, in a supplemental petition, or by a post-disposition motion after either the original or supplemental petitions have been ruled upon. Parental rights may be terminated even though that minor had reached the age of eighteen because the Juvenile Court Act allows an order to terminate if the minor is under twenty-one, is judged to abused, neglected or dependent, and there has been a *dispositional order* entered before the minor reached the age of eighteen. ***In re A.E.***, 368 Ill. App. 3d 1142 (3d Dist. 2006) (minor was seventeen when dispositional order was entered).

Due process requires that the petition or motion to terminate parental rights allege that the parent is unfit and set forth with specificity the grounds of unfitness**.** However, the test of the sufficiency of a petition for termination is whether it reasonably informs respondent of a valid claim. It is well-settled that the specificity requirement does not require more than setting forth the specific statutory ground(s) of unfitness. ***In re Dominique W.***, 347 Ill. App. 3d 557 (1st Dist. 2004); ***In re Andrea D.***, 342 Ill. App. 3d 233 (2d Dist. 2003). *See also* ***In re Dragoo***, 96 Ill. App. 3d 1104, 1107 (4th Dist. 1981). The grounds for unfitness are found in the Adoption Act, **705 ILCS 50/1(D)**. *See* section 13.35, *infra.*

A court may not terminate parental rights on grounds not alleged in the termination petition. ***In re Gwynne P.***, 215 Ill. 2d 340 (2005). *See also* ***In re G.W.S.***, 196 Ill. App. 3d 107 (4th Dist. 1990) (mother was reasonably informed of her alleged unfitness where petition stated she had been found guilty found guilty of the death of a child resulting from child abuse).

Note: There appears to be a significant exception to the general requirements relating to the sufficiency of a termination petition. If the petition alleges a failure to make reasonable progress toward return of custody to the parent within nine months of the adjudication of neglect or abuse, and the State seeks to prove the parent's failure to correct problems which have arisen since the initial adjudication and which prevent a return of custody, the petitioner must specifically alert the parent that these subsequent issues will be raised. *See* ***In re A.C.B.***, 153 Ill. App. 3d 704 (4th Dist. 1987) (new unfitness hearing required where termination petition did not mention sexual abuse occurring subsequent to adjudication and, therefore, failed to properly advise mother of the allegation she was required to confront).

The nine-month period within which parents must make reasonable efforts/reasonable progress begins on the date of adjudication of neglect, abuse, or dependency, not the dispositional order. ***In re D.F.***, 208 Ill. 2d 223 (Ill. 2003). *See* ***In re N.B.,*** 2019 Ill. App 2d 180797, 2019 Ill. App. Lexis 93, in which the Court held that the trial court is permitted to combine separate hearings and terminate

parental rights at the initial dispositional hearing when the original or amended petition contains a request to terminate parental rights.

C) NECESSARY PARTIES

Parties to a termination of parental rights proceeding include:

(1) The child or children who are the subject of the petition or motion to terminate parental rights;

(2) The child's parent or parents, including any adoptive parent and any father whose paternity is presumed or has been established under the law of this or another jurisdiction. **705 ILCS 405/1-3 (11)**.

(a) Legally presumed fathers

A man is presumed to be the father of a child if:

- he was married to the mother during the time in which the child was born or conceived; or
- he married the mother after the child's birth and is named, with his consent, as the father on the child's birth certificate; or
- he and the child's mother have signed a voluntary acknowledgment of paternity in accordance with Section 10.17.7 of the Illinois Public Aid Code (**305 ILCS 5/10-17.7**); or
- he and the child's mother have signed a petition to establish the parent and child relationship under Article 6 of the Illinois Parentage Act of 2015 (**750 ILCS 46/616**).

(b) Former legally presumed fathers

The leading case on the role of former presumed fathers in termination proceedings is ***In the Interest of A.K.***, 250 Ill. App. 3d 981 (4th Dist. 1993). In that case the court allowed a presumed father (married to the mother at the time of the child's birth) to remain a party to the proceeding after a finding that he in fact was not the child's biological father and after the biological father surrendered his parental rights. The basis for the ruling of the reviewing court is unclear. It rejected the argument that Illinois should adopt the "equitable parent" doctrine espoused by other jurisdictions but failed to identify the statutory or other basis for affording the presumed father party standing. Moreover, in a

subsequent decision, the appellate court confirmed that Illinois has not adopted the "equitable parent" doctrine. ***In re Marriage of Mancine,*** 2014 IL App (1st) 111138-B, appeal denied, 20 N.E.3d 1251, 2014 Ill. LEXIS 838. Finally, the Illinois Supreme Court has left open whether ***A.K.*** was correctly decided and held that the decision in ***A.K.*** was *sui generis*, in ***In re C.C.***, 2011 IL 111795 ¶ 50. Therefore, it appears that if the paternity of a presumed father is ruled out by a DNA test, he is no longer a proper party to a termination proceeding because he has no parental rights that may be terminated.

(3) Putative fathers

(a) Due process

In ***Lehr v. Robertson***, **463 U.S. 248 (1983)**, the U.S. Supreme Court held that a putative father who lived with but did not marry the mother, who did not have any significant custodial, personal, or financial relationship with the child, and who did not enter his name in the putative father registry for the child, had limited due process and equal protection rights where the man who later married the mother sought to adopt the child.

(b) Declaration of paternity in an adoption proceeding

705 ILCS 405/2-30

If a father does not file a declaration of paternity of the child or a request for notice within 30 days of the filing of the statutory notice to putative fathers, the court may enter an order terminating all of his rights without further notice to him. If, however, he files a declaration or request for notice, he is entitled to be given notice in the event any proceeding is brought for the adoption of the child or for termination of parental rights.

(c) Putative father registry

750 ILCS 12.1 50/12.1

Illinois has established a putative father registry (**750 ILCS 50/12.1**) which requires putative fathers to affirmatively declare their paternity or run the risk of being excluded from participation in legal proceedings, including termination of parental rights actions. The requirements of the Putative Father Registry apply in Juvenile Court proceedings. *See* ***In re A.S.B.***, 293 Ill. App. 3d 836 (2d Dist. 1997); ***In re Petition to Adopt O.J.M.***, 293 Ill. App. 3d 49 (lst Dist. 1997). *But see* ***In re Tinya W.***, 328 Ill. App. 3d 405 (2d Dist. 2002)

(improper for court to consider father's failure to register with the Putative Father Registry in determining unfitness). Thus, section 12.1 covers only notice and not the merits in adoption proceedings and termination proceedings under the Juvenile Court Act.

The Juvenile Court Act requires DCFS to respond to inquiries from parents, including putative parents, as to whether a child is in DCFS custody or guardianship and, if so, to refer the individual to the appropriate court. **705 ILCS 405/1-5(1.5)**.

(4) Guardian

705 ILCS 405/1-3(8)

A minor's current legal guardian is a respondent party at the outset of a case under the Juvenile Court Act. **705 ILCS 405/1-5(1)**. However, once child was placed with DCFS, grandparents no longer had custody and could not be considered responsible relatives, and thus were no longer parties to the case. ***In re V.C.,*** 2022 IL App. (4th) 210484.

(5) Legal custodian

705 ILCS 405/1-3(9)

A child's legal custodian is a person who has responsibility for physical custody of the child and a duty to care for the child except as limited by residual parental rights and responsibilities. For purposes of this section, the person must be a legal custodian and not merely a custodian in fact. *See* ***In re Winks***, 150 Ill. App. 3d 657 (4th Dist. 1986). A legal custodian is a respondent party at the outset of a case under the Juvenile Court Act. **705 ILCS 405/1-5(1)**; ***In re Anast***, 22 Ill. App. 3d 750 (1st Dist. 1974) (stepfather who had been granted legal custody in a divorce proceeding was entitled to notice and the right to be heard). Query whether this is still good law in light of ***In re C.C.***, 2011 IL 111795. As in the case of a legal guardian, it would seem that a legal custodian is no longer a proper party following appointment of the DCFS wardship administrator as temporary guardian during wardship.

(6) Grandparents

Even when the respondent mother is herself a minor, her parents are not necessary parties simply by virtue of their status as grandparents. A grandparent is a necessary party only if the grandparent is the legal guardian, legal custodian or "responsible relative" of the minor. **705 ILCS 405/1-5(1)**. See, e.g., ***In re C.P.,*** 2019 IL App. (4th) 190420. State not required to serve the minor mother's guardian with the termination of

parental rights petition, when mother had been adjudicated a ward of the court with DCFS appointed as her guardian.

While grandparents usually are not proper parties in a termination of parental rights proceeding, under some circumstances a grandparent may have a right to limited participation. In ***In re Jennings***, 68 Ill. 2d 125 (1977), the Supreme Court held that it was error to deny without an evidentiary hearing a grandmother's petition to set aside her allegedly mentally ill daughter's consent to adopt the grandchildren. The petition raised the possibility that the grandmother was a "'person having custody or control' of the children" because it alleged she had raised them since birth and therefore should have been made a party at the outset of the case; and that the consent was invalid due to mental incapacity. Moreover, the Supreme Court held the trial court did not have jurisdiction to terminate parental rights because the children were never adjudicated wards in a dispositional hearing. The court appears to have clarified ***Jennings*** in ***In re C.C***., 2011 IL 111795 (legal guardianship of minors' grandmother was vacated after minors were made wards and DCFS guardianship administrator was appointed temporary guardian). *See also* ***In re Adoption of S.G.***, 401 Ill. App. 3d 775 (4th Dist. 2010) (after court terminated parental rights, non-custodial grandparents filed petition for adoption and then foster parents filed petition for adoption in separate case. Held: trial court properly dismissed grandparents' petition and struck their response to foster parents' petition because, as result of termination of parental rights, they were no longer relatives and had no right to intervene in adoption proceeding by foster parents); **705 ILCS 405/1-5(2)(a)** (current or previous relative caregiver of minor has right to be heard by court but does not thereby become party to proceedings).

(7) Persons Who May Be Joined as Parties

705 ILCS 405/1-5(1) lists those who are necessary parties to the proceedings, and **705 ILCS 405/1-5(2)(a)** lists those who, while not parties, may participate in the proceedings. Given that the statute specifically sets forth both the necessary parties and those permitted to participate as nonparties, the omission of former guardians or others from that list should be understood as an exclusion. ***In re C.C.***, 2011 IL 111795, ¶ 34.

(8) Foster Parents

705 ILCS 405/1-5(2)(a)-(d)

In ***Smith v. Organization of Foster Families for Equality and Reform***, 431 U.S. 816 (1977), the Supreme Court discussed but stopped short of holding that foster families have a constitutional liberty interest that entitles them to due process of law in connection with government decisions affecting that relationship.

Under the Illinois Juvenile Court Act, **705 ILCS 405/1-5(2)(a)**, any current or previously appointed foster parent, relative caregiver or agency interested in a minor has the right to be heard by the court but does not thereby become a party to the proceedings. In addition, any current foster parent, relative caregiver or agency designated as custodian of the child has the right to receive adequate notice at all stages of any hearing or proceeding under the Act. ***Id.*** *See* Article I, section 2.15, *supra*.

Note: 705 ILCS 405/1-5(2)(b) and 2(d) set forth the grounds under which a foster parent *may* intervene in the proceeding. The standard is the best interest of the child. **705 ILCS 405/1-5(2)(c)** sets forth the grounds under which a foster parent *shall* be granted standing and intervenor status in the proceeding. When allowing a foster parent to intervene in a case, the judge should specify on the record the nature and scope of the foster parent's participation. This issue should be revisited at each new hearing. The court should also determine the degree to which foster parents are entitled to access reports, files, and other material in the case.

If a child has resided in a foster parent's home for more than one year and the minor's placement there is being terminated, the foster parent has "standing and intervenor status" unless the basis for removal from the home is a reasonable belief that the child's health or safety will be jeopardized by remaining in the home. **705 ILCS 405/1-5(2)(c)**.

Gag orders prohibiting parties in neglect proceedings from discussing facts with news media are constitutionally valid. ***In re J.S.***, 267 Ill. App. 3d 145 (2d Dist.1994).

(9) Parent's Plenary Guardian

In ***In re K.C.***, 323 Ill. App. 3d 839 (lst Dist. 2001), the trial court's termination order was void where the mentally ill mother's Probate Court-appointed plenary guardian of the person was not notified and served as a necessary party to the proceeding.

(10) Persons Who Are Not Parties

(a) Persons with physical but not legal custody

Mere physical custody of a child does not confer party status upon the custodian. ***In re Winks***, 150 Ill. App. 3d 657 (4th Dist. 1986). *Compare* ***In re D.L.***, 226 Ill. App. 3d 177 (lst Dist. 1992) (aunt and uncle who had temporary custody of minor were effectively his legal custodians and therefore were proper parties to proceedings).

(b) Person subject to order of protection

705 ILCS 405/2-25(7)

A person against whom an order of protection is being sought who is neither a parent, guardian, legal custodian nor responsible relative is not a party and does not have rights other than those set out in section 2-25 of the Act (**705 ILCS 405/2-25**).

D) NOTICE AND SERVICE OF MOTION OR PETITION FOR TPR

Section 2-29(2.1) of the Juvenile Court Act (**705 ILCS 405/2-29(2.1**)) provides:

(1) If a parent appeared, was personally served with summons or was served by certified mail, and a default entered as to that parent on the petition for wardship was not set aside, then notice of a TPR motion or petition shall be provided pursuant to **Supreme Court Rule 11**.

(2) If a parent was served by publication, and a default entered as to that parent on the petition for wardship was not set aside, then notice of the TPR motion or petition shall be provided pursuant to Sections 2-15 and 2-16 of the Act (discussed below).

Section 2-15 of the Act (705 ILCS 405/2-15)

Section 2-15(8) of the Act (**705 ILCS 405/2-15(8)**) provides, "Notice to a parent who was served by publication and for whom an order of default has been entered on the petition for wardship and has not been set aside shall be provided in accordance with this Section and Section 2-16." Other parts of Section 2-15 provide for service by summons either upon the individual personally or by substitute service by leaving a copy with a member of the party's family who is at least **10 years** of age (**NOTE**: This is different from the requirement of section 2-203(a) of the Illinois Code of Civil Procedure (**735 ILCS 5/2-203(a)**) which provides for substitute service upon a member of the party's family who is at least **13 years** of age.), informing that person of its contents, and mailing a copy to the party's usual place of abode. Thus, as to parents originally served by publication and defaulted, the Act requires an attempt to serve parents with summons and the TPR motion or petition *again*, either personally or by substitute service, despite language in Section 2-16(2) (**705 ILCS 405/2-16(2)**) that the original publication state, "Unless you appear you will not be entitled to further written notices or publication notices of the proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights."

Section 2-16 of the Act (705 ILCS 405/2-16)

Section 2-16(1) of the Act (**705 ILCS 405/2-16(1)**) provides for service upon a respondent by certified mail delivery to addressee only if personal or substitute service as provided in Section 2-15 is not made within a reasonable time or if it appears respondent resides outside Illinois.

Section 2-16(2) of the Act (**705 ILCS 405/2-16(2)**) provides for service upon a respondent by publication if respondent's abode cannot be ascertained by a diligent search or if respondent is evading service. As discussed above regarding Section 2-15, the Act requires service by publication again regarding a TPR motion or petition, despite language in Section 2-16(2) (**705 ILCS 405/2-16(2)**) that the original publication state, "Unless you appear you will not be entitled to further written notices or publication notices of the proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights."

Therefore, defaulted parents originally served by publication should be re-served with the TPR motion/petition by personal or substitute service, then by certified mail if personal/substitute service is not successful, followed by publication if service by certified mail is not successful, in order to protect the rights of all parties and to preserve the integrity of any subsequent termination and/or adoption.

Indian Child Welfare Act (25 U.S.C. § 1901, *et seq*.) ("ICWA")

If the trial court had reason at the outset to believe a child is an "Indian child" as defined in ICWA, and the required notice to the relevant tribe was not given, the remedy is to vacate the court's orders as to foster placement of the child and termination of parental rights and begin proceedings anew. ***In re H.S.***, 2016 IL App (1st) 161589. (Here, the appellate court simply remanded the case for a determination as to whether the children were "Indian children" because the mother had misled the trial judge by initially stating the children did not qualify as Indian children).

Cases:

Illinois case law on service of notice of proceedings is inconsistent. It is essential that a trial court give close attention to proper service of process as well as diligent efforts to locate and give notice to parents. In ***In re Dar C.***, 2011 IL 111083, the Supreme Court vacated and remanded a termination of parental rights because the trial court lacked personal jurisdiction. In that case, the State failed to make a diligent search for father's current and last known address as required for serving him by publication per section 2-16(2) of the Juvenile Court Act. Moreover, the State and DCFS failed to follow up on additional information that may have revealed father's location. A "diligent search" under JCA 2-16(2) requires a good faith

attempt to acquire a parent's contact information, including inquiry about potential leads.

The most recent decision is ***In re Jamari R.,*** 2016 IL App (1st) 160850, Aff'd at 2017 IL App. (1st) 160850, 82 N.E.3d 109., (misspelling of mother's and minor's names in original publication service of petition for wardship upon father rendered trial court without *personal* jurisdiction over father until he appeared at TPR hearing; the adjudication and dispositional orders were therefore void; and, because adjudication and disposition were necessary predicates, the subsequent TPR was also void). Contra ***In re T.A.***, 359 Ill. App. 3d 953 (4th Dist. 2005) (trial court's finding that father had "insufficient contact" with minor to require service of notice did not deprive the court of subject-matter jurisdiction in subsequent TPR proceeding because unfitness finding was not based on an assessment of father's compliance with the dispositional order; "the termination proceeding stands on its own" and thus the flaw in the prior proceedings — even a flaw that rendered void an order entered therein —had no bearing on the subsequent termination case); ***In re Rodney T.,*** 352 Ill. App. 3d 496 (1st Dist. 2004) (even though a parent generally has a due process right to notice of a juvenile proceeding, notice to a noncustodial parent whose whereabouts are unknown is excused if the custodial parent received notice). *See also* ***In re C.R.H.,*** 163 Ill. 2d 263 (1994) (same re parental notice in juvenile delinquency proceedings).

See ***In re Miracle C.***, 344 Ill. App. 3d 1046 (2d Dist. 2003) (failure of State to file affidavit that diligent search was made for father before serving him by publication rendered trial court without *subject-matte*r jurisdiction; adjudication and disposition in father's absence were therefore void; and TPR, even though father appeared with counsel and participated in fitness and best interest hearings, was also void), overruled ***In re Antwan L.***, 368 Ill. App. 3d 1119 (2d Dist. 2006). But the First District in ***Jamari R***. has questioned the correctness of ***Antwan L***.

See also ***In re D.J.S.,*** 308 Ill. App. 3d 291 (3d Dist. 1999) (failure to serve father did not deprive trial court of personal jurisdiction where he had appeared in court at temporary custody hearing).

In ***In re Haley D.***, 2011 IL 110886, the Illinois Supreme Court affirmed reversal of termination of father's parental rights even though he had been properly served originally, had appeared with counsel and participated at adjudication and disposition and was defaulted for failing to appear at the subsequent termination proceedings, because he was not served with the termination petition pursuant to Supreme Court Rule 11 and the trial court erroneously denied his motion to vacate the default pursuant to **735 ILCS 5/2-1301(e)**).

In re S.L., 2014 IL 115424 (Section 1(D)(m)(iii) of Adoption Act (**750 ILCS 50/1(D)(m)(iii)**) does not require specification of periods at issue in termination petition itself, but requires State to file and serve notice pleading with time periods at least three weeks before TPR discovery closes; and State's failure to file and serve such notice was pleading defect, rather than failure to state cause of action, which mother waived by not objecting thereto at TPR fitness hearing).

E) PREADJUDICATION ISSUES

(1) Re-admonishment

The judge should admonish parents as to the nature and possible consequences of the termination of parental rights proceeding and should assure either that the parents are represented by counsel or have knowingly and voluntarily waived their right to counsel.

(2) Discovery

(a) In General

Civil discovery rules are not automatically applicable to proceedings under the Juvenile Court Act. Instead, discovery issues are left to the discretion of the trial court. ***People ex rel. Hanrahan v. Felt,*** 48 Ill. 2d 171 (1971) (although the civil rules regulate juvenile proceedings and discovery is within trial court's discretion, trial court must first make evidentiary determination that allowing broad discovery will not adversely affect proceedings). This standard of discretion applies in termination of parental rights proceedings. ***In re Bentsen***, 90 Ill. App. 3d 269 (3d Dist. 1980).

(b) Sanctions

Once the court has granted discovery, it may enforce its discovery ruling by imposing any sanction permitted by law. *But see* ***In re Vanessa C.***, 316 Ill. App. 3d 475 (1st Dist. 2000) (trial court violated mother's due process and statutory rights by barring her from presenting any evidence in defense and limiting cross-examination of witnesses in TPR proceeding as sanction for refusing to sign answers to interrogatories).

(c) Subpoena *duces tecum*

When a party subpoenas medical, school, mental health, drug treatment and other records in advance of the fitness hearing to allow time for preparation, counsel should obtain a return date for the subpoena from the court.

(3) Rule 218 Case Management Conference

The language of **Supreme Court Rule 218** mandating a case management conference in civil cases seems to include TPR proceedings. In any case, consider utilizing a conference to assure that the case will proceed on the date(s) for which it is set.

Hearings on the issue of parental fitness can be lengthy, involving a substantial investment of the court's time, many witnesses, and vitally important issues. Continuances must be avoided to the extent possible. Therefore, a judge may wish to conduct a case management conference sufficiently in advance of the scheduled hearing on the merits to assure that the pleadings are in order, that all necessary parties have been joined and served with summons or other appropriate notice, that, if necessary, they are represented by counsel, that there is no conflict that may result in subsequent delay, and that all appropriate discovery disclosures have been made.

(4) Summary judgment

Summary judgment on the issue of parental fitness may be entered when there is no genuine issue of any material fact. ***In the Interest of E.C. and D.C.***, 337 Ill. App. 3d 391 (1st Dist. 2003) (uncontradicted evidence supported summary finding of unfitness under section 1(D)(s) of the Adoption Act where father had been repeatedly incarcerated, had not visited the children since 1995, the children were in fear of him and did not wish to visit him); ***In re T.T.***, 322 Ill. App. 3d 462 (lst Dist. 2001) (father's depravity based upon three felony convictions, one of which was within 5 years prior to filing of TPR petition); ***People v. Ray***, 88 Ill. App. 3d 1010 (5th Dist. 1980) (mother's depravity based on murder and cruelty to minors); ***In re Marriage of T.H.***, 255 Ill. App. 3d 247 (5th Dist. 1993) (father's depravity based on murder of mother); ***In re G.W.S.***, 196 Ill. App. 3d 107 (4th Dist. 1990) (conviction for death of a child resulting from child abuse). Even if the court enters an order of summary judgment on the issue of parental fitness, it must still conduct a separate hearing at which the court considers the issue of whether termination of parental rights is in the best interest of the respondent minor. *See* section 13.20(A), *infra.*

(5) Setting Date for Unfitness Hearing

Neither the Juvenile Court Act nor the Adoption Act contains any mandatory time frame within which a petition or motion for termination of parental rights must be heard. In ***In the Interest of E.M., Jr.***, 295 Ill. App. 3d 220 (4th Dist. 1998), the appellate court expressly held that the requirement of Section 2-14 (**705 ILCS 405/2-14**) that the adjudicatory hearing in an abuse, neglect or dependency case commence within 90 days

of the filing of a petition does not apply in termination of parental rights cases.

NOTE: Section 2-13(4.5)(a) of the Act (**705 ILCS 405/2-13(4.5)(a)**) provides, that DCFS shall request the State's Attorney to file a TPR motion or petition if the minor has been in foster care for 15 months of the most recent 22 months, with stated exceptions. This is to comply with funding requirements of the federal Adoption and Safe Families Act of 1997 and regulations promulgated thereunder. *See also* **45 C.F.R. § 1356.21(i)(1)(i)** (agency must file petition to terminate the parental rights of a parent(s) whose child has been in foster care under responsibility of agency for 15 of most recent 22 months; petition is to be filed by end of child's fifteenth month in foster care).

13.20 TERMINATION OF PARENTAL RIGHTS HEARING

A) TWO STAGES: UNFITNESS AND BEST INTEREST

A termination of parental rights proceeding is divided into two phases: the unfitness phase and the best interest phase. Before the court may consider whether termination of parental rights is in the best interest of a minor, the court must find by clear and convincing evidence (beyond a reasonable doubt if the minor is an Indian child) that, for one or more of the reasons set forth in the Adoption Act (**750 ILCS 50/1(D)**), a child's parent meets the statutory definition of an unfit parent. **705 ILCS 405/2-29(2)**, **(4)**; ***In re D.D.***, 196 Ill. 2d 405 (2001); ***In re Adoption of Syck***, 138 Ill. 2d 255 (1990) (best interest of minor is irrelevant in unfitness phase); ***In re Jamarqon C.***, 338 Ill. App. 3d 639 (2d Dist. 2003); ***In re M.P.***, 324 Ill. App. 3d 686 (5th Dist. 2001). *See also* ***In re S.F.***, 359 Ill. App. 3d 63 (1st Dist. 2005) (former "ground f," which created irrebuttable presumption of mother's unfitness due to murder of sibling held unconstitutional) A finding of unfitness is not error notwithstanding the technical failure to make specific written findings pursuant to § 2-21 of Juvenile Court Act, when it is based on stipulated facts read into the record. ***In re Leona W.***, 228 Ill. 2d 439 (2008). **NOTE:** Section 2-29(2) of the Act (**705 ILCS 405/2-29(2)**) provides that, "If the minor is over 14 years of age, the court may, in its discretion, consider the wishes of the minor in determining whether the *best interests* of the minor would be promoted by the finding of the unfitness of a non-consenting parent."

However, at the subsequent best interest stage, the State need only prove by a preponderance (but a higher standard applies in the case of an Indian Child) that termination of parental rights is in the child's best interest. See ***In re D.T.***, 212 Ill. 2d 347 (Ill. 2004) (trial court applied improper standard of proof when it found, within its "sound discretion," that it was in minor's best interest to terminate parental rights). "[The] same relaxed standard regarding the admission of evidence" applies as at the dispositional hearing, that is, "the formal rules of evidence do not apply." ***In re Jay H.***, 395 Ill. App. 3d 1063 (4th Dist. 2009). Thus, the court is

allowed to consider hearsay and may take judicial notice of previously admitted documents that would not be admissible at the fitness portion of the trial. ***Id.***

NOTE: The above holding in ***In re Jay H.*** is not followed outside of the Fourth District. *See e.g.*, ***In re S.J.***, 407 Ill. App. 3d 63 (1st Dist. 2011) (rules of evidence for adjudication apply to termination of parental rights hearing); ***In re J.B.,*** 346 Ill. App. 3d 77 (1st Dist. 2011) (hearsay is not admissible at best interest hearing). As stated in ***In re J.B.***, "Section 2-18(1) (**705 ILCS 405/2-18(1)** (West 2002)) of the Act states that 'the rules of evidence in the nature of civil proceedings in this State are applicable to proceedings under this Article.'" Since Section 2-29 of the Act (**705 ILCS 405/2-29**) does not provide otherwise for TPR proceedings, the rules of evidence should be applied at both the fitness and best interest stages. Therefore, caution should be used in not applying the rules of evidence at a termination of parental rights trial, particularly in courts outside of the Fourth District.

A finding of the unfitness of a parent must be made without regard to the likelihood that the child will be placed for adoption. **705 ILCS 405/2-29(4)**. Thus, unwillingness of the foster parent to adopt does not preclude termination parental rights. ***In re D.M.***, 336 Ill. App. 3d 766 (1st Dist. 2002).

B) COMBINED ADJUDICATORY/DISPOSITIONAL/TERMINATION OF PARENTAL RIGHTS HEARING

Section 2-18(1) (**705 ILCS 405/2-18(1)**) provides that if the petition for adjudication of wardship also seeks appointment of a guardian of the person with power to consent to adoption, the court may consider "legally admissible evidence at the adjudicatory hearing that one or more grounds of unfitness" exists under the Adoption Act.

Section 2-21(5) (**705 ILCS 405/2-21(5)**) authorizes the court to terminate a parent's rights at the initial dispositional hearing if all of the following conditions are satisfied:

1. the original or amended petition contains a request for termination of parental rights and appointment of a guardian with power to consent to adoption; *and*

2. the court has found by a preponderance of evidence, introduced, or stipulated to at the adjudicatory hearing, that the child is an abused, neglected, or dependent child; *and*

3. the court finds on the basis of clear and convincing evidence admitted at the adjudicatory hearing that the parent is an unfit person under the Adoption Act (**750 ILCS 50/1**); *and*

4 the court determines in accordance with the rules of evidence for the dispositional proceeding that:

a. it is in the best interest of the minor and the public that the child be made a ward of the court; *and*

b. reasonable efforts are inappropriate, or such efforts were made and were unsuccessful; *and*

c. termination of parental rights and appointment of a guardian with power to consent to adoption is in the best interest of the child pursuant to section 2-29 (**705 ILCS 405/2-29**).

See ***In re Tyianna J.***, 2017 IL App (1st) 162306 for an extensive analysis of the procedure, elements and standards for terminating parental rights at the adjudication/disposition stage of a case. *See also* ***In re J.V.***, 2018 IL App. (1st) 171766. Conditions for expedited TPR upheld on appeal.

See also section 2-22(5) (**705 ILCS 405/2-22(5)**) (if the parental rights of both parents have been terminated at the dispositional hearing, the first permanency hearing should be held within 30 days of the termination order), and section 2-23(7) (**705 ILCS 405/2-23(7)**) (restating that the court may terminate the parental rights of a parent at the initial dispositional hearing consistent with the requirements of section 2-21 (**705 ILCS 405/2-21**).

C) RIGHTS OF PARTIES

(1) Parties' Right to Be Present and to Participate in Hearing

(a) In General

All parties have the right to be present at all hearings under the Juvenile Court Act, including termination of parental rights proceedings. **705 ILCS 405/1-5**. This does not mean, however, that parents must be present at the time of the termination hearing. *See* ***In re C.L.T.***, 302 Ill. App. 3d 770 (5th Dist. 1999) (due process not violated when trial court proceeded with TPR hearing in parent's absence where parent received notice of hearing, was represented by counsel, and did not produce documentation to support her explanation for not being present). See ***In re Ca. B***., 2019 IL App. (1st) 181024. See also ***In re Aa. C.,*** 2021 IL App. (1st) 210639. Termination upheld as appellate court held that to the extent parents had a statutory right to be present for proceedings, use of videoconferencing software did not violate that right. See also ***In re Es.C.,*** 2021 IL App. (1st) 210197. Hearing over Zoom did not deny mother her right to be present and cross-examine witnesses.

Accord, ***In re A.H.***, 359 Ill. App. 3d 173 (1st Dist. 2005) (father's participation by telephone in parental fitness hearing did not deprive him of due process where he was incarcerated in Iowa, he was allowed

to confer periodically with counsel by telephone privately, and, after telephone connection was disconnected on numerous occasions, trial court withdrew pending arrest warrants in Illinois and ordered continuance to secure father's presence). *See* ***In re N.T.***, 2015 IL App (1st) 142391 (termination of mentally ill, hospitalized mother's parental rights without a hearing to determine her fitness to stand trial did not violate her due process rights where she was represented by counsel at the TPR hearing).

(b) Sanctions for Failure to Comply with a Rule 237 Notice to Appear

In ***In re B.C.***, 317 Ill. App. 3d 607 (lst Dist. 2000), the trial court's decision to sanction absent mother by entering default against her and prohibiting her attorney from offering evidence at TPR hearing was upheld. In ***In re D.R.***, 307 Ill. App. 3d 478 (lst Dist. 1999), however, the reviewing court held that the trial court abused its discretion by barring counsel from cross-examining witnesses, presenting a defense or making argument. It concluded that "[a] sanction causing a default judgment is the most severe discovery sanction the court can impose on a respondent and is proper only where the sanctioned party's conduct showed deliberate, contumacious, or unwarranted disregard for the court's authority." The absent mother explained her absence by problems with her pregnancy and a mandatory meeting with her probation officer.

(b) Incarcerated Parents

P.A. 99-836, Sec. 5, which amends **20 ILCS 505/6a** (Children and Family Services Act, §6a Case Plan). Adds requirement that the Dept. ensure that incarcerated parents can participate in case plan reviews via teleconference or videoconference. Also adds requirement that the case plan include tasks that must be completed by parent and how parent will participate in case review and hearings and, must include treatment that reflects options at parent's facility. Case plan must provide for visitation opportunities unless visitation is not in the best interests of the child.

(i) Out-of-State

In ***In the Interest of C.J.***, 272 Ill. App. 3d 461 (3d Dist. 1995), the court held that due process requires the trial court to afford a parent incarcerated in another state a "meaningful opportunity to be heard" through alternative procedures. In remanding the case, the appellate tribunal suggested the trial court consider allowing the mother to participate by telephone or to receive a complete transcript of the State's

case and then to submit her evidence deposition or testify by telephone.

See also ***In re J.M.,*** 153 N.E.3d 1059 (2020), trial court conducted hearing in TPR proceeding without father but father was represented at hearing by counsel. Court held denial of motion to continue in TPR case for incarcerated parent to participate. Appellate court said they're not persuaded J.M. is like C.J.; in J.M., father was represented by counsel who cross-examined State's witnesses and argued on his behalf; additionally, his presence would have made little to no difference based on evidence of extreme and repeated cruelty to child.

(ii) Illinois

In the Interest of C.J., *supra,* is also significant in addressing situations in which parents are incarcerated in Illinois and federal penal institutions. As to parents held in Illinois jails or penitentiaries, the trial court should issue a writ of *habeas corpus* compelling the production of the parent at each hearing if the parent so requests. *But see* ***In re B.A.***, 283 Ill. App. 3d 930 (3d Dist. 1996) (court erred in ordering Illinois Department of Corrections to bring inmate to courthouse for visitation with 13 year old daughter he had not met prior to abuse proceedings against mother and stepfather).

(iii) Federal Prison

Federal authorities refuse to comply with state court writs, so the judge conducting a termination proceeding involving a parent who is in federal custody must implement procedures such as those suggested in ***In the Interest of C.J.****, supra,* or continue the matter until the parent is released if the period of incarceration will be short.

(2) Right to Counsel

Under section 1-5(1) of the Act (**705 ILCS 405/1-5 (1)**), a minor who is the subject of any proceeding under the Act, including a termination of parental rights proceeding, and his parents, guardian, legal custodian or responsible relative who are parties, have the right to be represented by counsel. At the request of any party financially unable to employ counsel, the court must appoint counsel for the party. The right to counsel includes the right to effective assistance of counsel in termination proceedings. *See* ***In re Ca. B***., 2019 IL App. (1st) 181024 at ¶41; ***In re M.F.***, 326 Ill. App. 3d 1110 (4th Dist. 2002); ***In re R.G.***, 165 Ill. App. 3d 112 (2d Dist. 1988).

If there is no conflict between the parents, the same counsel may represent both parents in a termination of parental rights proceeding, but the better practice is to appoint separate counsel. *See* ***In re N.L.***, 2014 IL App (3d) 140172 – Where both parents were represented by the same counsel in a termination proceeding, until counsel withdrew as to one parent when marriage broke down, court found that the parents were not adverse clients that would invoke a *per se* conflict of interest at any time prior to counsel's request to be removed. Query whether counsel could continue to represent either parent once the conflict arose.

It is not a *per se* conflict for the office of the public defender to represent both a parent and a child in a termination case provided that neither defender outranks the other within the office of the public defender. ***In the Interest of A.P.***, 277 Ill. App. 3d 592 (4th Dist. 1996). *But see* ***People v. Lackey***, 79 Ill. 2d 466 (1980) (it was a conflict for the chief public defender to represent a child and another public defender to represent a parent). See generally**,** ***In re Br. M.,*** 2021 IL 125969; ***In re E.D.,*** 2021 IL App. (4th) 210267.

NOTE: In the First District, the Public Defender has created a conflicts unit which is separated by a "Chinese Wall" from the other attorneys in the office so that each parent may be represented by independent counsel without the possibility of a conflict of interest. If a "conflicts PD" is not available, or if the Public Guardian has a conflict due to prior representation of one of the parents, a qualified attorney from a bar association panel is appointed to represent the parent or serve as attorney and GAL of the minor.

In re S.W., 2015 IL App (3d) 140981 (Mother fired court-appointed attorneys and judge granted multiple continuances so that mother's new attorneys could prepare but denied continuance when she fired the fourth court-appointed attorney who was ready and willing to represent her). There is no absolute right to a continuance, and court didn't abuse its discretion by denying a motion for another continuance.

Counsel appointed for the minor and for any indigent party must appear at all stages of the proceeding, including a termination of parental rights hearing, subject to withdrawal or substitution pursuant to Supreme Court Rules or the Code of Civil Procedure. *See* **705 ILCS 405/1-5 (1)**. *See also* ***In re Adoption of K.L.P.***, 198 Ill. 2d 448 (2002) ("[A]n indigent parent in a termination proceeding brought under the Juvenile Court Act is entitled to court-appointed counsel . . . ."); ***In re Adoption of L.T.M.***, 214 Ill. 2d 60 (2005) (court's order requiring county to pay attorney's reasonable fees and costs did not violate separation of powers principles of state constitution as appointment of counsel for father was constitutionally mandated); ***In re J.P.***, 316 Ill. App. 3d 652 (2d Dist. 2000) (reversing termination of parental rights where parent's attorney withdrew without complying with Supreme Court Rule 13 and the court proceeded with hearing in parent's absence).

See also ***In re M.B.,*** 2019 IL App. (2d) 181008 (2019) (reversing termination of parental rights on due process grounds, where court dismissed father's appointed counsel after respondent failed to appear, and court did not comply with Supreme Court Rule 13(c) requiring withdrawing counsel to submit written motion to withdraw and provide notice to father, and providing 21 day period for party to retain new counsel or enter their own appearance.) *But see* ***In re S.P.***, 2019 IL App. (3d) 180476, where no due process violation found when court allowed respondent father's counsel to withdraw and risk father was erroneously deprived of fundamental right was minimal. Although it was error to allow an attorney to withdraw from representing a Respondent parent, the error was not material as the Respondent parent appeared at all hearings and was eventually appointed new counsel.

See ***In re Willow M.,*** 2020 IL App. (2d) 200237. Trial court repeatedly denied appointed counsel's motion to withdraw, as notice to respondent had not been reduced to writing and respondent failed to appear to address the court regarding her desire for new counsel. Appellate court affirmed because the motion did not comply with Rule 13(c)(2), did not advise client to obtain substitute counsel or file a timely appearance within 21 days to avoid being defaulted. Telephone conversation was not sufficient to comply with Rule 13(c)(2); plain language of the rule does not allow verbal notice.

Statutory Amendments:

(3) Right to Substitution of Judge

In ***In re Chelsea H.,*** 2016 IL App (1st) 150560, appeal denied 48 N.E.3d 678, the appellate court held that an order finding paternity in child protection proceeding was a substantial order that barred a subsequent motion to substitute judge.

In ***In re D.F.***, 321 Ill. App. 3d 211 (4th Dist. 2001), affirmed in part and vacated in part, 201 Ill. 2d 476, the appellate court's majority suggested that a termination of parental rights proceeding is an entirely new proceeding and, as such, a party has a right to a substitution of judge as a matter of right under section 2-1001(a)(2) of the Illinois Code of Civil Procedure, **735 ILCS 5/2-1001(a)(2)**, at the time a TPR petition or motion is filed. Upon further appeal, the Illinois Supreme Court vacated that suggestion as *dicta*.

The Courts have found that a party does not have a right to an automatic substitution of a judge in a termination proceeding under **705 ILCS 405/1-5(7)** without cause if the judge is currently assigned to a proceeding involving the alleged abuse, neglect, or dependency of the minor's sibling or half sibling and that judge has made a substantive ruling in the proceeding involving the minor's sibling or half sibling. ***In re J.S.***, 2020 Ill. App (1st) 19119, (Ill. App. Ct. 1st Dist. 2020).

D) STANDARD OF PROOF AT UNFITNESS STAGE

(1) Clear and Convincing Evidence

The due process clause of the Constitution of the United States applies to proceedings involving the termination of parental rights and requires that parental unfitness be proven by clear and convincing evidence. ***Santosky v. Kramer***, 455 U.S. 745 (1982); *In re M.I.,* 2016 IL 120232.

The Illinois Juvenile Court Act adopts the clear and convincing standard. **705 ILCS 405/2-29(2)**, **(4)**. A parent's parental rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence. ***In re Gwynne P.***, 215 Ill. 2d 340 (2005).

The clear and convincing standard requires proof greater than a preponderance, but not quite approaching the criminal standard of beyond a reasonable doubt. ***In re D.T.***, 212 Ill. 2d 347 (2004); ***In re R.G.***, 165 Ill. App. 3d 112 (2d Dist. 1988). Clear and convincing evidence is that degree of proof which, considering all the evidence in the case, produces the firm and abiding belief or conviction that it is highly probable that the proposition is true. Michael H. Graham, GRAHAM'S HANDBOOK OF ILLINOIS EVIDENCE § 300.6 (10th ed. 2010).

A finding of unfitness is not error notwithstanding technical failure to make specific written findings at adjudication pursuant to § 2-21 of Juvenile Court Act, where the adjudication findings were based on stipulated facts read into the record and the trial judge's oral findings were transcribed. ***In re Leona W.***, 228 Ill. 2d 439 (2008) (trial court's explicit oral statement of factual basis for its ruling at adjudication was sufficient to comply with written ruling requirement where statement was transcribed, and father's failure to appeal dispositional order waived the issue).

(2) Indian Child Welfare Act Cases: Beyond a Reasonable Doubt

The federal Indian Child Welfare Act (ICWA) (**25 U.S.C. § 1912 (f)**) requires the State to prove parental unfitness beyond a reasonable doubt when an eligible Native American child is the subject of a termination of parental rights proceeding. *See* ***In re C.N.***, 196 Ill. 2d 181 (2001), in which the Illinois Supreme Court discussed the type of evidence regarding a child's tribal status that is necessary to trigger consideration of a case under ICWA. *See also* ***In re Cari B.***, **327 Ill. App. 3d 743 (2d Dist. 2002)** (discussing the ICWA requirement that the State must prove that it made "active efforts" to prevent the breakup of an Indian family); ***In re D.D.***, **385 Ill. App. 3d 1053 (3d Dist. 2008)** (a finding "beyond a reasonable doubt" is supported by testimony of a "qualified expert witness" that the continued custody of the children by their parents is likely to result in serious

emotional and physical damage, met here by the testimony of a representative of the Cherokee Tribe that the Tribe did not oppose termination because the parents were unable to benefit from the resources they had been given to improve their parenting).

E) RULES OF EVIDENCE

(1) In General

Generally, the rules of evidence which pertain to any civil trial apply to a determination of parental unfitness in a termination proceeding. **705 ILCS 405/2-18(1)** ("The standard of proof and the rules of evidence in the nature of civil proceedings in this State are applicable to proceedings under this Article."). While the Juvenile Court Act relaxes this general rule for certain proceedings (e.g., dispositional hearing (JCA 2-22(1) and permanency hearing (JCA 2-28)), neither the JCA nor the Adoption Act provides the rules of evidence do not apply in TPR proceedings. ***In re Yasmine P.***, 328 Ill. App. 3d 1005 (3d Dist. 2002). In ***In re S.J.***, 407 Ill. App. 3d 63 (1st Dist. 2011), the court followed ***Yasmine P.***, holding that the modified business records hearsay exception in section 2-18(4)(a) of the Juvenile Court Act, applies in TPR proceedings. *See* ***In re Zariyah A.,*** 2017 IL App. (1st) 170971, reversing neglect finding on appeal because court erred in admitting and relying on hearsay evidence (from family services caseworker) of mother's bipolar diagnosis and failure to engage in mental health services.

(2) Special Statutory Rules

The statutorily created rules of evidence contained in section 2-18 of the Juvenile Court Act (**705 ILCS 405/2-18**) also apply to the hearing on parental fitness. *See* ***In re Nylani M.***, 2016 IL App (1st) 152262; ***In re M.S.***, 210 Ill. App. 3d 1085 (2d Dist. 1991); ***In re A.T.***, 197 Ill. App. 3d 821 (4th Dist. 1990); ***In re E.P.***, 167 Ill. App. 3d 534 (4th Dist. 1988). It is important to note that the rules of evidence in JCA 2-18 modify the Illinois Rules of Evidence. Moreover, ***In re Jay H.***, 395 Ill. App. 3d 1063 (4th Dist. 2009) held that the formal rules of evidence do not apply at the "best interest" stage of a TPR trial in the same fashion as the dispositional hearing because both are "functional equivalents." *Accord,* ***In re Breonna C.,*** 409 Ill. App. 3d 1164, 2011 Ill. App. Unpub. LEXIS 1146 (2d Dist. 2011). *See also* **705 ILCS 405/2-21(5)** (providing the procedure, elements and standards for terminating parental rights at the initial dispositional hearing following adjudication, and also providing that "the rules of evidence for dispositional proceedings" shall apply to the determination of whether "termination of parental rights and appointment of a guardian with the power to consent to adoption is in the best interest of the child pursuant to Section 2-29."); *but see* ***In re J.B.***, 346 Ill. App. 3d 77 (1st Dist. 2004) (rejecting argument that

hearsay evidence is admissible at both best interest and dispositional hearings). *See also* section 8.25, *supra.*

(3) Hearsay

The rule against hearsay applies during termination hearings. ***In re Nylani M.***, 2016 IL App (1st) 152262; *In re J.B.*, 346 Ill. App. 3d 77 (1st Dist. 2004) (court did not abuse discretion by excluding hearsay testimony from caseworker as to what parents told her regarding whether they visited their children). *See also* section 8.25, *supra*.

(a) Right of confrontation

The right of confrontation may be an aspect of due process which applies to a determination of parental fitness in the context of a termination of parental rights proceeding. ***In re E.P.***, 167 Ill. App. 3d 534 (4th Dist. 1988); ***In re K.L.M.***, 146 Ill. App. 3d 489 (4th Dist. 1986). However, a parent is not denied due process due to the alleged denial of a right to confrontation by the admission of hearsay evidence where the statute governing the admission of hospital and other records required an indicium of reliability prior to the admission. ***In re Yasmine P.***, 328 Ill. App. 3d 1005 (3d Dist. 2002).

See ***In re R.D***., 2021 IL App.(1st) 201411. Appellate court held that to the extent parents had a confrontation right under the Adoption Act at hearing on petition to terminate parental rights, that right was not infringed when trial court held hearing via videoconferencing due to COVID -19 pandemic. Appellate court emphasizes that their finding does not mean that video hearings are never violative of a parent's due process rights; no argument was made here as to how videoconferencing was unconstitutional as applied to parents. Court distinguished this case from ***In re C.M***., 744 N.E.2d 916 (2001). The Appellate Court noted in that case the State provided no explanation as to why the case manager was presenting her testimony by telephone, and court could not properly assess her demeanor or body language and whether she was alone.

(b) Previous statements of the minor

Out-of-court statements of a minor relating to allegations of abuse or neglect are admissible in evidence. **705 ILCS 405/2-18(4)(c)**; ***In re E.P.***, 167 Ill. App. 3d 534 (4th Dist. 1988) (due process not offended by admission of the minor's extra judicial statements if statements possess sufficient indicia of reliability and provide a satisfactory basis for evaluating the truth of the prior statement – in the case of the minor's statement, corroboration thereof by other admissible evidence or else cross-examination of the minor).

Sufficient corroboration of evidence of a child's out-of-court statement relating to allegations of abuse or neglect is determined on a case-by-case basis. ***In re K.O.***, 336 Ill. App. 3d 98 (1st Dist. 2002).

(c) Medical and mental health records

Section 2-18(4)(a) expressly refers to records "relating to a minor." Thus, the hospital or agency records made as to occurrences or events relating to a minor in a neglect proceeding are admissible as proof of those occurrences or events if the document was made in the regular course of the hospital's or agency's business (and will be sufficient to establish at least one ground of parental unfitness by clear and convincing evidence). ***In re Jamarqon C.***, 338 Ill. App. 3d 639 (2d Dist. 2003). *See also* ***In re Kenneth J.***, 352 Ill. App. 3d 967 (1st Dist. 2004) (parenting assessment team report was admissible as a business record, during termination of parental rights hearing since the report was created during the regular course of business, the report was made contemporaneously with the events that the report recorded, and the fact that the report was prepared for litigation did not affect the status of the report as a business record). Where a trial court is in error in admitting a physician's letter concerning an infant's injuries which was not within the normal course of business, and thus should have been excluded as a business record, it may be harmless error if there is ample evidence to support the court's finding that the child was neglected. ***In re J.Y.***, 2011 IL App (3d) 100727.

Section 2-18(4)(a) of the Juvenile Court Act (**705 ILCS 405/2-18(4)(a)**) also allows the admission of a parent's medical and mental health records in a termination proceeding. The records are not protected by either privilege or confidentiality due to the operation of section 2-18(4)(e). The medical and mental health records of a *parent* pertaining to treatment rendered after the initial adjudicatory and dispositional hearings are encompassed in 2-18(4)(a) because they were created as a direct result of the ongoing juvenile proceeding. ***In re M.S.***, 210 Ill. App. 3d 1085 (2d Dist. 1991). The health care records of a parent and sibling are also admissible during termination of parental rights proceedings because they concern the conditions that brought about the child's removal from mother and thus relate to the child. ***In re Precious W.***, 333 Ill. App. 3d 893 (3d Dist. 2002).

(d) Client service plans

In ***In re A.B.***, 308 Ill. App. 3d 227 (2d Dist. 1999), the court held that client service plans are admissible under the business records

exception to the Juvenile Court Act (**705 ILCS 405/2-18(4)(a)**), but a witness is not permitted to testify as to the contents of the document or provide a summary thereof; the document speaks for itself. The court found that, given the other evidence, it was harmless error to allow witnesses to testify as to the specifics of the plans. *See* ***In re Z.J.***, 2020 Il App 2d 190824 which held that a trial court may allow a family caseworker to testify to contents of all client service plans because she had prepared five service plans.

Although service plans are admissible, courts have cautioned against making findings of unfitness based on a parent's failure to comply with service plan requirements unless the State shows that such requirements were grounded in fact, not the result of hearsay, and related to a perceived shortcoming of respondent's ability to parent the child. *See* ***In re A.J.***, 296 Ill. App. 3d 903 (2d Dist. 1998) (requirement that father undergo drug testing and couples counseling was not supported by admissible evidence that father had a drug problem or needed counseling); ***In re S.J.***, 233 Ill. App. 3d 88 (2d Dist. 1992) ("[T]o place undue emphasis on compliance with service plans would raise the danger of a form of 'bootstrapping' . . ..").

See ***In re M.H.,*** State failed to satisfy requirements of 2-18(4)(a) because it "failed to elicit any testimony regarding the production of the service plans." Court abused discretion in admitting service plans, erred by allowing case worker to testify regarding info she obtained from reading files. No other evidence provided regarding reasonable progress, so Appellate court reversed and remanded for new fitness hearing, reversing termination order. The Illinois Supreme Court also addressed the issue in ***In re C.N.***, 196 Ill. 2d 181 (2001). While recognizing that the service plans "are an integral part of the statutory scheme", the court cautioned that, in assessing parental progress, the "overall focus" must remain on the fitness of the parent in relation to the needs of the child and trial judges must not focus "solely" on the parent's compliance with DCFS service plans. ***Id.*** 196 Ill. 181, at 214-216. However, in ***In re T.Y.***, 334 Ill. App. 3d 894 (1st Dist. 2002), a determination to terminate parental rights of a mother and father was held supported by evidence that the father failed to complete services offered during period following adjudication of wardship (he failed to control alcoholism, often became angry with children and did not participate in visits, and failed to appreciate mother's inability to parent children due to mental health problems).

(e) Prior indicated reports

Section 2-18(4)(b) of the Juvenile Court Act provides that any prior indicated report filed pursuant to the Abused and Neglected Child Reporting Act is admissible. **705 ILCS 5/2-18(4)(b)**. *See* ***In re J.C.,*** 2012 IL App (4th) 110861 (entire DCFS investigatory file is not "indicated report" and trial court erred by considering the investigatory file). *Accord* ***In re D.S.,*** 2016 IL App (2d) 160652-U.

Due process concerns may be implicated by the admission of hearsay at a termination proceeding even if authorized by statute, if the hearsay is not accompanied by sufficient indices of reliability. *See* ***In Re G.V***., 2018 IL App. (3d) 180272. Out of state report here was unverified, with no testimony, admission deprived parents of due process. Court vacated all orders entered on and after the adjudicatory hearing. Before admitting evidence under this provision, the trial judge may wish to consider the opinion in ***In the Interest of J.G.***, 298 Ill. App. 3d 617 (4th Dist. 1998), in which the court suggests a procedure for deciding what portions of the court file are appropriately the subject of judicial notice and consideration.

(f) Review hearings

Reports and other evidence adduced at review hearings which precede the termination proceeding generally are not admissible. It is reversible error to take judicial notice of the entire court file without making findings on admissibility of its contents. ***In the Interest of J.G.***, 298 Ill. App. 3d 617 (4th Dist. 1998) (At unfitness hearing, trial court must necessarily take notice of certain facts relating to how case reached the point at which State seeks termination of parental rights, and thus, court must know what steps the parent was supposed to have taken in order to achieve reunification and when clock began to run during which time parent was required to take these steps; but wholesale judicial notice of everything that took place prior to unfitness hearing is unnecessary and inappropriate). *See* **705 ILCS 405/2-18(6)**. See also ***In re M.D.***, 2022 IL App. (4th) 210288.

(4) Judicial Notice of Prior Proceedings

See also section 8.25(P), *supra.*

(a) In general

Section 2-18(6) of the Juvenile Court Act **705 ILCS 405/2-18(6)** was added in 1998 to provide for taking of judicial notice of prior proceedings:

> In any hearing under this Act, the court may take judicial notice of prior sworn testimony or evidence admitted in prior proceedings involving the same minor if (a) the parties were either represented by counsel at such prior proceedings or the right to counsel was knowingly waived and (b) the taking of judicial notice would not result in admitting hearsay evidence at a hearing where it would otherwise be prohibited.

See also ***In re Nylani M.***, 2016 IL App (1st) 152262; ***In re McDonald***, 144 Ill. App. 3d 1082 (4th Dist. 1986); ***In re Smith***, 95 Ill. App. 3d 373 (4th Dist. 1981); ***In re Robertson***, 45 Ill. App. 3d 148 (3d Dist. 1977).

In ***In the Interest of J.G.***, 298 Ill. App. 3d 617 (4th Dist. 1998), the appellate court found that it was inappropriate to take wholesale notice of everything that had happened in the case prior to the unfitness hearing. In order to assure that a court only takes judicial notice of properly admissible hearsay evidence in a termination proceeding, the court suggested that the State proffer certain evidence from prior proceedings and the defense should be given an opportunity to argue as to its admissibility under JCA 2-18(6). This suggested procedure was endorsed in ***In re A.B.***, 308 Ill. App. 3d 227 (2d Dist. 1999). *See also* ***In re H.C.***, 305 Ill. App. 3d 869 (4th Dist. 1999) (Steigmann, dissenting, re proper scope of judicial notice in termination proceedings).

A court may only take judicial notice of evidence from prior proceedings where there is a factual basis in the record. *See* ***In re J.P.***, 316 Ill. App. 3d 652 (2d Dist. 2000) (trial court erred in considering mother's alleged cocaine addiction where there was no factual basis in the record supporting such a finding).

(b) Criminal convictions

It is proper to judicially note the fact of a parent's criminal conviction. ***In re C.M.J.***, 278 Ill. App. 3d 885 (5th Dist. 1996); ***In re J.R.Y.***, 157 Ill. App. 3d 396 (4th Dist. 1987) (also proper to judicially note the contents of father's criminal history and alcohol abuse in his pre-sentence report because, at the sentencing hearing following his plea of guilty to residential burglary, he was given the opportunity to correct any errors; and his guilty plea and statement that he had no corrections amounted to judicial admissions).

(5) Expert Opinion

See also section 8.25(L), *supra.*

(a) Parental fitness

In ***In re M.B.C.***, 125 Ill. App. 3d 512 (5th Dist. 1984) the appellate court held the trial judge did not abuse his discretion by excluding the expert opinion testimony of a minister as to father's parental fitness where the alleged ground of unfitness was depravity and the father had an extensive criminal record including two rapes, robbery, deviate sexual assault, and intimidation.

(b) Parenting skills

It was held proper to allow a clinical psychologist to express an opinion as to the parenting skills of the respondent parents based upon three consultation sessions of approximately one hour each. ***In re L.M.***, 205 Ill. App. 3d 497 (4th Dist. 1990). A parenting assessment team report is admissible as a business record if created during the regular course of business, made contemporaneously with the events that the report recorded, and the fact that the report was prepared in the course of litigation did not affect the status of the report as a business record. ***In re Kenneth J.***, 352 Ill. App. 3d 967 (1st Dist. 2004) (under the Juvenile Court Act, agencies are required to "assist a Circuit Court during all stages of the court proceeding in accordance with the purposes of the Juvenile Court Act of 1987 by providing full, complete, and accurate information to the court.").

(c) Expert witness expenses

In ***In re E.S.***, **246 Ill. App. 3d 330 (4th Dist. 1993)**, the reviewing court held that the trial judge correctly denied mother's request for payment of fees for an expert witness to counter an unfavorable bonding assessment in a termination of parental rights proceeding because she failed to offer evidence that the original bonding assessment ordered by the court was defective or tainted by bias.

(6) Parental Misconduct Toward Other Children

Proof of the abuse, neglect, or dependency of one minor is admissible evidence on the issue of the abuse, neglect or dependency of any other minor for whom the respondent is responsible. **705 ILCS 405/2-18(3)**. ***In re A.T.***, 197 Ill. App. 3d 821 (4th Dist. 1990); ***In re Henry***, 175 Ill. App. 3d 778 (2d Dist. 1988); ***In re Bentson***, 90 Ill. App. 3d 269 (3d Dist. 1980); ***In re Walton***, 79 Ill. App. 3d 485 (3d Dist. 1979); ***In re Brooks***, 63 Ill. App.

3d 328 (1st Dist. 1978). *See also* ***In re O.R.***, 328 Ill. App. 3d 955 (2d Dist. 2002) (mother had previously had another biological child born with a controlled substance found within its system).

(7) Best Interest of the Child

It is improper to consider evidence as to the best interests of the child or the relationship of the child to potential adoptive parents at the initial stage of a termination proceeding. ***In re M.I.,*** 2016 IL 120232; ***In re Adoption of Syck,*** 138 Ill. 2d 255 (1990) (When ruling on parental unfitness, court is not to consider the child's "best interests."). *But see* **705 ILCS 405/2-29(2)** ("If the minor is over 14 years of age, the court may, in its discretion, consider the wishes of the minor in determining whether the best interests of the minor would be promoted by the finding of the unfitness of a non-consenting parent.") *See also* section 13.20(A), *supra.*

(8) Compliance with the Norman Decree by D.C.F.S.

Whether or not D.C.F.S. complied with the *Norman* decree is irrelevant to a determination of parental fitness even where the children were originally removed from the parent's home because they were living in a filthy, rodent-infested apartment. ***In re E.S.***, 246 Ill. App. 3d 330 (4th Dist. 1993).

13.25 ADMISSION OF UNFITNESS

Because of the serious and permanent consequences of the decision to terminate parental rights, a parent's admission to parental unfitness is analogous to the entry of a guilty plea in a criminal case. In ***In re M.H.***, 196 Ill. 2d 356 (2001), the Illinois Supreme Court held that due process requires a circuit court to determine a factual basis exists for a parent's admission of unfitness, advise the parent of that factual basis and confirm the admission of unfitness is knowing and voluntary. *See also* ***In re A.A.***, 324 Ill. App. 3d 227 (5th Dist. 2001) (parents' admission at adjudication, when supplemented with additional evidence presented at termination hearing, was sufficient to provide factual basis for evidence on which trial court could properly rely in determining parents were unfit); ***In re J.P.***, 316 Ill. App. 3d 652 (2d Dist. 2000) (factual basis that is required before the trial court may accept an admission of unfitness need not rise to the level of the State's burden of proof). *But see* ***In re Tamera W.***, 2012 IL App (2d) 111131 (2d Dist. 2012) (trial court need not comply with **Supreme Court Rule 402** at termination of parental rights proceedings, as it applies only to criminal proceedings).

13.30 SUFFICIENCY OF THE EVIDENCE

A) *SUI GENERIS* PROCEEDINGS

Although case law may be useful in deciding whether a parent is unfit, parental unfitness proceedings are unique to each case and must be determined based on the evidence presented. *See* ***In re J.A.***, 316 Ill. App. 3d 553 (1st Dist. 2000); ***In re C.M.***, 305 Ill. App. 3d 154 (4th Dist. 1999).

B) ONLY ONE GROUND NECESSARY

In most cases where the State seeks to terminate parental rights, it alleges more than one ground of parental unfitness. To sustain a finding, however, the State need only establish one ground by clear and convincing evidence. ***In re M.I.***, 2016 IL 120232. *See also* ***In re S.H.***, 2014 IL App (3d) 140500; ***In re Tinya W.***, 328 Ill. App. 3d 405 (2d Dist. 2002).

C) EVIDENCE RE: OTHER CHILDREN

(1) Ability to Care for Another Child

The fact that a parent has successfully parented one child, although admissible, does not prevent a finding of parental unfitness with respect to the child who is the subject of a termination petition or motion. *See* ***In re D.L.W.***, 226 Ill. App. 3d 805 (4th Dist. 1992) (although court used language suggesting that ability to care for another child is "irrelevant," in context the court's ruling was intended to emphasize the fact that successful parenting of one child is not dispositive on the question of parental unfitness with respect to another child).

(2) Proof of Unfitness with Respect to Each Child

A finding of parental unfitness with respect to one child cannot be the sole basis for finding unfitness as to other children. Although evidence of neglect or abuse of other children may be relevant to support the finding of unfitness as to a particular child, it is always necessary to find, by clear and convincing evidence, that the parent is unfit with respect to each child, based on some ground set forth in the Adoption Act. In determining whether a mother failed to make reasonable progress toward the return of the child, a court is required to find lack of reasonable progress during the applicable time period with respect to each child. ***In re D.C.***, 209 Ill. 2d 287 (2004). See also ***In re Z.L.,*** 2021 IL 126931.

Cases re: Other Evidentiary Issues:

In re Leona W., 228 Ill. 2d 439 (2008) (allowance of motion in limine restricting father from presenting evidence of his parenting of other children returned to him did not cause him any material prejudice).

In re S.R., 349 Ill. App. 3d 1017 (4th Dist. 2004) (there was insufficient evidence to support finding that a mother's son was a neglected minor because his environment was injurious to his welfare where the only evidence of neglect was the mother's refusal to continue to care for her daughter; the mother's abandonment of the daughter, in other words, did not necessarily mean that son was in an injurious environment).

13.35 GROUNDS FOR UNFITNESS

750 ILCS 50/1(D)(a) - (t)

The sufficiency of the evidence will be discussed specifically with respect to particular grounds or definitions of parental unfitness set forth in the Illinois Adoption Act, **750 ILCS 50/1(D)**. The sufficiency of the evidence will also be discussed with respect to particular factors such as age, poverty, DCFS actions and parental activity, including failure to visit or support the child, drug abuse, and the like, which affect the determination as to whether the evidence establishes parental unfitness by clear and convincing evidence.

A) ABANDONMENT

(1) Statutory Provision

750 ILCS 50/1(D)(a)

(a) Abandonment of the child.

(a-1) Abandonment of a newborn infant in a hospital.

(a-2) Abandonment of a newborn infant in any setting where the evidence suggests that the parent intended to relinquish his or her parental rights.

(2) General Rules

(a) Definition of "abandonment."

"Abandonment" is a parent's intent, measured by his or her conduct, to forego all parental responsibilities and to relinquish all parental claims to a child. ***In re Adoption of Markham***, 91 Ill. App. 3d 1122 (3d Dist. 1981). This requires a showing of more than a mere desire to relinquish custody. It requires a settled purpose to end all aspects

of the parent-child relationship. ***In re A.B.***, 308 Ill. App. 3d 227 (2d Dist. 1999).

(b) Proof of parental intent

In determining whether a parent has "abandoned" a child within the meaning of the Adoption Act, the intent of the parent is the determining factor. ***In re Adoption of Mantzke***, 121 Ill. App. 3d 1060 (2d Dist. 1984).

In the past, courts construed this requirement in a way that made it difficult for the State to prove parental intent to relinquish all parental responsibility by clear and convincing evidence. *See, e.g.,* ***In re Adoption of Mantzke***, 121 Ill. App. 3d 1060 (2d Dist. 1984) (trial court's denial of an adoption petition affirmed notwithstanding biological mother's failure to visit, send cards, gifts or telephone for six years.) In affirming, the appellate court alluded to the mother's testimony that she did not intend to abandon her children, that she wanted to relieve the stress the children demonstrated when she did visit during the first eight years of their separation, and that her new husband disliked her children and objected to driving the necessary thirty-five miles to visit); ***In re Sanders***, 77 Ill. App. 3d 78 (4th Dist. 1979) (although father incarcerated, when he was released for a short time he did attempt to reunite the family).

More recently, both the legislature and courts have indicated a greater willingness to terminate parental rights on grounds of abandonment. *See, e.g.*, ***In re A.B.***, *supra* (mother's move to Alabama for 18 months, leaving her child in another's custody in Illinois constituted abandonment even where mother said her reason for leaving was to get away from an abusive relationship and create a better life for her child).

In an apparent reaction to some of the foregoing case law, the legislature enacted subsection 1(D)(n) of the Adoption Act adding to abandonment and desertion the "intent to forgo parental rights" as a separate and distinct basis for termination of parental rights. (**750 ILCS 50/1(D)(n)**). "Ground n" provides that a parent's subjective intent is not a defense to conduct evincing an intent to forgo parental rights. This ground for parental unfitness is discussed further at subparagraph N, *infra.*

(c) Abandonment of newborns and young children

750 ILCS 50/1(D)(a-1)(a-2)

The Act specifies that abandonment of a newborn in a hospital or similar setting (*e.g.*, on a doorstep) can be the basis of a finding of unfitness. However, the Abandoned Newborn Infant Protection Act, **325 ILCS 2/1**, ***et seq.*** creates an exception where a parent anonymously relinquishes a newborn 30 days of age or less at a police station, fire station or hospital and provides certain information about the child's medical and family background. **325 ILCS 2/25(a)**.

See, e.g., ***In re Joshua S.***, 2012 IL App (2d) 120197. There, the respondent mother gave birth to the minor outdoors and then left him under a tree. The minor was found several hours later, and the state filed criminal charges against the mother, who entered a plea agreement wherein the state represented that it would not seek to terminate her parental rights on the basis of the events in relation to the minor's birth. The state, however, subsequently caused mother's parental rights to be terminated for unfitness. On appeal, the judgment was affirmed because the state's promise that it would not seek to terminate parental rights was against public policy, and therefore unenforceable. The guardian *ad litem* and the juvenile court could not ignore the best interests of the minor. The appropriate remedy was to allow the respondent to withdraw her guilty plea.

(2) Particular Evidentiary Issues

(a) Interference by others with parental contact

Because abandonment turns upon the intent of the parent, interference by others with parental attempts to contact a child may preclude a finding of abandonment.

See ***Estes v. Garrison***, 93 Ill. App. 3d 670 (1st Dist. 1981); ***In re Adoption of Markham***, 91 Ill. App. 3d 1122 (3d Dist. 1981). *See* ***In re P.J.H.***, 2019 Ill. App. 5th 190089 in which a Respondent's father's attempts to visit children were not thwarted by Respondent Mother who refused visits because of the father's drug and alcohol use.

(b) Illness and other excuses

Illness or any other viable explanation for surrendering custody to another and failing to resume custody may defeat a claim of

abandonment. *See* ***In re Petition to Adopt Cech,*** 8 Ill. App. 3d 642 (lst Dist. 1972) (father visited the child only when the child was with the paternal grandmother about every six weeks but did not pay support; he did not exercise his court ordered visitation because he wished to avoid contact with his ex-wife who had custody).

(c) Putative Father Registry

Failure to register with the Putative Father Registry (**750 ILCS 50/12.1**) is not a statutory ground upon which the father may be found unfit. The purpose of the Registry is to assist in the identification and location of a putative father of a minor child who is, or who is expected to be, the subject of an adoption proceeding, in order to provide notice of such proceeding to the putative father. ***In re Tinya W.***, 328 Ill. App. 3d 405 (2d Dist. 2002) (trial court erred by considering failure to register with Putative Father Registry in termination hearing, but since record showed father showed no interest in his child after he learned about her, termination was justified on various grounds listed in **750 ILCS 50/1(D)**, including abandonment and failure to show reasonable degree of interest).

B) FAILURE TO MAINTAIN INTEREST

(1) Statutory Provision

750 ILCS 50/1(D)(b)

(b) Failure to maintain a reasonable degree of interest, concern, or responsibility as to the child's welfare.

(2) General Rules

(a) Definition of "reasonable degree of interest"

Neither the Juvenile Court Act nor Adoption Act defines reasonable degree of interest. In general, the court looks to see what type of effort a parent has made to demonstrate interest, concern, or responsibility for the child over an extended period of time. This is a subjective standard, requiring examination of what efforts were reasonable for this parent to make given his or her circumstances. In ***In re C.L.T.***, 302 Ill. App. 3d 770 (5th Dist. 1999), the court noted that the statutory language is in the disjunctive, leading to the conclusion that unfitness may be proved by failing to maintain interest *or* concern *or* responsibility.

See ***In re adoption of P.J.H.***, 2019 IL App. (5th) 190089, the court upheld a finding of unfitness under 50/1(D)(b). Finding was not

against manifest weight of the evidence when the father who was in prison and made some visits while out of prison, calls from prison, but had ongoing drug and alcohol addiction and never paid child support because such efforts were lacking, and mother rightfully refused visitation due to father's drug and alcohol use.

In ***In re M.I.,*** 2016 IL 120232, the court held that, in determining whether a parent showed reasonable concern, interest or responsibility as to a child's welfare, a trial court is required to examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred. Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions and statements of others that hinder or discourage visitation, and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child. The primary consideration is visitation. If visits with the child are somehow impractical, letters, telephone calls, and gifts to the child or those caring for the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances. Also, mindful of the circumstances in each case, a court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts. **750 ILCS 50/1(D)(b)** does not contain a willfulness requirement, when considering termination of a parent's parental rights. *Accordingly*, ***In re Adoption of L.T.M.***, 214 Ill. 2d 60 (2005); ***In re Gwynne P.***, 346 Ill. App. 3d 584 (1st Dist. 2004), *aff'd* 215 Ill. 2d 340 (2005); ***In re M.J.***, 314 Ill. App. 3d 649 (2d Dist. 2000); ***In re E.O.***, 311 Ill. App. 3d 720, (2d Dist. 2000).

Fitness is determined by a parent's effort to communicate with or show interest in the child. *See* ***In re A.S.B.***, 293 Ill. App. 3d 836 (2d Dist. 1997); ***In re Adoption of A.S.V.***, 268 Ill. App. 3d 549 (5th Dist. 1994). Frequently, a parent's degree of interest, concern or responsibility is gauged by the frequency of his or her visits and other efforts at maintaining an ongoing relationship with a child. If the record reflects that a parent has made a genuine effort to maintain contact through personal visits, telephone calls, letters, and/or has provided financial support for the child, it is unlikely that the parent should be found unfit under this section. *See also* ***In re Adoption of Syck***, 138 Ill. 2d 255, 562 N.E.2d 174 (1990); ***In re K.B.***, 314 Ill. App. 3d 739 (4th Dist. 2000). Conversely, failure to maintain regular contact or half-hearted sporadic efforts may result

in a finding of unfitness. *See, e.g.*, ***In re Shauntae P. and Kyla P.***, 359 Ill. Dec. 938 (1st Dist. 2012) (mother failed to maintain a reasonable degree or interest, concern, or responsibility as to her children's welfare where her visits with children were inconsistent, as her behavior and choices, including her decision to move to Colorado, interfered with visits, and she continued to abuse drugs and failed to undergo drug evaluation).

Cases discussing subsection (b) include:

In re Gwynne P., 346 Ill. App. 3d 584 (1st Dist. 2004) *aff'd* 215 Ill. 2d 340 (completion of service plan objectives can be considered evidence of a parent's concern, interest, and responsibility; other circumstances that warrant consideration include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions and statements of others that hinder or discourage visitation, and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child). *But see* ***In re M.I.,*** 2016 IL 120232 (**750 ILCS 50/1D(b)** does not hinge on a parent's compliance with a service plan or directives, when considering termination of the parent's parental rights; rather, that is an issue underground (m). See ***In re Je. A.,*** 2019 IL App. (1st) 190467 and its discussion of ground (b), "Unlike ground (m), which we address later in this order, ground (b) has no time constraint that limits our consideration of respondent's fitness.", citing ***In re Nicholas C.,*** 2017 IL App. (1st) 162101.

(3) Evidence of Lack of Interest Sufficient

In re S.T., 2021 IL App. (5th) 210077-U. Father's lack of concern upheld due to violence in front of the child and towards the child's mother.

In re Je. A., 2019 IL App. (1st) 190467. (finding based on failure to maintain concern and responsibility; father failed to register as convicted murder after release from prison and was re-incarcerated. Unable to visit during incarceration but delayed after release in visitation; didn't comply with services needed as a single parent, and fed children inappropriate foods, and fell asleep during a visitation).

In re Tr. A., 2020 IL App. (2nd) 200225 (affirmed on unfitness for ground b based on failing to comply with goals in service plans to keep children safe; repeatedly received unsatisfactory rating, unsatisfactorily discharged from counseling, didn't show up for psychological, psychiatric, or substance abuse evaluations, failed to make satisfactory progress with parenting classes).

In re Angela D., 2012 IL App (1st) 112887 (court properly terminated mother's parental rights based on her failure to maintain reasonable degree

of interest, concern, or responsibility for minors' welfare, her drug addiction for at least one year prior to the unfitness hearing, and her failure to make reasonable efforts and progress given evidence of the mother's positive tests for PCP, failure to appear for multiple scheduled drug tests, undocumented attendance at NA-AA meetings, and premature withdrawal from inpatient treatment).

In re Konstantinos H., 387 Ill. App. 3d 192 (1st Dist. 2008) (mother with a history of drug and alcohol abuse, who gave birth to child with opiates in her system, was unfit by virtue of her failure to maintain a reasonable degree of interest, concern, or responsibility where she was repeatedly incarcerated while the child was in foster care, did not follow through with drug or alcohol services, did not submit to random drug drops, went for long periods of time without making any effort to contact child or arrange for visits, and did not appear at either adjudicatory or dispositional hearings; and child-welfare agencies' indifference and inadequate delivery of services did not rise to the level of preventing the mother from showing her concern and interest and responsibility as to the minor's welfare).

In re Janira T., 368 Ill. App.3d 883 (1st Dist. 2006) (mother did not complete recommended services, visited infrequently and visits were inconsistent).

In re M.C. and T.C., 362 Ill. App. 3d 1174 (2d Dist. 2006) (mother had satisfactorily complied with only two of the eight 6-month service plans and otherwise her participation in services was sporadic for four years, she had been in substance abuse treatment several times, she refused to visit the children more than once per month, her only visits with the children coincided with when she was in town for court dates, and she made no reasonable effort to communicate with, show interest in, or financially support her children).

In re T.A., 359 Ill. App. 3d 953 (4th Dist. 2005) (sex-offender father never had any contact with child due to a no-contact order and, although he met with DCFS caseworker and inquired about his daughter three days after his release from prison, he did not inquire about child in subsequent meetings with caseworker).

In re Rodney T., 352 Ill. App. 3d 496 (1st Dist. 2004) (father, who was incarcerated, had waited for mother to initiate visits with child, did not know where the child was living, and never requested a visit with the child).

(4) Evidence of Lack of Interest Insufficient

In re A.J., 296 Ill. App. 3d 903 (2d Dist. 1998) (unfitness finding reversed, with court indicating agency service plans were "bootstrapping because

they did not address parental deficiencies that led to removal of child; and, in any case, father's "satisfactory" ratings, unsupervised visits and other evidence contradicted trial court's finding that he failed to maintain reasonable degree of interest or concern for his daughter).

In re Brianna B., 334 Ill. App. 3d 651 (4th Dist. 2002) (trial court denied TPR petition in one-sentence docket entry; appellate court reviewed record and concluded ruling was not against manifest weight of evidence where mentally retarded mother and angry putative father exercised reasonable degree of interest in medically complex child, where they had weekly visits with child, father was involved in decisions regarding child's surgery, mother asked repetitive questions of therapists and social workers, and only gap in visitation was due to parents' lack of flu shots).

(5) Special Evidentiary Problems

(a) Interference by others or inadequate support from DCFS

If a parent is thwarted in efforts to maintain contact, that will operate as a defense to an allegation of unfitness under this section. *See* ***In re Adoption of Syck***, 138 Ill. 2d 255 (1990). In addition, if DCFS does not provide appropriate support to facilitate visits or discourages ongoing contact that will be a relevant fact in determining "reasonable efforts." ***In re T.D.***, 268 Ill. App. 3d 239 (1st Dist. 1994).

(b) Poverty or lack of transportation

Courts have rejected a parent's argument that poverty or a lack of transportation impeded his or her ability to maintain contact with a child, noting that contact can be maintained by mail or in other ways. *See* ***In re N.H.***, 175 Ill. App. 3d 343 (4th Dist. 1988) (father failed to consistently visit children because his trailer home was a 45-minute walk from place of visits, and previously had no contact with children when he was in Chicago for two years).

(c) Failure to comply with service plan or otherwise cooperate

Even if a parent visits a child, his or her rights may be terminated for failure to show sufficient concern for the child through noncompliance with service plans or an uncooperative approach to services. ***In re A.A.***, 324 Ill. App. 3d 227 (5th Dist. 2001); ***In re M.J.***, 314 Ill. App. 3d 649 (2d Dist. 2000). *But see* ***In re K.B.,*** 314 Ill. App. 3d 739 (4th Dist. 2000) (trial court did not err in finding State failed to prove unfitness where parent was required to comply a second time with provisions in the service plan).

(d) Post-petition parental efforts

The fact that a parent who has failed to demonstrate a reasonable degree of interest for an extended time begins to show interest after a termination action is commenced does not preclude a finding of unfitness based on the parent's earlier behavior. ***In the Interest of Grant M.***, 307 Ill. App. 3d 865 (lst Dist. 1999); ***In re Davonte L.***, 298 Ill. App. 3d 905 (1st Dist. 1998), aff.'d on other grounds in ***In re D.L.***, 191 Ill. 2d 1 (2000). In ***In re Adoption of D.A.***, 222 Ill. App. 3d 73 (2d Dist. 1991), the court suggested that evidence of reformed behavior goes to the issue of whether termination is in a child's best interest and not to the issue of parental unfitness.

C) DESERTION

(1) Statutory Provision

750 ILCS 50/1(D)(c)

(c) Desertion of the child for more than 3 months next preceding the commencement of the Adoption proceeding.

(2) General Rules

(a) Definition of "desertion"

"Desertion" is parental conduct that indicates an intent to end a parent's custody of a child. ***In re Adoption of Markham***, 91 Ill. App. 3d 1122 (3d Dist. 1981). But failure to visit for more than 3 months may not be desertion if the parent has a reasonable excuse. ***In re Adoption of Mantzke***, 121 Ill. App. 3d 1060 (2d Dist. 1984); ***In re Overton***, 21 Ill. App. 3d 1014 (2d Dist. 1974).

(b) Desertion vs. abandonment

Abandonment means parental intent to completely forego all future responsibility or contact. Proof of unfitness for desertion does not require a showing that a parent intends to relinquish all parental rights and duties. ***In re A.B.***, 308 Ill. App. 3d 227 (2d Dist. 1999). Under either ground, however, parental intent is the crucial question. In ***In re D.L.***, 326 Ill. App. 3d 262 (lst Dist. 2001), the court upheld the trial court's finding of desertion where the child's father made no effort to contact or arrange for visits with the child. Abandonment of a child by a parent amounts to desertion but desertion does not necessarily amount to abandonment. ***Townsend v. Curtis***, 15 Ill. App. 3d 209 (3d Dist. 1973).

(3) Particular Evidentiary Problems

(a) Placement for adoption

Placement of a child for adoption can be the basis for a finding of desertion. ***In re R.B.W.***, 192 Ill. App. 3d 477 (4th Dist. 1989).

D) SUBSTANTIAL NEGLECT

(1) Statutory Provision

750 ILCS 50/1(D)(d)

(d) Substantial neglect of the child if continuous or repeated.

(d-1) Substantial neglect, if continuous or repeated, of any child residing in the household which resulted in the death of that child.

(2) General Rules

Under subsection (d), the State must prove by clear and convincing evidence that (1) the neglect was substantial; *and* (2) that it was either continuous or repeated. In ***In re D.F.***, 201 Ill. 2d 476 (2002), the supreme court upheld the constitutionality of Ground D, observing that "substantial neglect" of a child may result from the cumulative effect of several forms of neglect and that, depending on the type of neglect, evidence of neglect of one child may be relevant to the question of a parent's fitness with respect to another child. In ***D.F.***, the court upheld the trial court's determination that the mother was unfit due to continuous and repeated substantial neglect due to multiple instances over a period of years of filthy, cluttered floors, spoiled food, and cat feces throughout the home, the children had poor personal hygiene and their dental needs were neglected to the point that one child had an abscessed tooth and several that were bordering on that condition, another child was diagnosed with inorganic failure to thrive, mother deliberately kept the children hidden from their father for four years, mother married a convicted sex offender and remained with him despite being informed of the risk to the girls, and mother had a habit of making the children lie for her.

In ***In re A.B.***, 308 Ill. App. 3d 227 (2d Dist. 1999), the court defined "substantial" as neglect carried out "to a large degree." It rejected the idea that either a finding of neglect or a single incident of neglect alone rises to the level of "substantial neglect." Instead, the court found that the neglect "must be pronounced over a period of time, or there must be multiple instances of pronounced neglect." Under the facts of the case, the court upheld the order terminating parental rights where the children's mother left

the state to escape an abusive husband and failed to support or otherwise provide for the children.

(3) Neglect Resulting in Death of Child

Subparagraph (d-1) formerly provided that if one child dies as a result of substantial neglect, there can be a finding of parental unfitness with respect to other children in the home. This provision codified the opinion in ***In re J.R.***, 130 Ill. App. 3d 6 (3d Dist. 1985) (mother unfit as to subsequently born twins because, prior to their birth, she allowed boyfriend who had been convicted of battering one of her children to return to the home, the boyfriend subsequently murdered mother's other child, and mother assisted by hiding the child's body). However, ***In re J.R.***, was partially overruled by ***In re D.C.***, 209 Ill. 2d 287 (2004) (although evidence of neglect or abuse of other children may be *relevant* to support the finding of unfitness as to a particular child, thus supporting termination of parental rights, it is always necessary to find, by clear and convincing evidence, that the parent is unfit with respect to each child, based on some ground set forth in statute providing for adoption of abused, neglected or dependent minors). But, the Supreme Court also stated in ***In re D.C.*** that:

> [E]vidence of the neglect or abuse of the other child or children may be sufficient to support the finding of unfitness as to the particular child. This may be so even when the particular child was born after the occurrences of neglect or abuse toward the other child or children. Nevertheless, it is always necessary to find, by clear and convincing evidence that the parent is unfit with respect to each child, based on some ground set forth in section 1(D) of the Adoption Act. 209 Ill.2d at 300.

E) EXTREME CRUELTY

(1) Statutory Provision

750 ILCS 50/1(D)(e)

(e) Extreme or repeated cruelty to the child.

(2) General Rules

Extreme or repeated cruelty normally involves torture or other extreme forms of physical abuse or sexual abuse. In ***In re Hollis***, 135 Ill. App. 3d 585 (4th Dist. 1985), the court held that the focus of inquiry should be upon the result rather than intent as being more important in defining cruelty. The court also rejected a parental contention that a court must consider a parent's entire set of interactions with a child, and not just instances of abuse. It is unclear whether father's unfitness was based upon "Ground E."

(a) Cases under this section include:

In re Mi.S., 2016 IL App (3d) 160265 (father unfit for extreme cruelty, although he did not commit act of physical cruelty directly upon minors, because parents had history of domestic violence in front of the children and 4-year-old witnessed father violently kill mother, after an argument and in act of rage, by repeatedly hitting her with a metal curling bar; said conduct was sufficient to prove extreme cruelty to all 3 children).

In re J.B., 2014 IL App (1st) 140773 (trial court properly found mother unfit due to extreme cruelty and also depravity for inflicting severe beating on eight-year-old that included choking him, throwing him to the floor where he hit his head, and beating him repeatedly with a belt, and because she would not stop beating him until another adult intervened. And, due process rights were not violated in not allowing her an opportunity to correct the conditions that led to the removal of child under subsection 1(D)(e) for extreme or repeated cruelty to a child, because the language of that subsection "does not entitle a parent to a specific period of time before a trial court may find a parent unfit on this ground.").

In re I.B., 397 Ill. App. 3d 335 (3d Dist. 2009) (father, age 15, found to be unfit parent of 7-month old child found to have evidence of physical abuse inflicted by both mother and father; father's minority did not prohibit court from finding him unfit, and, under "extreme or repeated cruelty" ground, parent need not be given an opportunity to correct the conditions prior to termination of parental rights; fitness hearing held less than three months after adjudication and disposition).

In the Interest of B.R., 282 Ill. App. 3d 665 (3d Dist. 1996) (reviewing court upheld a finding of unfitness under subparagraph (e) against a father who shook his companion's child so violently that the child sustained retinal hemorrhages and brain damage).

In re D.L.W., 226 Ill. App. 3d 805 (4th Dist. 1992) (older son subjected to acts of physical abuse including punching and kneeing and younger child, although not yet a victim of physical abuse, was at extreme risk).

In re E.P., 167 Ill. App. 3d 534 (4th Dist. 1988) (children testified as to repeated touching of genitals).

In re J.R., 130 Ill. App. 3d 6 (3d Dist. 1985) (mother allowed boyfriend to remain in home after he battered one child and he

subsequently murdered another child). *But see* ***In re D.C.***, 209 Ill. 2d 287 (2004) (partially overruling or at least clarifying ***J.R.***).

F) PHYSICAL ABUSE

(1) Statutory Provision

750 ILCS 50/1(D)(f)

(a) There is a rebuttable presumption, which can be overcome only by clear and convincing evidence, that a parent is unfit if:

(1) Two or more findings of physical abuse have been entered regarding any children under JCA Section 2-21, the most recent of which was determined by the juvenile court hearing the matter to be supported by clear and convincing evidence; or

(2) The parent has been convicted or found not guilty by reason of insanity and the conviction or finding resulted from the death of any child by physical abuse; or

(3) There is a finding of physical child abuse resulting from the death of any child under JCA Section 2-21.

No conviction or finding of delinquency pursuant to Article V of the Juvenile Court Act of 1987 shall be considered a criminal conviction for the purpose of applying any presumption under this item (f).

(2) General Rules

This provision sets forth three separate circumstances in which a prior judicial finding(s) of physical abuse has been made.

(a) Two or more findings of physical abuse, the most recent of which was made by clear and convincing evidence

(b) Criminal conviction resulting from the death of any child by physical child abuse. ***In re J.H***, 292 Ill. App. 3d 1102 (lst Dist. 1997) (affirming summary judgment that mother was unfit after conviction for murder of unrelated child); ***In re G.W.S.***, 196 Ill. App. 3d 107 (4th Dist. 1990) (affirming summary judgment that mother was after conviction for involuntary manslaughter of her child).

(c) Adjudication finding that child died as a result of parent's physical abuse.

(3) Particular Evidentiary Problems

(a) Accountability

People v. Ray, 88 Ill. App. 3d 1010 (5th Dist. 1980) (mother's conviction of murder and cruelty to children on evidence of common design and participation in boyfriend's course of torture and abuse that resulted in death of her child supported summary judgment of unfitness).

(b) Summary Judgment

In ***In re G.W.S.***, 196 Ill. App. 3d 107 (4th Dist. 1990), the court upheld a finding of unfitness on a motion for summary judgment based on introduction of a certified copy of a conviction for manslaughter of a child.

G) FAILURE TO PROTECT

(1) Statutory Provision

750 ILCS 50/1(D)(g)

(g) Failure to protect the child from conditions within his environment injurious to the child's welfare.

(2) General Rules

This provision is most often used as a basis for a finding of unfitness against a parent who allows a child to remain in the presence of an abuser or otherwise fails to take measures to protect a child from serious harm. This ground for unfitness does not contain a time provision within which a parent is given an opportunity to ameliorate his or her behavior.

In ***In re C.W.***, 199 Ill. 2d 198 (2002), the Supreme Court held that ground (g) focuses on the child's environment and a parent's failure to protect *before* the child is placed in foster care. Thus, evidence of injurious conditions which persist after removal of a child would be relevant to an unfitness finding underground (m), but irrelevant to an unfitness finding underground (g). The court further held that ground (g) does not allow a parent a period to correct or improve an injurious environment before he or she may be found unfit.

Cases:

In re Tr. A., 2020 Il App. (2nd) 20025 (affirmed on unfitness for ground g; trial court found mother put children in "horrific conditions" and failed to

understand severity of her neglect).

In the Interest of B.R., 282 Ill. App. 3d 665 (3d Dist. 1996) (mother tolerated repeated physical abuse of herself and the children by respondent father of one of the children; finding of unfitness upheld against mother who knew of paramour's violent behavior and who failed to protect child from serious injury from shaken baby syndrome; respondents had no right to a period of time to correct their parenting deficiencies prior to TPR).

In re G.V., 292 Ill. App. 3d 301 (2d Dist. 1997) (where mother and one of her children were severely beaten by paramour multiple times, mother failed to seek medical care and child ultimately died, evidence supported finding of mother's Ground G unfitness as to all of her children).

In re Brown, 86 Ill. 2d 147 (1981) (divorced noncustodial father unfit underground (g) because during visits with his children he had extensive opportunities to observe abuse, he saw bruising and burns on the children but took no action and one of the children later died from physical abuse by mother's subsequent husband).

In re Dixon, 81 Ill. App. 3d 493 (3d Dist. 1980) (father knew his three minor children were mistreated and neglected by their mother but failed to take an active role in improving home environment; he compounded children's physical and psychological trauma by his own neglect and abuse as well as his passive neglect and thus was unfit underground (g).

In Re C.W., 199 Ill. 2d 198 (2002) (finding of unfitness underground (g) is warranted only where parent failed to protect child from conditions in child's environment that were injurious to child's welfare, and where child has been removed from injurious home environment and placed in foster care, parent cannot be found unfit based on a failure to protect during foster care; thus, fact that child would be in injurious environment if returned home is not relevant to ground (g)).

In re J.D., 314 Ill. App. 3d 1109 (4th Dist. 2000) (because children were in foster care for several years, ground (g) failure to protect not available as a basis for TPR).

In re Veronica J., 371 Ill. App. 3d 822 (4th Dist. 2007) (ground (g) established where mother allowed child to reside in home where drug sales often occurred).

In re J.B., 2014 IL App (1st) 140773 (mother unfit underground (g) for failing to protect child from injurious conditions that arose from mother's own neglect and abuse).

H) OTHER NEGLECT

(1) Statutory Provision

750 ILCS 50/1(D)(h)

(h) Other neglect of, or misconduct toward the child; provided that in making a finding of unfitness the court hearing the adoption proceeding shall not be bound by any previous finding, order or judgment affecting or determining the rights of the parents toward the child sought to be adopted in any other proceeding except such proceedings terminating parental rights as shall be had under either this Act, the Juvenile Court Act or the Juvenile Court Act of 1987 (**705 ILCS 405/1-1 *et seq.***).

(2) General Rules/Comments

This is a curious statutory provision. It appears to govern adoption proceedings. Further research of the legislative history is suggested. There are only two published appellate court cases on ground (h):

In ***In re D.F.***, 321 Ill. App. 3d 211 (4th Dist. 2001), affirmed in part, vacated in part, and reversed in part, 201 Ill. 2d 476 (2002), the appellate court held that ground (h) was unconstitutionally vague, as the statute did not adequately inform persons of ordinary intelligence what conduct constituted grounds for unfitness, and because it permitted arbitrary prosecution. Upon further appeal, the Supreme Court simply vacated the finding of unconstitutionality, holding it was unnecessary to consider whether ground (g) is unconstitutionally vague because the trial court's parental unfitness finding underground (d) had been affirmed by the appellate court. Therefore, the constitutionality of ground (g) remains an open question. ***See In re D.F***., 201 Ill.2d 476.

See generally ***In re Diana L.***, 343 Ill. App. 3d 419 (3d Dist. 2003) (adoptive father convicted of aggravated criminal sexual abuse of daughter TPR'd underground (h)).

I) DEPRAVITY, CRIMINAL CONVICTIONS AND INCARCERATION

(1) Introduction

Initially, the Illinois Adoption Act contained a ground of unfitness denominated simply "depravity." A substantial body of case law developed in which the courts attempted to define "depravity" for purposes of parental fitness. In this case law, the courts also sought to define the limits of the proper role of criminal convictions in determining whether the State had proven a parent unfit by reason of depravity, discussed below. The question

of whether a single criminal conviction constituted "depravity" rendering a parent "unfit" posed a significant problem for the courts. In apparent response to this case law, the legislature has repeatedly amended the Adoption Act to specifically address convictions for specific offenses as well as the problem posed by parents who are repeatedly incarcerated or incarcerated for an extended period of time. Extreme care must be exercised in addressing the various definitions of parental unfitness based upon criminal conviction. A number of the definitions appear identical, but there are some subtle differences.

Discussion of this area will begin with the more general unfitness provision of "depravity." When considering cases decided under subparagraph (I), bear in mind that most of the cases decided on this ground preceded the more specific statutory provision dealing with convictions of specific offenses discussed in **750 ILCS 50/1(D)(q)-(s)**, *infra.*

(2) Statutory Provision

750 ILCS 50/1(D)(i)

(i) Depravity. Conviction of any one of the following crimes shall create a presumption that a parent is depraved which can be overcome only by clear and convincing evidence: (1) first degree murder in violation of paragraph 1 or 2 of subsection (a) of Section 9-1 of the Criminal Code of 1961 (**720 ILCS 5/9-1**) or conviction of second degree murder in violation of subsection (a) of Section 9-2 of the Criminal Code of 1961 (**720 ILCS 5/9-2**) of a parent of the child to be adopted; (2) first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 (**720 ILCS 5/1-1 *et seq.***); (3) attempt or conspiracy to commit first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 (**720 ILCS 5/1-1 *et seq.***); (4) solicitation to commit murder of any child, solicitation to commit murder of any child for hire, or solicitation to commit second degree murder of any child in violation of the Criminal Code of 1961 (**720 ILCS 5/1-1 *et seq.***); or (5) aggravated criminal sexual assault in violation of Section 12-14 (b) (1) of the Criminal Code of 1961 (**720 ILCS 5/12-14**). "Absent the statutory presumption, it is more difficult, but not impossible, for the State to prove depravity based on the evidence presented to the court." ***In re A.F.***, 2018 IL App. (3d) 170826.

There is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of at least 3 felonies under the laws of this State or any other state, or under federal law, or the criminal laws of any United States territory; and at least one of these convictions took place within 5 years of the filing of the petition or motion seeking termination of parental rights.

There is a rebuttable presumption that a parent is depraved if that parent has been criminally convicted of either first- or second-degree murder of any person as defined in the Criminal Code of 1961 (**720 ILCS 5/1-1 *et seq.***) within 10 years of the filing date of the petition or motion to terminate parental rights.

(3) General Rules

(a) Definition of depravity

"Depravity" is "an inherent deficiency of moral sense and rectitude." ***Stalder v. Stone***, 412 Ill. 488 (1952); ***In re J.A.***, 316 Ill. App. 3d 553 (lst Dist. 2000); ***In the Interest of A.L.***, 301 Ill. App. 3d 198 (3d Dist. 1998); ***In re J.B.***, 298 Ill. App. 3d 250 (4th Dist. 1998).

See also ***In re J.V.,*** 2018 IL App. (1st) 171766, "Our courts have held that depravity may be shown where a parent engages in a course of conduct indicating a moral deficiency and an inability to conform to accepted morality." (cited in ***In re Faith S***).

(b) Constitutionality of Ground I

(i) The constitutionality of this ground for unfitness has been upheld against challenges based on vagueness (***In re M.B.C.***, 125 Ill. App. 3d 512 (5th Dist. 1984)) and cruel and unusual punishment (***In re Marriage of T.H.,*** 255 Ill. App. 3d 247 (5th Dist. 1993)).

(c) Proof of depravity

Traditionally, depravity may be established by a series of acts or a course of conduct indicating a deficiency in moral sense and showing either an inability or an unwillingness to conform to accepted morality.

In re Tr. A., 2020 Il. App. (2nd) 200225 (affirmed on unfitness for ground i; horrendous conditions in the home and "rather than addressing the severity of her conduct, respondent avoided counseling and treatment, resisted assistance, lacked stability in housing or income, and failed to take steps to correct those conditions." Older child with medical issues was lying in her own waste, covered in vomit, diaper hadn't been changed in days, feeding tube infected, stomach was distended, and she was very thin, had multiple open wounds with maggots in the wounds, and had severe bed sores including a stage-four genital ulcer.

In re J.V., 2018 IL App. (1st) 171766, "Our courts have held that depravity may be shown where a parent engages in a course of conduct indicating a moral deficiency and an inability to conform to accepted morality." (cited in ***In re Faith S***).

In re Shanna W., 343 Ill. App. 3d 1155 (1st Dist. 2003); ***In re J.A.***, 316 Ill. App. 3d 553 (lst Dist. 2000); ***In re Dawn H.***, 281 Ill. App. 3d 746 (1st Dist. 1996); ***Ornstead v. Kleba,*** 37 Ill. App. 3d 163 (1st Dist. 1976). The acts relied upon must be of sufficient duration and repetition to demonstrate an inability or unwillingness to conform to accepted morality. ***In re Adoption of Casale***, 266 Ill. App. 3d 656 (1st Dist. 1994); See ***In re N.B.,*** 2019 IL App. (2d).

Depravity may be proved by introduction of certified copies of convictions. *See* ***In re J.B.***, 298 Ill. App. 3d 250 (4th Dist. 1998) (certified copies sufficient proof of father's conviction for aggravated sexual assault of stepchildren). *But see* ***In re R.G.***, 165 Ill. App. 3d 112 (2d Dist. 1988) (certified copy of conviction alone not enough to support circuit court finding of unfitness on grounds of depravity).

In re Faith S., 2019 IL App. (1st) 182290. Evidence of physical abuse over years included father choking one child, twisting arm, punching and causing fracture of pelvis, internal organ injury and internal bleeding, other scars and marks indicative of physical abuse, and prior conviction of mother for endangering the life of a child.

(d) Presumptions of depravity

(i) Categories of convictions

Previously, the only ground for unfitness was "depravity." *See* ***In re J.A.***, 316 Ill. App. 3d 553 (lst Dist. 2000). In 1998, the ground was amended to add additional bases for a finding of unfitness due to depravity – three categories of convictions that create a presumption of depravity. In each of these categories, if the State introduces certain evidence relating to a parent's criminal record, the burden then shifts to the respondent to overcome the presumption.

The first category includes convictions for the most serious crimes (*e.g.*, murders; attempt, conspiracy, solicitation of murder of a child; and aggravated criminal sexual assault). To overcome the presumption of depravity in these cases, the respondent must offer clear and convincing evidence. *See* ***In re S.H.***, 284 Ill. App. 3d 392 (4th Dist. 1996) (father

TPR'd as to his 3 children for depravity – convicted on 2 counts of aggravated sexual assault of five-year-old daughter). *See also* ***In re Donald A.G.***, 221 Ill. 2d 234 (2006) (father convicted of predatory criminal sexual assault of a child; Supreme Court held legislature made "drafting error" and intended to create a rebuttable presumption of depravity to be applied to this offense even though Ground I(5) refers to aggravated criminal sexual assault and therefore father had burden of rebutting presumption of depravity by clear and convincing evidence, which he did not do).

The second category creates a rebuttable presumption. In ***In re J.A.***, 316 Ill. App. 3d 553 (lst Dist. 2000), the court held that a rebuttable presumption creates a *prima facie* case as to the particular issue in question and thus the party against whom it operates must come forward with evidence to meet the presumption. Once evidence opposing the presumption is received, the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption ever existed. The burden of proof does not shift but, remains with the party who initially had the benefit of the presumption. The only effect of the rebuttable presumption is to create the necessity of offering evidence to meet the prima facie case created thereby, and which, if no proof to the contrary is offered, will prevail. The court in ***In re J.A.*** further held the amount of evidence that is required to meet the presumption is not determined by any fixed rule. A party may simply have to respond with some evidence or may have to respond with substantial evidence. If a strong presumption arises, the weight of the evidence needed to rebut it must be great. The statutory ground of depravity requires the trier of fact to closely scrutinize the character and credibility of the parent and a reviewing court will give such a determination deferential treatment.

The second category of depravity involves a conviction for three felonies, one of which occurred within five years of the filing of the petition to terminate parental rights. ***In re J.A.***, *supra,* the appellate court affirmed the trial court's findings that father was not depraved despite convictions for involuntary manslaughter, aggravated stalking and possession of cocaine, the latter of which was within 5 years of the TPR filing. The trial court found that father had rebutted the presumption with evidence of his sobriety, his commitment to J.A., his positive relationships with other family members, his constant employment, his taking of responsibility for his actions, and his demeanor in court.

In the Interest of T.S. III, 312 Ill. App. 3d 875 (3d Dist. 2000) (father depraved due to six felony convictions, four of which were within five years of the filing of the TPR petition; and he failed to rebut presumption of depravity because, although he testified he was going to change when released from prison because his son needed him, he continued committing crimes while he had three other children). *See also* ***In re N.G.***, 2017 IL App (3d) 160277 (conviction following plea of guilty to charge of unlawful use of weapon, where statute creating that offense of UUW was later declared unconstitutional, could not serve as basis for finding of depravity in support of petition to terminate parental rights, even though respondent had not caused conviction to be vacated in post-conviction proceeding; appellate court had ability to vacate the conviction in the adoption action, even though it was a collateral proceeding). Affirmed at ***In re N.G.,*** 2018 IL 121939.

The third category also creates a rebuttable presumption and involves conviction for first- or second-degree murder of any person in the ten years preceding filing of the TPR petition. *See* ***In re C.M.J.***, 278 Ill. App. 3d 885 (5th Dist. 1996) (certified copy of judgment of murder of children's mother shifted burden to father to show by clear and convincing evidence that he was not depraved; and fact that he had not yet exhausted his appeal rights did not preclude a finding of unfitness). **NOTE:** ***In re C.M.J.*** was decided under **750 ILCS 50/1D(j-1)** which was deleted from the Adoption Act in 1998 because it duplicated **750 ILCS 50/1D(i)(1)**.

(ii) Rebuttable Presumption

A rebuttable presumption creates a *prima facie* case and requires the party against whom it operates to introduce evidence to oppose the presumption. *See* ***Diederich v. Walters,*** 65 Ill. 2d 95 (1976); ***In re Donald A.G.***, 221 Ill. 2d 234 (2006) (father was convicted of the offense of predatory criminal sexual assault of a child and the legislature intended to create a rebuttable presumption of depravity to be applied to this offense). Once some evidence is introduced by the party, "the presumption ceases to operate, and the issue is determined on the basis of the evidence adduced at trial as if no presumption had ever existed." ***In re J.A.***, 316 Ill. App. 3d 553 (lst Dist. 2000). The burden of proof remains on the State. See ***In re L.J.S.,*** 2018 IL App. (3d) 180218. State successfully raised the presumption and father rebutted. Trial court said father needed to prove by clear and

convincing evidence that he was not depraved; this was error, respondent only need provide some contrary evidence to rebut the presumption.

The amount of evidence required to meet the presumption is not specified. In ***In the Interest of A.L.***, 301 Ill. App. 3d 198 (3d Dist. 1998), the court said that, in a case involving Ground I, the trial court must scrutinize the character and credibility of the parent. *See also* discussion of ***In re J.A.***, *supra*.

(4) Particular Evidentiary Problems

(a) Conviction for single act of depravity

As a rule, absent special circumstances, a single criminal conviction will not support a finding of depravity. *See, e.g.*, ***In re Abdullah,*** 85 Ill. 2d 300 (1981) (father's 60-year prison sentence and single conviction of murdering mother of minor was sufficient to prove depravity). **NOTE**: ***Abdullah*** was decided under the previous version of ground (i) depravity. ground (i)ground (i); ***In re S.H.***, 284 Ill. App. 3d 392 (4th Dist. 1996) was also decided under the previous version of ground (i). depravity. There, the appellate court held that although in most cases a single criminal conviction would not support a finding of depravity, the father's guilty plea of raping and sodomizing his five-year old daughter was sufficient to support a finding of "depravity." ***In re Addison R.***, 2013 IL App (2d) 121318 was decided under the current version of ground (i). There, the mother had separate convictions of three felonies committed during single police chase; and the convictions occurred within 5 years of the filing of the TPR petition, giving rise to the rebuttable presumption of depravity in the second category of ground (i) which mother failed to meet with opposing evidence.

(b) Misconduct that Does Not Result in Conviction

A finding of unfitness for depravity does not necessarily require a showing of conviction for a crime. ***Stalder v. Stone***, 412 Ill. 488 (1952) See *also* ***In re E.P.***, 167 Ill. App. 3d 534 (4th Dist. 1988) (repeated sex abuse established depravity); ***In re Adoption of Casale***, 266 Ill. App. 3d 656 (lst Dist. 1994) (father's use of drugs and alcohol demonstrated that his lifestyle categorized him as being depraved). *Cf.* ***In re Marriage of T.H.***, 255 Ill. App. 3d 247 (5th Dist. 1993).

(c) Possibility of rehabilitation

In determining whether the evidence establishes that the parent is depraved within the meaning of the Adoption Act, a criminal record is not conclusive on the issue of depravity, and there must be some allowance for an individual to be rehabilitated. ***In re Dawn H.***, 281 Ill. App. 3d 746 (1st Dist. 1996). The facts of a given case, however, may make it clear that rehabilitation is unlikely. *See, e.g.*, ***In re the Adoption of Kleba***, 37 Ill. App. 3d 163 (lst Dist. 1976) (depravity finding upheld despite father's exemplary behavior in prison and efforts to maintain contact with child where convictions were for three rapes and two robberies and father failed to acknowledge facts of crime).

(d) Behavior with respect to other children or later-born children

The fact that a parent was able to effectively parent another child does not itself bar a finding of depravity. *See* ***In re J.R.***, 130 Ill. App. 3d 6 (3d Dist. 1985) (termination of parental rights with respect to twins was properly based on events that occurred prior to their birth).

(e) Depravity based on tolerating acts of another person

Complicity in another person's depraved behavior may be the basis for a finding of unfitness. *See* ***In re J.R.***, 130 Ill. App. 3d 6 (3d Dist. 1985) (mother failed to report death of child beaten by father, allowed the child's body to remain in the residence, and lied to the police to conceal the location of the body).

(f) Age of conviction

In ***In re M.B.C.***, 125 Ill. App. 3d 512 (5th Dist. 1984), the reviewing court sustained the trial court's decision to consider evidence of father's 30-year-old convictions for armed robbery and rape where he was again convicted of rape after 20-year prison sentence.

(g) Pendency of appeal

A court need not wait for a defendant to exhaust all appeals in the criminal case before entering a finding of unfitness. *See* ***In re C.M.J.***, 278 Ill. App. 3d 885 (5th Dist. 1996).

(h) Proof of depravity

The current Adoption Act, which says any three felonies suffice to present a prima facie case of depravity, as long as one of the convictions occurred within 5 years of the filing of the petition to terminate parental rights, clarifying how courts should handle proof of depravity.

J) ADULTERY

(1) Statutory Provision

750 ILCS 50/1(D)(j)

(i) Open and notorious adultery or fornication.

(2) General Rules

This subsection has not been the basis for a finding of parental unfitness in any reported case. Adultery and fornication are not defined in the Juvenile Court Act or Adoption Act. Under the Criminal Code, fornication is defined as sexual intercourse with a person other than one's husband or wife if the sexual conduct is open and notorious. **720 ILCS 5/11-35, 11-40**. However, ***See Culkin v. Culkin***, 30 Ill. App. 3d 1073 (Ill. App. Ct. 4th Dist. 1975) and ***Thorpe v. Thorpe***, 48 Ill. App. 2d 455 (Ill. App. Ct. 4th Dist. 1964).

K) HABITUAL ALCOHOLISM OR ADDICTION

(1) Introduction

Originally, the Illinois Adoption Act provided a definition of unfitness which contained only the first paragraph of the current subparagraph (k). It fell to the courts to provide a more detailed definition of "habitual drunkenness or addiction to drugs." In apparent response to some of that decisional law, the legislature, while leaving the original, general provision intact, provided a rebuttable presumption in subparagraph (t), *infra*, to address certain situations. Presumably, the case law developed under the original, general provision remains authoritative. It must be read and applied, however, in light of the more recent statutory provision, **750 ILCS 50/1D(t)**, *infra.*

(2) Statutory Provision

750 ILCS 50/1D(k)

(k) Habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding.

There is a rebuttable presumption that a parent is unfit under this subsection with respect to any child to which that parent gives birth where there is a confirmed test result that at birth the child's blood, urine, or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act (**720 ILCS 570/102(f)**) or metabolites of such substances, the presence of which in the newborn infant was not the result of medical treatment administered to the mother or the newborn infant; and the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987 (**705 ILCS 405/2-3(c)**).

(3) General Rules

(a) Definitions

A finding of habitual drunkenness requires a finding that a parent (1) had a fixed habit of drinking to excess, and (2) used alcohol so frequently as to show an inability to control the need or craving for it. *See* ***In re J.J.***, 316 Ill. App. 3d 817 (3d Dist. 2000) (finding of unfitness reversed because, at most, evidence showed respondent drank alcohol and failed to attend treatment sessions during relevant period; but state did not establish the required frequency and extent elements). *See also* ***In re Angela D.***, 2012 IL App (1st) 112887 (parental rights terminated based on mother's drug addiction for at least one year prior to unfitness hearing; evidence included two positive tests for PCP, failure to appear for four scheduled drug tests, no documentation of attendance at NA-AA meetings and premature withdrawal from inpatient treatment).

Similarly, addiction to drugs is characterized by an inability or unwillingness to refrain from the use of controlled substances. ***In re D.M.***, 298 Ill. App. 3d 574 (3d Dist. 1998). ***In re Precious W.***, 333 Ill. App. 3d 893 (3d Dist. 2002) ("addiction to drugs" means inability or unwillingness to refrain from use of drugs where frequent indulgence has caused habitual craving, manifested by ongoing pattern of drug use; and evidence of indulgence without intermission is not necessary to prove drug addiction).

In re Tajannah O., 2014 IL App (1st) 133119 (mother did not appeal unfitness finding; termination of parental rights was in minor's best interest because mother's long-term heroin addiction and multiple relapses severely interfered with her ability to parent and minor, age 12, was in need of permanency).

(b) Birth of more than one substance-exposed newborn.

In ***In re Latifah P.***, 315 Ill. App. 3d 1122 (1st Dist. 2000), the court took note of changes in child protection laws that place renewed emphasis on permanency and parental responsibility. These changes are reflected in subparagraph (k), which was amended to include a rebuttable presumption that a mother is unfit if she gives birth to a substance exposed child after having had an earlier child adjudicated neglected for exposure to drugs.

If the State introduces medical and court records showing the existence of these facts, the burden shifts to the mother to show why she should not be found unfit. *See also* subparagraph (t) (**750 ILCS 50/1D(t)**), *infra,* which also requires a showing of at least two children born with drugs in their system, but unlike subparagraph (k), subparagraph (t) requires the State to show the mother was offered substance abuse treatment between the births. *See, e.g.,* ***In re M.S.***, 351 Ill. App. 3d 779 (1st Dist. 2004) (documentary evidence supported Ground T unfitness finding as to twins that mother gave birth to drug-exposed children before and after the twins, and that she had opportunity engage in substance abuse program); ***In re Jamarqon C.***, 338 Ill. App. 3d 639 (2d Dist. 2003) (three other of mother's eight children, who had also been born with cocaine in their systems, had been adjudicated neglected; mother had enrolled and participated at various times in drug treatment and rehabilitation programs); ***In re Jaron Z.***, 348 Ill. App. 3d 239 (1st Dist. 2004) (mother used drugs while the children were in her custody, failed to participate in a treatment program, several periods of time went by when she was not in contact with social workers, and she refused to engage in therapy). Subparagraph (t) also contains no provision for establishing a rebuttable presumption of unfitness.

(4) Particular Evidentiary Problems

(a) Determining when one year period begins

For purposes of this section, the one-year period for measuring substance addiction runs back from the time the petition for

termination of parental rights is filed. ***In re Latifah P.***, 315 Ill. App. 3d 1122 (1st Dist. 2000).

(b) Intermittent alcoholism or drug use

Proof of unfitness may be found even if the parent had periods of sobriety during the one-year period. *See* ***In re D.M.***, 298 Ill. App. 3d 574 (3d Dist. 1998) (mother gave birth to three cocaine babies). (Note from editor judge: Perhaps a better term than "cocaine baby" can be used).

(c) Rehabilitation after the termination petition is filed

In ***In the Interest of Grant M.***, 307 Ill. App. 3d 865 (lst Dist. 1999), the court upheld a finding of unfitness where father had been addicted for several years prior to commencement of TPR proceedings and completed a drug treatment program only after the State filed its petition for termination of parental rights. The court held that father's apparent recovery from drug addiction may be considered at the "best interests" hearing.

(d) Sufficiency of the evidence

In re Angela D., 2012 IL App (1st) 112887 (parental rights terminated as to the minors based on mother's drug addiction for at least one year prior to unfitness hearing; evidence included two positive tests for PCP, failure to appear for four drug tests, no documentation of attendance at NA-AA meetings, and premature withdrawal from inpatient treatment).

In re J.J., 201 Ill. 2d 236 (2002) (evidence was insufficient to support finding of habitual drunkenness during one-year time period immediately prior to filing of termination petition, and no amount of antecedent or subsequent evidence of substance abuse will sustain finding of unfitness; State must prove by clear and convincing evidence that parent was habitually drunk one year before filing TPR petition, without any reference to evidence either before or after that period; but if this initial burden is met, State may also present evidence showing that parent was habitually drunk prior to or after that period as well).

L) INTEREST IN A NEWBORN

(1) Statutory Provision

750 ILCS 50/1D(l)

(i) Failure to demonstrate a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child during the first 30 days after its birth.

(2) General Rules

This ground for unfitness is most often used when a putative father's whereabouts are unknown or where a father fails to acknowledge or take responsibility for a newborn. *See, e.g.,* ***In re Adoption of A.S.V.***, 268 Ill. App. 3d 549 (5th Dist. 1994) (mother told respondent he was the father 5 days after child's birth and father failed to acknowledge paternity, visit the child or take any responsibility for more than four months); ***In re Adoption of J.R.G.***, 247 Ill. App. 3d 104 (lst Dist. 1993) (father showed no interest in child and failed to provide support); ***In re Sheltanya S.***, 309 Ill. App. 3d 941 (lst Dist. 1999) (father took no interest in child and had repeated convictions); ***In re the Adoption of G.L.G.***, 307 Ill. App. 3d 953 (2d Dist. 1999) (finding that father not unfit reversed where evidence demonstrated he took no interest in child within 30 days of birth, even though he was aware of mother's pregnancy and child's birth).

(3) Interference with parent's efforts

In the "Baby Richard" case, ***In re Petition of Doe***, 159 Ill. 2d 347 (1994), however, the Illinois Supreme Court reversed a finding of father's unfitness under this ground where mother told father the baby died, the father had paid the prenatal expenses, actively searched for the child after learning it had not died, and filed a paternity action shortly thereafter.

M) REASONABLE EFFORTS/REASONABLE PROGRESS

(1) Statutory Provision

750 ILCS 50/1D(m)

(m) Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act [**705 ILCS 405/2-4**], or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or

abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act [**325 ILCS 5/8.2**] to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, "failure to make reasonable progress toward the return of the child to the parent" includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987. Notwithstanding any other provision, when a petition or motion seeks to terminate parental rights on the basis of item (ii) of this subsection (m), the petitioner shall file with the court and serve on the parties a pleading that specifies the 9-month period or periods relied on. The pleading shall be filed and served on the parties no later than 3 weeks before the date set by the court for closure of discovery, and the allegations in the pleading shall be treated as incorporated into the petition or motion. Failure of a respondent to file a written denial of the allegations in the pleading shall not be treated as an admission that the allegations are true.

Note: ground (m) has been amended several times to read as quoted above. Previous ground (m)-1 was held unconstitutional in ***In re H.G.***, 197 Ill. 2d 317 (2001).

(2) Introduction

Ground M is the most frequently used basis for finding parental unfitness under the Juvenile Court Act, although it is often brought in conjunction with allegations of unfitness on other grounds. It contains two distinct bases for finding parental unfitness – "reasonable efforts" and "reasonable progress." Although these grounds appear in the same statutory unfitness provision, each requires a separate analysis. *See* ***In re J.A.***, 316 Ill. App. 3d 553 (1st Dist. 2000); ***In re C.M.***, 305 Ill. App. 3d 154 (4th Dist. 1999). Because these grounds are in the disjunctive, either failure to make reasonable efforts *or* failure to make reasonable progress can be the basis for a finding of parental unfitness. *See* ***In re C.N.***, 196 Ill. 2d 181 (2001).

Note: In ***In re D.F.***, 201 Ill. 2d 476 (2002), the supreme court held that a parent could make both reasonable efforts and reasonable progress, defeating allegations of unfitness under grounds (m)(i) and (m)(ii) and still be found unfit based on one of the other grounds in 750 ILCS 50/1D. Reasonable efforts and reasonable progress are not affirmative defenses to an allegation of unfitness under one of the other subsections of section 1D (e.g., ground (d), "substantial neglect").

(3) Failure to Make Reasonable Efforts

(a) General Rules

(i) Subjective standard of review

Whether a parent has made reasonable efforts to correct the conditions that were the basis for the removal of a child from a parent's custody requires a *subjective* judgment focusing on (a) the actual efforts made by the parent to correct the conditions that were the basis for the removal of a child from the parent and (b) whether that level of effort is reasonable given that person's circumstances. See ***In re J.O.***, 2021 IL App. (3d) 210248.

(ii) Relevant time frame

In ***In re D.L.***, 191 Ill. 2d 1 (2000), the supreme court held that section 1D(m) (**750 ILCS 50/1D(m)**), limits the evidence that may be considered to matters concerning the parent's conduct during the statutory period (now 9 months) following the adjudication of neglect, abuse, or dependency. Evidence of a parent's conduct before and after the statutory period may, however, be considered during the best interest phase of the termination proceeding.

Note: After the supreme court decided ***D.L.***, the legislature added former Ground M(iii) (failure "to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication . . . .") which is now incorporated in the current version of Ground M relating to *both* "reasonable efforts" and "reasonable progress."

It should be further noted that section (m) provides that, "when a petition or motion seeks to terminate parental rights based on item (ii) of this subsection (m) [i.e., failure to make reasonable progress], the petitioner shall file with the court and serve on the parties a pleading that specifies the 9-month period or periods relied on. The pleading shall be filed and served on the parties no later than 3 weeks before the date set by the court for closure of discovery, and the allegations in the pleading shall be treated as incorporated into the petition or motion." This appears to be a drafting error, since the parents should be notified in a similar fashion as to the 9-month period or periods relied on for lack of "reasonable efforts." Therefore, the better practice is to require the party

seeking termination to file a pleading specifying the 9-month periods of no reasonable efforts as well as no reasonable progress.

In ***In re D.F.***, 208 Ill. 2d 223 (2003) the supreme court held that the 9-month period for assessment of parental fitness begins to run on the date the trial court entered its order adjudging the minors neglected, abused, or dependent, not on the date the trial court entered its dispositional order.

(iii) Scope of inquiry

In assessing a parent's efforts, the court's focus is only upon those parental deficits (i.e., "the conditions") that led to the child's removal, even if there are other reasons for continuing the child's placement in substitute care. ***In re J.A.***, 316 Ill. App. 3d 553 (lst Dist. 2000) (in contrast to reasonable progress, reasonable efforts relate to the much narrower goal of correcting the conditions that were the basis for removal of a child from a parent); ***In re C.M.***, 305 Ill. App. 3d 154 (4th Dist. 1999) (finding of unfitness for "no reasonable efforts" reversed because trial court based its termination order on mother's lack of disciplining skills, and not on lack of proper housing which was the condition that was the basis for removing the children). *See also* ***In re C.N.***, 196 Ill. 2d 181 (2001) (distinguishing reasonable efforts from reasonable progress, and holding that the benchmark for measuring a parent's "progress toward the return of the child" under Ground M(ii) encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, *and* in light of *other* conditions which later become known and which would prevent the court from returning custody of the child to the parent).

In ***C.M.***, the court quoted from language in ***In re L.L.S.***, 218 Ill. App. 3d 444, 465-66 (4th Dist. 1991) admonishing trial court judges to "direct that steps be taken . . . to achieve a reconciliation and a reunification of the family unit," and suggesting that these directions include "specific steps the respondent parents . . . must take to correct the problems in their lives . . . and specific parental deficiencies which led or contributed to the removal of the child in the first place." The court also recommended that those steps should be included in a written dispositional order, "thereby derailing any later claim that the parents either were not informed or did not understand what they were required to do." ***Id.***

When such orders are entered, the court may take judicial notice of them in later proceedings. *But see* ***In the Interest of J.G.***, 298 Ill. App. 3d 617 (4th Dist. 1998) (Error to take judicial notice of entire court file at unfitness hearing. If State wishes court to take judicial notice of portions of court file in unfitness proceeding, State can make proffer to court of material requested to be noticed. Defense counsel may then object to State's request. Such a procedure would focus court's attention on only admissible matters, as well as assist reviewing court to determine what court actually relied on re unfitness. Unfitness finding must be based only upon admissible evidence.). See also ***In re M.D.***, 2022 IL App. (4th) 210288.

(b) Particular Evidentiary Problems

(i) Meaning of "removal" and "return home"

In ***In re R.E.***, 317 Ill. App. 3d 227 (4th Dist. 2000), the court rejected a parent's argument that subsection (m) does not apply to cases where the child was not in substitute care during the 9-month period after adjudication of neglect. The court held the fact that the child was in foster care only briefly during the 9-month period was irrelevant and that the phrases "removal" and "return home" are not limited to actual physical custody of a child.

(ii) No requirement of parental fault

Failure to make reasonable efforts does not require a showing that a parent willfully failed to act. A parent may, through no fault of his or her own, be unable to comply. *See* ***In re Devine****,* 81 Ill. App. 3d 314 (5th Dist. 1980) (mentally disabled parents unable to make reasonable efforts).

(iii) Noncustodial parent

The rights of a noncustodial parent may be terminated if he or she failed to make reasonable efforts to correct the conditions that led to a child's placement in substitute care. ***In re Jason U.***, 214 Ill. App. 3d 545 (lst Dist. 1991).

(iv) Judicial Notice

The court may consider the evidence and orders at the original adjudication and disposition in assessing the reasonableness of a parent's efforts; but the court must

receive clear and convincing evidence of unfitness. ***In re Enis***, 145 Ill. App. 3d 753 (2d Dist. 1986) (reversible error where judge who did not preside at adjudication and dispositional hearing simply took judicial notice of those orders and, without receiving additional evidence, found parents were unfit; this violated parents' due process rights under ***Santosky v. Kramer***, 455 U.S. 745 (1982), since the burden of persuasion at adjudication and disposition is by a preponderance and the burden at termination is clear and convincing). In addition, exercise caution when taking judicial notice of evidence received at disposition, because the rules of evidence are relaxed at disposition yet apply at an unfitness hearing. The court may take judicial notice only of admissible evidence at the latter.

(v) Proof regarding reasonable efforts

(v-1) Cases where the State met its burden of showing unfitness for failure to make reasonable efforts include:

In re Jacorey S., 2012 IL App (1st) 113427 (minors were cared for by family friends and, when their mother took care of them, they were injured and hospitalized for bruises and fractures. Parents failed to diligently and enthusiastically involve themselves with the minors and participate in the mandatory therapy, so their parental rights were terminated for failure to make reasonable efforts or progress, or to maintain a reasonable degree of interest, concern, or responsibility for the children.

In re L.W., 383 Ill. App. 3d 1011 (1st Dist. 2008) (father unfit for lack of reasonable efforts and reasonable progress because he failed to attend most of retarded minor's medical appointments or any IEP meetings and steadfastly denied the child had special needs), *vacated and remanded on other grounds*, 229 Ill. 2d 667 (2008) (requiring new best interests hearing based on "changed circumstances" in child's foster home).

In re R.E., 317 Ill. App. 3d 227 (4th Dist. 2000) (failure to address issues that led to removal supported finding of unfitness despite fact that child had resided with her father during significant portions of the time during the nine months after adjudication).

In re Latifah P., 315 Ill. App. 3d 1122 (1st Dist. 2000) (although mother made some effort toward overcoming her

drug problem, it was not a reasonable amount of effort within the relevant time period).

In the Interest of D.J.S., 308 Ill. App. 3d 291 (3d Dist. 1999) (father made limited effort at contact with child and failed to attend parenting classes or obtain an alcohol or psychological evaluation).

In the Interest of J.J., 307 Ill. App. 3d 71 (3d Dist. 1999) (mother unfit for failing to make reasonable efforts because she did not complete substance abuse treatment, continued to abuse drugs and alcohol, and failed to visit children for more than three years).

In re J.P., 261 Ill. App. 3d 165 (4th Dist. 1994) (parental rights may be terminated if a parent makes efforts to correct some, but not all, of the problems that led to a child's removal).

(v-2) Cases where the State failed to meet its burden of showing unfitness for failure to make reasonable efforts include:

See ***In re J.H.,*** --- N.E.3d (2020). Father was incarcerated but would be released in a year, evidence indicated he had been doing well with visitation and services prior to incarceration, and no other evidence presented to trial court to support state's petition (ground b, interest concern or responsibility)

In re P.M.C., 387 Ill. App. 3d 1145 (5th Dist. 2009) (because State presented testimony of therapists regarding defendant's failure to participate in meaningful therapy for sex abuse of minor child during period of time outside of relevant nine-month period, trial court necessarily based its finding of respondent's failure to make reasonable efforts solely on his refusal to admit that he had sexually abused his daughter, thereby depriving defendant of his Fifth Amendment right against self- incrimination).

In re J.A., 316 Ill. App. 3d 553 (lst Dist. 2000) (father made reasonable efforts and reasonable progress by fully complying with court and DCFS directives to submit to substance abuse and psychological evaluations, tested negative for drugs, underwent anger management counseling as recommended by psychological evaluation, remained in contact with worker, allowed inspection of his

home, visited minor at least once per week and provided financial support for minor).

In re J.J., 316 Ill. App. 3d 817 (3d Dist. 2000) (TPR reversed because finding that mother failed to make reasonable efforts and progress to overcome her alcoholism was contrary to manifest weight of evidence).

In re H.C., 305 Ill. App. 3d 869 (4th Dist. 1999) (reversing trial court finding of unfitness and holding that mother who cooperated with DCFS, admitted risk posed by boyfriend, and ceased romantic relationship with him had made reasonable efforts notwithstanding proof of some continued contact with him).

In re C.M., 305 Ill. App. 3d 154 (4th Dist. 1999) (TPR reversed because trial court found mother failed to make "reasonable efforts;" but State failed to prove she was unable to provide adequate housing, which was the reason children were originally removed from mother's custody).

In re M.F., 304 Ill. App. 3d 236 (5th Dist. 1999) (mother complied with service plan, including required psychiatric evaluation, drug counseling and parenting classes; trial court's unfitness finding based in part upon inadmissible hearsay and not clear and convincing evidence).

(4) Failure to Make Reasonable Progress

(a) General Rules

(i) Objective standard

The Adoption Act does not contain a definition of "reasonable progress." In ***In re C.N.***, 196 Ill. 2d 181, 211 (2001), the Illinois Supreme Court defined this term to mean "demonstrable movement toward the goal of reunification." This is an objective standard, which focuses on the amount of progress toward return of the child to the parent that it is reasonable to expect under the circumstances without making allowance for handicaps or difficulties peculiar to the parent. *See* ***In re April C.***, 345 Ill. App. 3d 872 (1st Dist. 2004) (at very least, reasonable progress requires measurable or demonstrable movement toward the goal of reunification); ***In re A.A.***, 324 Ill. App. 3d 227 (5th Dist. 2001); ***In re C.M.***, 305 Ill. App. 3d 154 (4th Dist. 1999).

In ***In the Interest of E.M. Jr.,*** 295 Ill. App. 3d 220 (4th Dist. 1998), the court concluded that reasonable progress has been made "if the trial court can objectively conclude that the parent's progress is sufficiently demonstrable and is of such quality that the child can be returned to the parent within the near future."

(ii) Relevant time frame

The date of adjudication of neglect, as opposed to date of the dispositional order, commenced the applicable nine-month period during which "reasonable efforts" and "reasonable progress" were to be measured. ***In re Jacien B.***, 341 Ill. App. 3d 876 (2d Dist. 2003). In ***In re D.L.***, 191 Ill. 2d 1 (2000), the Illinois Supreme Court ruled that, in considering whether a parent has made reasonable progress toward return of a child, the judge may only consider evidence of parental conduct that occurred within the statutory period (now, 9 months) after the adjudication of abuse, neglect or dependency. *See also* ***In re Tiffany M.***, 353 Ill. App. 3d 883 (2d Dist. 2004). The Court, in ***In re D.L.,*** rejected the argument that the statutory time frame establishes a minimum period for considering parental progress before the filing of a petition for termination of parental rights. Parental conduct after expiration of the relevant 9-month time period, however, may be considered in the second phase of the termination proceeding, when the judge must consider whether termination is in a child's best interest.

Note should be taken of the subsequent amendments to subsection (m).

See also ***In re R.L.***, 352 Ill. App. 3d 985 (1st Dist. 2004) (trial court stated that it had considered the fact that mother's actions were rated "unsatisfactory" three times, from April to October of one year, October to April of the following year, and the subsequent period of April to October, and, because court specified the nine-month periods it considered, there was no error in court's determination that mother had not made reasonable progress).

(iii) Scope of inquiry

In ***In re C.N.***, 196 Ill. 2d 181 (2001), the Illinois Supreme Court resolved a difference of opinion at the appellate court level on the question of what standard should be used in measuring progress under the "reasonable progress" prong

of subparagraph (m). The Court rejected the Second District's conclusion that a parent's progress toward return home should be limited to an examination of the facts that gave rise to the child's removal from the home and the parent's efforts to correct those conditions. Instead, the Court adopted the Fourth District's reasoning that "the measure of reasonable progress encompasses those conditions *which could give rise* to a finding of abuse or neglect, not merely those conditions which led to the initial removal of the minor." 196 Ill. 2d at 210. The benchmark for measuring progress toward return of the child encompasses the parent's compliance with the service plans and the court's directives, considering the condition which gave rise to the removal of the child, *and* in light of conditions which *later* become known which would prevent the court from returning custody to the parent.

(b) Particular Evidentiary Problems

(i) Compliance with service plans

The Juvenile Court Act requires trial judges at several points in abuse, neglect or dependency proceedings to admonish parents that they must comply with the terms of the service plan and correct the conditions that led to the child's removal from the home or face the risk of loss of their parental rights. *See* **705 ILCS 405/2-21(1); 2-22(6)**.

The Adoption Act (**750 ILCS 50/1(D)(m)**), now provides that if a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act [**325 ILCS 5/8.2**] to correct the conditions that were the basis for removal of the child, and if services were made available, then failure to make reasonable progress includes "the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care" within 9 months of adjudication *or* during any 9-month period after the end of the initial 9-month period.

The Illinois Supreme Court has recognized the important role that service plans play in securing permanency for children. Nonetheless, in ***In re C.N.***, 196 Ill. 2d 181 (2001), the Court ruled that compliance with service plans is not the sole measure of whether a parent has made reasonable progress toward return of a child home. Instead, in addition to examining whether a parent has substantially fulfilled his

or her obligations under the service plan, the trial court should also consider such factors as the parent's progress in complying with court directives. The overall focus of the trial court must remain on the parent's progress relative to the child's needs.

Several appellate level opinions contain dicta that DCFS service plans should be directed, at least primarily, to parental deficiencies that led to removal of the child from the home, and that it is possible for a parent to make reasonable progress without following specific DCFS directives. *See*, *e.g.*, ***In re A.J.***, 296 Ill. App. 3d 903 (2d Dist. 1998). *Cf.* ***In re S.J.***, 233 Ill. App. 3d 88 (2d Dist. 1992).

(ii) Proof regarding reasonable progress

(ii-1) Cases where the State met its burden of showing failure to make reasonable progress include:

In re Je. A., 2019 IL App. (1st) 190467; failure to complete service plans for two children during relevant 9-month period; "despite years of services, the boys were simply not closer to reunifying with respondent. That respondent's personal circumstances prevented him from making reasonable progress is irrelevant to the "objective standard" (citing ***In re F.P.,*** 2014 IL App. (4th) 140360.

In re M.I., 2016 IL 120232 (father's failure to make reasonable progress toward reunification with child because he was unable to comply with service plan tasks due to mental retardation was no defense to allegation of unfitness, as "willful failure to comply" is not an element of unfitness).

In re Phoenix F., 2016 IL App (2d) 150431 (father did not complete service plan conditions, including receiving mental health treatment and thus failed to make reasonable progress).

In re K.I., 2016 IL App (3d) 160010, where mother's history of mental illness and substance abuse formed basis for adjudication of wardship, the court ordered her to cooperate with DCFS, undergo random drug testing and follow all recommendations. Her failure to comply with services or address issues related to the reasons why her child was removed from her care, and her continued frequent use of marijuana, established her failure to make reasonable progress.

In re S.H., 2014 IL App (3d) 140500 (mother failed to make reasonable progress to correct the conditions which led to removal of children from her custody by continuing to have a relationship with child's abuser).

In re A.S., 2014 IL App (3d) 140060 (termination upheld under manifest weight of the evidence standard. Trial court found mother failed to make reasonable progress where she was completing some court-ordered tasks such as visitation, stable housing, and employment, but was not successfully attending counseling, had missed several drug drops, and continued to reside and have a "toxic" relationship during the relevant 9-month period).

In re A.L., 409 Ill. App. 3d 492 (4th Dist. 2011) (mother did not make reasonable progress towards the return of her child because, although she was rated satisfactory on some specific client-service-plan goals, the report found her unsatisfactory overall and that she was not complying with drug screening tests, substance abuse treatment and mental health treatment).

In re L.W., 383 Ill. App. 3d 1011 (1st Dist. 2008) (father unfit for lack of reasonable progress for failing to attend most of retarded minor's medical appointments or any IEP meetings and steadfastly denied child had special needs), *vacated and remanded on other grounds*, 229 Ill. 2d 667 (2008) (requiring a new best interest hearing based on "changed circumstances" in foster home).

In re Reiny S., 374 Ill. App. 3d 1036 (1st Dist. 2007) (finding that mother was not unfit reversed due to her failure to make reasonable progress in first nine months after neglect adjudication because, despite trial court's finding that caseworkers' testimony was incredible, mother was incarcerated for aggravated battery of a fireman during a significant portion of that period and did not engage in services; moreover, the trial court relied on evidence outside the 9-month period; however, the appellate court affirmed the finding that father was not unfit. **Note**: this case has a chaotic record).

In re Jordan V., 347 Ill. App. 3d 1057 (4th Dist. 2004) (parents cancelled or were late for numerous individual and couples' counseling sessions even though they knew children's return depended on their participation, parents

were not cooperative in counseling leading to unsuccessful discharge, and generally failed to comply with family services directives).

(ii-2) Cases where the State did not meet its burden of showing failure to make reasonable progress include:

In re S.L., 2014 IL 115424 (where parental unfitness is based on lack of progress during any nine-month period following initial 9-month period after adjudication, statute calls for separate notice specifying the particular nine-month period or periods upon which State is relying; but failure of State to file and serve said notice was a pleading defect which was waived and forfeited when not raised in the trial court where it could have been corrected and the parties proceeded as if all possible nine-month periods were relevant; therefore, claim of failure to state cause of action was without merit).

In re M.F., 304 Ill. App. 3d 236 (5th Dist. 1999) (State failed to show lack of reasonable progress where mother substantially complied with requirement of service plan and other evidence of unfitness based on hearsay).

In re A.J., 296 Ill. App. 3d 903 (2d Dist. 1998) (State failed to introduce competent evidence that father had a drug problem that required drug testing required by DCFS).

(iii) Non-Custodial Parent

The rights of a noncustodial parent may be terminated if he or she failed to make reasonable progress toward reunification with the child. ***In re K.S.***, 203 Ill. App. 3d 586 (4th Dist. 1990); ***In re J.R.Y.***, 157 Ill. App. 3d 396 (4th Dist. 1987).

N) INTENT TO FORGO PARENTAL RIGHTS

(1) Statutory Provision

750 ILCS 50/1D(n)

(n) Evidence of intent to forgo his or her parental rights, whether or not the child is a ward of the court, (1) as manifested by his or her failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or by court order, or (iii) to maintain

contact with or plan for the future of the child, although physically able to do so, or (2) as manifested by the father's failure, where he and the mother of the child were unmarried to each other at the time of the child's birth, (i) to commence legal proceedings to establish his paternity under the Illinois Parentage Act of 1984 (**750 ILCS 45/1 *et seq.***) [repealed], the Illinois Parentage Act of 2015 [**750 ILCS 46/101 *et seq*.**], or the law of the jurisdiction of the child's birth within 30 days of being informed, pursuant to Section 12a of this Act (**750 ILCS 50/12a**), that he is the father or the likely father of the child or, after being so informed where the child is not yet born, within 30 days of the child's birth, or (ii) to make a good faith effort to pay a reasonable amount of the expenses related to the birth of the child and to provide a reasonable amount for the financial support of the child, the court to consider in its determination all relevant circumstances, including the financial condition of both parents; provided that the ground for termination provided in this subparagraph (n) (2) (ii) shall only be available where the petition is brought by the mother or the husband of the mother.

Contact or communication by a parent with his or her child that does not demonstrate affection and concern does not constitute reasonable contact and planning under subdivision (n). In the absence of evidence to the contrary, the ability to visit, communicate, maintain contact, pay expenses and plan shall be presumed. The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting that intent, shall not preclude a determination that the parent has intended to forgo his or her parental rights. In making this determination, the court may consider but shall not require a showing of diligent efforts by an authorized agency to encourage the parent to perform the acts specified in subdivision (n).

It shall be an affirmative defense to any allegation under paragraph (2) of this subsection that the father's failure was due to circumstances beyond his control or to impediments created by the mother or any other person having legal custody. Proof of that fact need only be by a preponderance of the evidence.

(2) General Rules

(a) Failure to maintain interest in a child

Parental rights may be terminated under this ground if a parent failed to contact or maintain a reasonable degree of interest in a child for a 12-month period of time. The 12-month period begins to run on the date of the parent's last visit or communication with child. ***Douglas R.S. v. Jennifer A.S.***, 360 Ill. Dec. 122 (5th Dist. 2012). Any

affirmative evidence that a parent offers during the unfitness portion of the adoption hearing for not communicating with child for 12 months is limited to that 12-month period, but evidence outside that period is allowed at the second stage best-interests hearing. ***Id.*** See e.g., ***In re M.W.***, 2019 IL App. (1st) 191002 (2019). (father made no effort to visit or inquire about minor's welfare for nearly three years after notification).

This section involves an objective determination as to whether a parent maintained meaningful contact with a child and creates a presumption that, unless contrary evidence is introduced, a parent had the ability to visit or communicate with his or her child. The trial court may, but is not required to, consider an agency's efforts to foster a parent-child relationship.

As previously discussed, *see* section 13.35, *supra,* this section appears to be a legislative reaction to earlier cases construing "abandonment" as a basis for parental unfitness to depend completely upon the subjective intent of the parent.

In ***In the Interest of Grant M.***, 307 Ill. App. 3d 865 (1st Dist. 1999), the court upheld a finding of unfitness against a father on ground that he intended to forgo his parental rights by failing, for a period of five years, to communicate with DCFS, the child's legal guardian, or the private agency in the case. It was irrelevant that the father had become much more engaged in the child's life in the year preceding the termination hearing.

(b) Failure to assume responsibilities of fatherhood

Unfitness may also be shown under this section if a father who was not married to the child's mother at the time of the child's birth fails to take affirmative steps to acknowledge paternity or fails to provide support to the child.

A father's rights may be terminated if he fails to acknowledge paternity under the provisions of the Illinois Parentage Act, **750 ILCS 46/101 *et seq***. A putative father must begin such proceedings within 30 days after receiving notice under **750 ILCS 50/12a**.

The Act creates an affirmative defense to a finding of unfitness under this section requiring active steps to acknowledge paternity, if a father can demonstrate by a preponderance of the evidence that the child's mother or an agency frustrated his good faith efforts to assume the responsibilities of fatherhood.

O) FAILURE TO PROVIDE

(1) Statutory Provision

750 ILCS 50/1D(o)

(o) Repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, or shelter.

(2) General Rules

This unfitness ground is similar to other grounds relating to parental behavior that fails to meet the minimum level of care expected of parents. It is most likely to be used in "dirty house" type cases when children are repeatedly neglected. *See* ***In re T.E.***, 128 Ill. App. 3d 449 (5th Dist. 1984).

P) MENTAL DISABILITY

(1) Statutory Provision

750 ILCS 50/1D(p)

(p) Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability as defined in Section 1-116 of the Mental Health and Development Disabilities Code (**405 ILCS 5/1-116**), or developmental disability as defined in Section 1-106 of that Code (**405 ILCS 5/1-106**), and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period. However, this subdivision (p) shall not be construed to permit a licensed clinical social worker to conduct any medical diagnosis to determine mental illness or mental impairment.

(2) General Rules

Under this ground for unfitness, the General Assembly attempted to balance the rights of parents who are unable to parent adequately because of mental illness, an intellectual disability (retardation) or other mental impairment, and the right of the child to enjoy a safe and permanent home. Unfitness may be demonstrated if a parent's mental disability seriously interferes with his or her ability to carry out parental responsibilities, and if there is reason to believe that the disability and its effects will last "beyond a reasonable time."

(a) Constitutionality of subparagraph (p)

The constitutionality, on its face, of subparagraph (p) was upheld ***In re R.C.***, 195 Ill. 2d 291 (2001). The Illinois Supreme Court strictly scrutinized the statute because of its effect on the fundamental right of parents and children to maintain a parent-child relationship. In upholding the Act in its current form, the Court rejected the argument that due process requires a judge to choose a less restrictive alternative than termination of parental rights when a parent is unable to carry out his or her parental responsibilities as a result of a mental disability over which he or she has no control.

(b) Definitions

(i) Intellectual Disability

The Mental Health and Developmental Disabilities Code, (**405 ILCS 5/1-116**), defines intellectual disability as "significantly subaverage general intellectual functioning which exists concurrently with impairment in adaptive behavior, and which originates before the age of 18."

(ii) Mental Illness

The Mental Health and Developmental Disabilities Code (**405 ILCS 5/1-129**) defines mental illness as "a mental, or emotional disorder that substantially impairs a person's thought, perception of reality, emotional process, judgment, behavior, or ability to cope with the ordinary demands of life, but does not include a developmental disability, dementia or Alzheimer's disease absent psychosis, a substance abuse disorder, or an abnormality manifested only by repeated criminal or otherwise antisocial conduct."

(3) Particular Evidentiary Problems

(a) Evidence

(i) Competent evidence

To meet its burden of proving parental unfitness by clear and convincing evidence under this subparagraph, the State must introduce "competent" evidence from a mental health expert that a parent suffers from a mental disability, and that the disability renders the parent unable to adequately care for his or her child now and in the future. *See* ***In re M.F.***, 326 Ill.

App. 3d 1110 (4th Dist. 2002) (State must (1) present competent evidence that the parent suffers from a mental impairment, mental illness, or mental retardation sufficient to prevent the discharge of normal parental responsibilities; and (2) present sufficient evidence to conclude that the inability will extend beyond a reasonable time period); ***In re R.C.***, 195 Ill. 2d 291 (2001) ("competent" language in Act refers to the type of evidence and not the degree of required proof).

(ii) Sufficient justification

The Act requires the State to provide "sufficient justification" that a parent's inability to discharge his or her parental duties will continue for a reasonable time. Under this section, "a medical prognosis need not be absolutely conclusive to satisfy the requirement of the statute." *See* ***In re J.A.S.***, 255 Ill. App. 3d 822 (5th Dist. 1994); ***In re J.B.***, 198 Ill. App. 3d 495 (5th Dist. 1990).

(iii) Reasonable time

The Act does not provide a specific measure of what is meant by "a reasonable time period." The Act appears to envision a standard of "foreseeable future" as the objective standard for determining how long a parent will be unable to discharge parental responsibilities as a result of mental disability. *See* ***In the Interest of A.J.***, 269 Ill. App. 3d 824 (lst Dist. 1994); ***In re E.J.F.***, 161 Ill. App. 3d 325 (4th Dist. 1987).

(iv) Summary judgment

Proof of mental disability and ability to discharge parental duties is a "nuanced, fact-intensive question" that does not lend itself to summary judgment. *See* ***In re T.J.***, 319 Ill. App. 3d 661 (lst Dist. 2001), *reversed in part, vacated in part on other grounds*, 202 Ill. 2d 282 (2002). The terms "mental illness" and "mental impairment," as used in section 1D(p) of the Adoption Act (**750 ILCS 50/1 D(p)**), do not require that those conditions originate prior to the age of 18. ***In re Michael M.***, 364 Ill. App. 3d 598 (2d Dist. 2006).

(v) Ability to care for other children

The fact that a parent is able to care for another child is not determinative on the question of whether a parent can fulfill

his or her parental responsibilities to the child who is the subject of a termination petition is alleging unfitness under subparagraph (p). *See* ***In re R.M.***, 219 Ill. App. 3d 747 (lst Dist. 1991).

(b) Proof of unfitness

(i) Unfitness was found in the following cases:

In re K.B., 2019 IL App (4th) 190496, where sole ground was that mother's bipolar disorder prevented her from discharging parental responsibilities and that the inability would persist for an unreasonably long time. Mother, at 28 years old, had been hospitalized 25-30 times before being involuntarily admitted.

In re Daphnie E., 368 Ill. App. 3d 1052 (1st Dist. 2006) (father unfit because he suffered from mental retardation and narcissistic personality disorder that made him incapable of properly parenting child and appreciating his wife's impairments).

In re M.F., 326 Ill. App. 3d 1110 (4th Dist. 2002) (clinical psychologist testified that mother was diagnosed with a schizo-affective disorder and paranoid schizophrenia, physician and psychologist testified that mother's condition was chronic, had existed for over 10 years, and would continue indefinitely, and that mother's progress for improvement is poor).

In re B.S., 317 Ill. App. 3d 650 (lst Dist. 2000) (mother hospitalized repeatedly and failed to take medicine). **NOTE:** ***In re R.C.***, 195 Ill. 2d 291 (2001) overruled the "rational basis" test applied in ***In re B.S.*** to uphold the constitutionality of Ground P.

In re M.M., 303 Ill. App. 3d 559 (2d Dist. 1999) (clinical psychologist testified as to mother's mild retardation and personality disorders and trial court could reasonably infer that mental disability occurred before age 18; and, regardless, the State was not required to prove that she was mentally retarded since a finding of unfitness can be based on mental impairment sufficient to prevent a parent from discharging normal responsibilities).

In the Interest of A.J., 269 Ill. App. 3d 824 (lst Dist. 1994) (court not required to compel mentally ill parent to accept treatment).

(ii) Unfitness was not found in the following cases:

In re Cornica J., 351 Ill. App. 3d 557 (2d Dist. 2004) (while father's 69 IQ and mother's 74 IQ undoubtedly affected their parenting skills, "a low IQ does not automatically translate into an inability to discharge parental responsibilities" and psychologist opinion that parents were unfit was based upon only three interactions with parents, other witnesses stated that mother and father interacted with children and had a bond with them, and evidence indicated that mother and father were fully oriented to reality).

In re C.M., 305 Ill. App. 3d 154 (4th Dist. 1999) (State's evidence "was not close to meeting this standard" under Ground P as it presented no evidence that respondent was mentally impaired, ill, or retarded, and "the trial court specifically found respondent to be intelligent and otherwise capable").

In re M.W., 199 Ill. App. 3d 1050 (3d Dist. 1990) (no evidence of severe personality disorder).

(4) Issues on Appeal from Terminations for Mental Disability

Cases:

In re J.B., 204 Ill. 2d 382 (2003) (judgment vacated and appeal dismissed mother's failure to obtain stay of termination order and passage of more than a year from children's adoption order rendered appeal moot).

In re Tekela, 202 Ill. 2d 282 (2002) (adoptions that followed termination of parental rights but occurred before appellate decision and passage of statutory period to challenge adoptions rendered termination issue moot, and thus appellate court's judgment reversing termination order should have been vacated as moot).

Q) UNINVOLVED INCARCERATED PARENT

(1) Statutory Provision

750 ILCS 50/1D(r)

(r) The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated as a result of criminal conviction at the time the petition or motion for termination of parental rights is filed, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights.

(2) General Rules

Prior to amendments to the Adoption Act's grounds for unfitness, Illinois courts were reluctant to find that parental incarceration alone was a basis for finding a parent unfit. *See, e.g.*, ***In re Sanders***, 77 Ill. App. 3d 78 (4th Dist. 1979) (if parent's lack of contact with the child is result of parent's imprisonment, lack of contact does not constitute abandonment). Typically, the issue of parental incarceration arose when the state sought to prove unfitness on grounds of depravity. ***In re Abdullah***, 85 Ill. 2d 300 (1981) (father's single conviction sufficient to show depravity when crime involved father's exceptionally brutal murder of child's mother). The Act now contains two express grounds for unfitness that make a parent's incarceration a basis for termination of parental rights under certain circumstances. (**705 ILCS 50/1 D(r)-(s)**). Depravity may still be used as the basis for a termination petition, however, particularly where the evidence does not satisfy the specific requirements of subparagraphs (r) or (s).

Subparagraph (r) addresses the situation of a (1) child who is in the temporary custody or guardianship of DCFS, (2) a parent who is incarcerated at the time a termination petition is filed, (3) the parent had little or no contact with and/or support for the child prior to his or her incarceration, and (4) the parent will be unable to parent the child within two years of the filing of the petition as a result of the incarceration. In ***In re S.R.***, 326 Ill. App. 3d 356 (2d Dist. 2001), the court defined and applied the term "little contact" as used in the statute and upheld termination of father's rights where the children had been largely reared by grandparents; between mid-1994 and August 2000 father was at liberty for only 10 months; although he may have had contact with the children when he was not incarcerated; he admitted he was unable to raise them due to alcohol, drug, and family problems; that he never requested visitation during his time

in prison; and that he had not supported them. *See also* ***In re M.H.***, 2015 IL App (4th) 150397 (Ground R requires incarceration as a result of a criminal conviction); ***In re Donald A.G.***, 357 Ill. App. 3d 934 (4th Dist. 2005) (trial court reversed because third element of Ground R unfitness not proven as father was incarcerated 2 months prior to birth of minor), *rev'd on other grounds*, 221 Ill. 2d 234 (2006) (presumption of depravity under Ground I not rebutted where father was convicted of predatory criminal sexual assault of a child).

Note: The State did not seek supreme court review of the appellate court's Ground R ruling in ***In re Donald A.G.*** and, instead, sought review of the Ground I ruling only. In ***In re M.H.***, 2015 IL App (4th) 150397, a Ground R case where the father was in jail awaiting trial at the time his child was born, the State argued that the reversal of ***In re Donald A.G.*** meant that the unreviewed Ground R ruling of the Fourth District had "little precedential value." The appellate court instead affirmed the trial court's finding of unfitness by distinguishing ***In re Donald A.G.*** as follows:

> [A]lthough M.H. was born after respondent went to jail, she was born before he was "incarcerated as a result of criminal conviction." Whenever section 1(D)(r) speaks of "incarceration," it must mean the "incarceration" to which it referred at the beginning: "incarcera[tion] as a result of a criminal conviction."

It should be noted that, to date, there are no appellate decisions in other districts that have followed the Ground R analysis in ***In re Donald A.G.*** *Compare* ***In re Gwynne P.,*** 215 Ill. 2d 340 (2005), discussed *infra*.

R) REPEATED INCARCERATIONS

(1) Statutory Provision

750 ILCS 50/1D(s)

(s) The child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child.

(2) General Rules

In addition to focusing on uninvolved parents who are incarcerated for longer than two years, (*see* **750 ILCS 50/1D(r)**), the Act also makes repeated incarceration as a result of criminal convictions a basis for a

finding unfitness where the incarcerations prevented the parent from discharging parental duties. **750 ILCS 50/1D(s)**.

In ***In re D.D.***, 196 Ill. 2d 405 (2001), the Illinois Supreme Court emphasized that the language of subparagraph (s) is "repeated incarceration" and not "repeated incarcerations." This led the Court's majority to conclude that the General Assembly intended courts to consider incarcerations that occurred both before and after the birth of the child who is the subject of the termination petition. Chief Justice Harrison dissented, noting that the father whose rights were at issue had only been incarcerated once during the child's lifetime. *See also* ***In re Gwynne P.***, 215 Ill. 2d 340 (2005) (incarceration that predates the child's birth can also be considered if it has impeded a parent's ability to acquire appropriate life skills or provide the types of physical, mental, moral, material, and emotional support children require). The date on which a termination petition is filed does not mark the ending point for assessing the impact "repeated incarceration" has had on a person's ability to parent; the court should look beyond the filing of the termination petition and consider the parent's experiences up to the time of the hearing on the petition. ***Id.*** A single incarceration will support a finding of unfitness if it prevented the discharge of parental duties, including providing the child with a stable home and the necessary physical, emotional, and financial support. ***Id.***

Other cases include:

In re Brandon A., 395 Ill. App. 3d 224 (5th Dist. 2009) (father had, at time of fitness, spent nearly half of child's life incarcerated, and had been incarcerated for two criminal convictions and was in federal prison on federal charges, to be released when minor turned age 23).

In re Andrea D., 342 Ill. App. 3d 233 (2d Dist. 2003) (finding of father's parental unfitness where father had history of repeated incarceration, most recently for acts committed after his daughter's birth, which prevented him from discharging his parental responsibilities such as providing emotional or financial support or stability to his daughter).

In re E.C., 337 Ill. App. 3d 391 (1st Dist. 2003) (finding of unfitness where the parent has "been repeatedly incarcerated" did not require proof of more than one conviction; the emphasis was on the inability to discharge parental responsibilities, rather than on the number of convictions and incarcerations).

In re M.P., 324 Ill. App. 3d 686 (5th Dist. 2001) (trial court erroneously considered children's "best interests" when it found that State failed to meet its burden of unfitness where incarcerated father, who had five felony convictions, had taken steps to take control of his life, completed parenting classes, obtained his high school diploma, received alcohol treatment, was

neither violent nor abusive toward the minors, and had provided for the minors prior to his incarceration):

In re D.P., 319 Ill. App. 3d 554 (3d Dist. 2001) (upholding the constitutionality of subparagraph (s) and affirming trial court's order terminating parental rights where father was incarcerated twice shortly after child's birth and made no effort to establish a relationship after learning of his paternity).

In re M.M.J., 313 Ill. App. 3d 352 (4th Dist. 2000) (State met its burden of showing unfitness despite father's occasional gifts and visits where father's repeated incarcerations kept him from providing child with financial support or stability).

(3) Particular Evidentiary Problems

(a) Stay pending appeal of criminal conviction

In ***In re Marriage of T.H.***, 255 Ill. App. 3d 247 (5th Dist. 1993), the court held that it was in the interests of justice and judicial economy "to refuse to stay the termination proceeding while the respondent father exhausted all appellate avenues particularly when the conviction had been affirmed already by the appellate court."

S) SUBSTANCE ABUSE

(1) Statutory Provision

750 ILCS 50/1D(t)

(t) A finding that at birth the child's blood, urine, or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act (**720 ILCS 570/102**), or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant was the result of medical treatment administered to the mother or the newborn infant, and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987 (**705 ILCS 405/2-3**), after which the biological mother had the opportunity to enroll in and participate in a clinically appropriate substance abuse counseling, treatment, and rehabilitation program.

(2) General Rules

Subparagraph (t) is intended to allow a mother to be found unfit who; (1) has given birth to one substance involved child; and (2) has been offered appropriate clinical services; and (3) who has given birth to another child who is born substance involved. To meet its burden, the State must prove: (1) that a prior child was found substance exposed (certified copy of finding); and (2) that the subject child was born with a controlled substance in his or her system (medical records or testimony), and that treatment services were made available between the time of the two births.

This ground for unfitness is similar to the ground in subparagraph (k). Under subparagraph (k), however, the birth of more than one substance-involved child creates a rebuttable presumption of unfitness and, does not require proof that a mother was given an opportunity for rehabilitation.

(3) Cases Relating to Evidence of Substance Abuse as a Ground

In re Jamarqon C., 338 Ill. App. 3d 639 (2d Dist. 2003) (three other of mother's eight children, who had also been born with cocaine in their systems, had been adjudicated neglected);

In re M.S., 351 Ill. App. 3d 779 (1st Dist. 2004) (children's older sister had been previously found neglected by mother because she had been born exposed to drugs, and state produced certified medical records of children's birth which indicated that urine of mother and that of children had tested positive for marijuana and opiates).

(4) Constitutionality

In re Jamarqon C., 338 Ill. App. 3d 639 (2d Dist. 2003) (section providing that one of the grounds of unfitness includes a finding that at birth the child's blood, urine, or meconium contained any amount of a controlled substance, and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor, does not violate procedural due process because a prior adjudication of a neglected minor is but one factor in the unfitness determination and the State still must show by clear and convincing evidence that mother was given the opportunity to get drug treatment yet still subsequently gave birth to another child who tested positive for drugs).

13.40 BEST INTEREST DETERMINATION

A) PROCEDURE AT BEST INTEREST STAGE

(1) Right to Counsel

Parties are entitled to effective assistance of counsel in termination of parental rights proceedings, including during the best interest phase. ***In re R.G.***, 165 Ill. App. 3d 112 (2d Dist. 1988). Once counsel has been appointed in a child protection proceeding, the appointment continues throughout the case, including the termination of parental rights phase. An attorney who seeks to withdraw from the case must do so pursuant to **Supreme Court Rule 13**.

See ***In re D.M.,*** --- N.E. ---, 2020 IL App. (1st) 200103 (2020). Pursuant to Rule 13, father's first appointed counsel withdrew after client missed three court appearances, hadn't been in contact for 7 months. New counsel appointed, and father missed two appearances, no explanation for absences. Not entitled to a continuance; right to counsel derives from statute. Father had notice and opportunity to be heard but did not appear.

(2) Parental Right to Be Present

A parent has a right to be present at each stage of the termination proceeding, although his or her presence is not mandatory. *See* ***In re C.L.T.***, 302 Ill. App. 3d 770 (5th Dist. 1999) (trial court did not err in going forward with termination hearing where mother received notice of hearing date and caseworker had contacted mother about the hearing).

See ***In re Es. C.,*** 2021 IL App. (1st) 210197. Best interests' portion of TPR trial took place after Cook County order was issued directing matters to be conducted by videoconference. Follows decision in ***In re R.D.,*** 2021 IL App. (1s) 201411. Court also mentioned IL **Supreme Court Rule 241**, providing for remote participation via videoconferencing if "good cause" is shown.

B) EVIDENCE

(1) Burden and Standard of Proof

At the best interest's stage of a termination of parental rights trial, the State bears the burden of proving that termination is in the child's best interests, by a preponderance of the evidence. ***In re D.T.***, 212 Ill. 2d 347 (2004).

(2) Rules of Evidence

The Adoption Act is silent on the evidentiary rules to be used at the best interest phase of a termination proceeding. By analogy to the dispositional phase of an abuse, neglect or dependency proceedings, all relevant evidence that would be helpful to the judge in making the best interest decision is admissible. ***In re Jay H.***, 395 Ill. App. 3d 1063 (4th Dist. 2009). *See* ***In re Al. P.,*** 2017 IL App. (4th) 170435.

A trial court need not articulate any specific rationale for its decision that termination of parental rights is in child's best interests, and a reviewing court need not rely on any basis used by a trial court below in affirming trial court's decision. ***In re Jaron Z.***, 348 Ill. App. 3d 239 (1st Dist. 2004). The trial court's determination concerning whether termination of parental rights is in a child's best interests will not be reversed unless it is against the manifest weight of the evidence or the trial court has abused its discretion. ***Id.*** A court will not err in finding that it was in child's best interest to terminate parental rights, where although court did not explicitly mention each factor for termination of parental rights, it was not required to do so when it had received proper evidence from a caseworker who had worked with the minor at issue. ***In re Deandre D.***, 405 Ill. App. 3d 945 (1st Dist. 2010). *Accord* ***In re Tajannah O.,*** 2014 IL App (1st) 133119 (in assessing minor's best interest, trial court is to look to all matters bearing on her welfare; and best interest determination need not make an explicit reference to each factor and reviewing court need not rely on any basis used by trial court in affirming its decision).

(3) Evidence of Child's Relationship with Biological Parent

Parental behavior following an adjudication of abuse or neglect is potentially relevant and admissible at a best interest hearing relating to termination of parental rights. *See* ***In re S.B.***, 348 Ill. App. 3d 61 (1st Dist. 2004).

(4) Evidentiary Issues

In ***In re A.W., Jr.***, 397 Ill. App. 3d 868 (3d Dist. 2010) the court affirmed the trial court's ruling barring the mother from calling her son as a witness at the best interest's portion of a termination trial. Under the analysis in ***Mathews v. Eldridge***, 424 U.S. 319 (1976), the mother's need to elicit the son's testimony was minimal since he had consistently told case workers that he did not want to be reunited with his mother, and the evidence was undisputed that he had had little contact with his mother, while the state's need to protect the best interest of the minor was strong since the clinical team reported that he did not want to testify and exhibited significant anxiety and negative behaviors when he learned he might have to appear at the termination trial. ***Id.***

In ***In re J.C.***, 2019 IL App. (1st) 182226 (2019). Trial court did not violate mother's due process rights by denying her motion to compel 9-year-old child's testimony at best interests hearing; reasons for motion were for mother's best interests, not child's.

In re Jay H., 918 N.E.2d 284 (4th Dist. 2009) (taking judicial notice of various documents at best interest of child hearing was appropriate in parental rights termination proceeding; documents at issue solely concerned parental relationship with children, showed that state took children into protective custody because both parents had drug-related problems, problems persisted until state again took children into custody, and court obviously viewed evidence as probative of its determination as to what decision was in best interest of children).

(5) Proof of Best Interest

(a) Cases in which there was a finding that termination was in child's best interest include:

In re J.B., 2019 IL App. (4th) 190537. Parental rights of father terminated, but custody remained with mother. Children were neglected minors due to environment injurious to their welfare because of exposure to domestic violence. Mother was fit, able, and willing to exercise custody and was not included in the petition to terminate parental rights. Father refused to participate in services or to work with DCFS and failed to make reasonable progress and failed to maintain reasonable degree of interest or concern. Father found unfit, and subsequently found to be a serious danger to his children, and parental rights terminated. Appellate court acknowledged that "it is rare that the parental rights of one parent are terminated, and the parental rights of the other parent are not, particularly when the parents remain married." But parents were separated and no longer have contact, and father had "fad[ed] away for them, as a part of their lives, by his own choice." "[he] hasn't provided them affection, and so it's not [a] loss of continuity of affection to terminate his parental rights."

In re Ca.B. and Ch.B., 2019 IL App (1st) 181024. Mother had long-term substance abuse and mental health issues that had not been fully addressed. Unlikely that mother would make progress in the long term to be able to parent. Foster parent provided a stable home environment in which children were thriving.

In re Davon H., 2015 IL App (1st) 150926. Sibling died in parents' care after injuries that went untreated. Mother had already surrendered parental rights as to three older children, and had four

children between the time when siblings were removed in 2008 and when she consented to their adoption in 2012.

In re SKB, 2015 IL App (1st) 151249. Parental rights terminated as to both parents, and father appealed. 5-year-old child had been living with foster family since before he was a year old, was deeply rooted in foster mother's familial structure, and foster mother wanted to adopt.

In re Curtis W., Jr., 2015 IL App (1st) 143860. Trial court erred in denying petition to terminate parental rights, where court balanced rights of the father to maintain his legal relationship with his child against the best interests of the child. Child's best interest is not part of an equation and may not be balanced against any other interest (citing ***In re Austin W.***, 214 Ill. 2d 31, 49 (2005)). Preponderance of evidence established that best interest required termination, and trial court reached opposite conclusion and thus its decision was against the manifest weight of the evidence.

In re Shauntae P. and Kyla P., 2012 IL App (1st) 112280 (statutory factors used in making "best interest" determination weighed strongly in favor of terminating mother's parental rights so minors could be adopted by current foster parents).

In re Julian K., 2012 IL App (1st) 112841 (adoption of child by his aunt and her husband was in his best interests since he had been living with aunt for 2 years, the child had been found wandering streets alone at age five, mother's apartment was constantly filthy, and she often failed drug tests).

In re M.R., 393 Ill. App. 3d 609 (4th Dist. 2009) (no error in holding a second best interest hearing after finding, at the first best interest hearing, that it was not in the minor's best interests to terminate her mother's parental rights because she had recently been placed in a new foster home and she had a strong bond with her mother, and then holding a second best interests hearing approximately fourteen months later, concluding that it was now in the minor's best interest to terminate parental rights, so long as the court relied on the previous finding that the mother was unfit).

See ***In re Tas. C.,*** father challenged termination based only on the best interest determination. Children were in long-term foster placements and were bonded and all needs met, stable and loved. Despite one child's wish to be with her two siblings, other considerations such as permanency outweigh that desire.

(b) Cases in which there was a finding that termination was not in a child's best interest include:

In re B.B., 386 Ill. App. 3d 686 (3d Dist. 2008) (TPR reversed because children's best interest not served by termination of mother's parental rights and trial court did not adequately consider and apply the statutory "best interest" factors. Moreover, although mother and original foster parent had defied DCFS whereby foster parent allowed mother unfettered access to children and removed children from Illinois after mother's presence in foster home was discovered, children nevertheless became strongly bonded with mother, mother was making progress toward addressing her drug and alcohol dependency without State services, and these circumstances outweighed any "best interest factor" that might still favor termination, such as the need of children for "permanence").

In re O.S., 364 Ill. App. 3d 628 (3d Dist. 2006) (decisions made by the trial court and DCFS regarding visitation, including court-enforced restrictions on frequency, place, and nature of the interaction, robbed the visitation of all its usual and meaningful attributes, and the decision not to tell the child that the mother was his mother "predetermined" the outcome of the case; under the circumstances, termination would be a deprivation of the mother's constitutional right to custody of the child without due process of law; trial court had a statutory duty to take actions to foster and encourage reunification throughout the term of the mother's incarceration and for four months thereafter).

13.45 CONSEQUENCES OF TERMINATION OF PARENTAL RIGHTS

Section 50/17 (**750 ILCS 50/17**) of the Adoption Act provides that an order terminating parental rights relieves a child's biological parents of "all parental responsibility for such child" and deprives the parent of "all legal rights as respects the child." Severance ends a parent's right to custody, visitation, decision making, notice, or the right to participate in any way in the child's life. *See* ***In re C.B.***, 221 Ill. App. 3d 686 (4th Dist. 1991) (the effect of termination is the same as if the parent had died). The child is also released from "all obligations of maintenance and obedience as respects such natural parents."

Another effect of termination of the parent-child relationship is that it also legally ends the relationship of the child to his or her biological relatives, including siblings, grandparents, aunts and uncles. If parental rights are terminated under the Juvenile Court Act, a judge may not order any ongoing contact between the child and his or her "former" parents or relatives even if the judge determines that such contact is in the child's best interest. ***In re M.M.***, 156 Ill. 2d 53 (1993); ***In re Donte***, 259 Ill. App. 3d 246 (lst Dist. 1994).

Where the termination of parental rights was upheld on appeal, and the mother then filed a petition to vacate the termination asserting that she could satisfy the criteria necessary for

post-judgment relief, *res judicata* precluded the circuit court from awarding mother custody after the original decision had been made and upheld on appeal. ***In re B.G.***, 407 Ill. App. 3d 682 (1st Dist. 2011).

In ***In re Tajannah O.***, 2014 IL App (1st) 133119 (1st Dist. 2014), the court held that, after it is determined that it is in the minor's best interest to terminate parental rights, the trial court must first rule out adoption before it may consider an alternative custodial goal such as guardianship.

See also ***In re M.R.,*** --- N.E.3d ---, 2020 IL App. (1st) 191716 (2020). Mother objected to TPR based on uncertainty of adoption and argued for guardianship with guaranteed visitation; Appellate court affirmed TPR, quoting Tajannah O. and ***In re Jeffrey S***. on guardianship being available only if the trial court determines that a minor should not return home and finds that the parent's rights should not be terminated. Here, the court found rights should be terminated in order to free M.R. for adoption; guardianship alternative is not available.

13.50 APPEALS IN TERMINATION OF PARENTAL RIGHTS CASES

A) APPEALABLE ORDER

A termination of parental rights is an appealable order. A child's appeal from an order *denying* a petition to terminate mother's and father's parental rights will not be rendered moot by a later order changing the permanency goal from termination to private guardianship where the permanency goal of private guardianship was not attained. ***In re Reiny S.***, 374 Ill. App. 3d 1036 (1st Dist. 2007). However, since the permanency goal order was subject to change, it was not impossible for an appellate court to grant the guardian *ad litem* relief if it thought that the court's order denying the petition to terminate parental rights was against the manifest weight of evidence. ***Id.*** *But see* ***In re A.H.***, 207 Ill. 2d 590 (2003) (order denying state's petition for termination of parental rights, ordering "subsidized guardianship" as permanency goal for children, and continuing matter for a permanency hearing was not "final order" within meaning of rules governing appeals of civil cases in which a final order has disposed of entire controversy; it did not end the litigation of the termination issue and did not "set or fix" the rights of the parties.

B) NECESSITY OF WRITTEN ORDER

An order terminating parental rights should asset forth the factual basis for the court's finding of unfitness and best interest determination. *See, e.g.,* ***In re B'Yata I***., 2013 IL App (2d) 130558 (lack of factual findings precluded appellate review of whether mother was unfit; case was remanded for the trial court to make specific findings of fact as to unfitness).

C) ADMONITIONS TO PARENTS

In ***In re Phoenix F.***, 2016 IL App (2d) 150431, the trial judge properly admonished father as to his appeal rights at the conclusion of the dispositional hearing in which his child was made a ward of the court but erred by failing to *also* admonish him that he could appeal an order terminating his parental rights if such an order were entered in the future. On that point, the appellate court stated, "Section 1-5 of the Juvenile Court Act provides that '[u]pon an adjudication of wardship *** the court shall inform the parties of their right to appeal therefrom *as well as from any other final judgment of the court.*'" ***Id.*** ¶18 (emphasis in original). After terminating parental rights, the trial judge also erred by (a) failing to appoint appellate counsel for father who was indigent and had been represented by the public defender in the trial court, and (b) instructing the clerk of the court to inform the father, who had filed a notice of appeal *pro se*, that because his parental rights were terminated he could no longer have access to the court file in order to prepare the record on appeal and to pursue his appeal.

See also ***In re Z.M.,*** 2019 IL App. (3d) 180424. Trial court erred by failing to admonish father of his right to appeal dispositional order. Appellate court held due process does not require court to vacate findings after dispositional order as remedy. However, see separate concurrence filed by McDade, J.

D) TIMELINESS OF APPEAL

Time requirements for filing a notice of appeal are governed by civil rules. ***In re C.J.***, 325 Ill. App. 3d 502 (lst Dist. 2001). **Supreme Court Rule 303(a)(1)** provides that a notice of appeal from a final judgment must be filed within 30 days after entry of the judgment. 155 Ill. 2d R. 303(a)(1). The 30-day filing requirement may be extended by filing a motion providing a "reasonable excuse" for failing to file the notice in a timely fashion. If a parent fails to abide by these time requirements, his or her appeal will be dismissed. ***In re C.J.,*** *supra.*

E) RIGHT TO COUNSEL

In ***Lassiter v. Department of Social Services of Durham Cty.***, 452 U.S. 18 (1981), the U.S. Supreme Court held that, while indigent parents do not have a right to appointed counsel in every case involving termination of parental rights, whether due process calls for the appointment of counsel in such proceedings is to be answered in the first instance by the trial court, subject to appellate review. In Illinois, however, there is a statutory right to counsel in all proceedings under the Juvenile Court Act, including the termination of parental rights stage of the proceeding. **705 ILCS 405/1-5(1)**. The right to counsel extends to the appeal from an order terminating parental rights. ***In re Adoption of K.L.P.***, 198 Ill. 2d 448 (2002) (trial and appellate court may, where appropriate, direct county to pay reasonable attorney's fees for indigent parents); ***In re Harrison***, 120 Ill. App. 3d 108 (4th Dist. 1983).

F) STANDARD ON APPEAL

On appeal from a finding that termination of parental rights is in a child's best interest, the reviewing court will reverse the trial court's finding only if it is against the manifest weight of the evidence or the court has abused its discretion. *See* ***In re Jaron Z.***, 348 Ill. App. 3d 239 (1st Dist. 2004); ***In re S.H.***, 284 Ill. App. 3d 392 (4th Dist. 1996). A finding is contrary to the manifest weight of the evidence only if the "opposite conclusion is clearly apparent." ***In re C.M.***, 305 Ill. App. 3d 154 (4th Dist. 1999). In this process, the appellate court will neither reweigh the evidence nor reassess the credibility of witnesses. *See* ***In re C.P.***, 191 Ill. 3d 237 (4th Dist. 1989).

However, where a trial court fails to make specific written findings but bases its neglect finding on stipulated facts read into the record, the appellate court must review the ultimate finding on the merits. ***In re Leona W.***, 228 Ill. 2d 439 (2008). Furthermore, a trial court's failure to make written findings of fact, failure to state the degree of persuasion (clear and convincing), repeatedly stating at the conclusion of the fitness hearing that it was in the "best interests of the children" to terminate parental rights will amount to plain error requiring reversal. ***In re G.W.***, 357 Ill. App. 3d 1058 (2d Dist. 2005).

G) *ANDERS* BRIEFS

In ***In re S.M.***, 314 Ill. App. 3d 682 (4th Dist. 2000), the court discussed the proper procedure to be followed when an attorney seeks to withdraw from an appeal in a termination of parental rights case. The steps include:

(1) Counsel should review both the unfitness and best interests' stages to determine if they present appealable issues.

(2) If, in counsel's opinion, there are no appealable issues, he or she should file a brief that states no appealable issues exist, and then set out anything in the record that may contradict his or her judgment that there is no basis for an appeal.

Counsel's motion to withdraw as counsel on appeal pursuant to ***Anders*** will be denied if there is a failure to (1) identify issues of irregularities in the trial process or other potential errors (2) sketch the argument in support of the issues that could be raised on appeal and explain why the arguments are frivolous, (3) conclude the case presents no viable grounds for appeal, and (4) include transcripts of relevant hearings.

See ***In re Zy. D.,*** 2021 IL App. (2d) 200629. Anders motion found insufficient because counsel's representation of the record was not borne out by the record itself. Counsel failed to address part of the unfitness findings, saying that court

could find lack of fitness based on only one ground. Counsel's Anders brief must address all the unfitness counts in the state's petition.

See ***In re J.P.***, 2016 IL App (1st) 161518 (motion to withdraw must comply with the four-step process in ***Anders***).

H) SCOPE OF ISSUES ON APPEAL

In an appeal from an order terminating parental rights, the reviewing court may not address claims relating to the original adjudicatory or dispositional hearings. *See See* ***In re Ja. P.,*** 2021 IL App. (2d) 210257.; ***In re S.D.***, 213 Ill. App. 3d 284 (4th Dist. 1991) (court without jurisdiction to address claim of ineffective assistance of counsel at adjudicatory hearing). *Accord*: ***In re J.J.***, 316 Ill. App. 3d 817 (3d Dist. 2000) (court lacked jurisdiction on appeal because party filed untimely notice and failed to specify nature of appeal); ***In re S.D.***, 213 Ill. App. 3d 284 (4th Dist. 1991) (court without jurisdiction to address claim of ineffective assistance of counsel at adjudicatory hearing).

ARTICLE III

MINORS REQUIRING AUTHORITATIVE INTERVENTION AND TRUANT MINORS IN NEED OF SUPERVISION

Article III gives the juvenile court jurisdiction over runaways, homeless youth, children who are otherwise beyond the control of parents, and minors who are chronic truants.

CHAPTER 1. INTRODUCTION

Juvenile courts traditionally have had jurisdiction over children known as status offenders. These are children who have not committed any crime, but whose behavior is considered unacceptable for children. Such behavior may include running away, truancy and being beyond the control of parents.

In recent years there has been a spirited debate over the desirability of retaining juvenile court jurisdiction over status offenders. Those who favor reduced juvenile court involvement argue that the child's antisocial behavior often is the product of a pervasive "family systems" problem or the product of adolescent rebellion, both of which are better handled outside the court system. Illinois has responded to this debate by abolishing juvenile court authority over a category of children known as MINS (Minors in Need of Supervision), and by creating a more limited right to intervene in the case of Minors Requiring Authoritative Intervention (MRAI).

Under this modified legislative scheme, there is a mandatory cooling-off period between the time a minor is identified as one requiring authoritative intervention and the time the juvenile court may so adjudicate the minor. During this interim period, there must be an attempt to resolve extra-judicially the issues which led to the minor's socially unacceptable behavior. Only after these efforts have been tried and have failed may the juvenile court become involved.

The Act also authorizes the Juvenile Court to intervene if a minor is chronically truant from school. If, after hearing, a minor is found to be a truant minor in need of supervision, a court may enter orders aimed at correcting the minor's failure to attend school.

In addition, families may seek intervention for minors seeking special services. *See* **20 ILCS 540/1** and **20 ILCS 540/20** added on August 1, 2014 and effective on January 1, 2015: "called the Custody Relinquishment Prevention Act, establishes a pathway for families on the verge of seeking services for their child's serious mental illness or serious emotional disturbance through relinquishment of parental custody to the Department of Children and Family Services, despite the absence of abuse or neglect, to receive services through the appropriate State child-serving agency. The Act provides for interagency agreements and outcome reporting." IL Law & Practice Minors, § 89.

CHAPTER 2. MINOR REQUIRING AUTHORITATIVE INTERVENTION (MRAI)

2.01 JURISDICTION

A) SUBJECT MATTER JURISDICTION

705 ILCS 405/3-1 and **705 ILCS 405/3-3**

705 ILCS 405/3-1, as amended by **Public Act 096-1087** (effective January 1, 2011), reads as follows:

Sec. 3-1. Jurisdictional facts. Proceedings may be instituted under this Article concerning boys and girls who require authoritative intervention as defined in Section 3-3, or who are truant minors in need of supervision as defined in Section 3-33.5, or who are minors involved in electronic dissemination of indecent visual depictions in need of supervision as defined in Section 3-40.

A new section, **705 ILCS 405/3-40**, added by **Public Act 096-1087** (effective January 1, 2011), reads as follows:

Minors involved in electronic dissemination of indecent visual depictions in need of supervision.

(a) For the purposes of this Section:

"Computer" has the meaning ascribed to it in Section 16D-2 of the Criminal Code of 1961.

"Electronic communication device" means an electronic device, including but not limited to a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures.

"Indecent visual depiction" means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person.

"Minor" means a person under 18 years of age.

(b) A minor shall not distribute or disseminate an indecent visual depiction of another minor through the use of a computer or electronic communication device.

(c) Adjudication. A minor who violates subsection (b) of this Section may be subject to a petition for adjudication and adjudged a minor in need of supervision.

(d) Kinds of dispositional orders. A minor found to be in need of supervision under this Section may be:

(1) ordered to obtain counseling or other supportive services to address the acts that led to the need for supervision; or

(2) ordered to perform community service.

(e) Nothing in this Section shall be construed to prohibit a prosecution for disorderly conduct, public indecency, child pornography, a violation of the Harassing and Obscene Communications Act, or any other applicable provision of law.

A minor requiring authoritative intervention is defined, under Section 3-3, as a minor under the age of 18 who is (a) absent from home without consent or (b) beyond the control of parents, legal guardian or custodian in circumstances which constitute a substantial or immediate danger to the minor's physical safety, **and** who, after being taken into limited custody and offered interim crisis intervention services, refuses to return home after the minor and parent, guardian, or custodian cannot agree to an alternative voluntary residential placement or to the continuation of such placement.

If, however, there is no evidence that a minor is beyond control and in immediate or substantial danger, there will be no finding that the dependent minor is in need of authoritative intervention. *See* ***In re L.H.***, 384 Ill. App. 3d 836 (1st Dist. 2008) (parent's refusal to pick up minor at the hospital, and refusal to allow the minor back into the respondent's home, was not sufficient evidence of minor being beyond respondent's control so as to require authoritative intervention).

B) LIMITS ON JUVENILE COURT JURISDICTION

The policy of the Juvenile Court Act (the Act) limiting judicial intervention in status offense cases finds expression in section 1-4 of the Act (**705 ILCS 405/1-4**), which provides in relevant part:

"Nothing in this Act shall be construed to give (b) any court jurisdiction***over any minor solely on the basis of the minor's (i) misbehavior which does not violate any***law or municipal ordinance, (ii) refusal to obey orders or directions of a parent, guardian or custodian, (iii) absence from home without the consent of his or her parent***, or (iv) truancy, until efforts and procedures to address and resolve such actions by a law enforcement officer during a period of limited custody, by

crisis intervention services***, and by alternative voluntary residential placement***have been exhausted without correcting such actions."

C) CONSTITUTIONALITY OF THE MRAI STATUTE

The constitutionality of the MRAI statute was upheld in ***People v. R.G.***, 131 Ill. 2d 328 (1989). In ***R.G.***, a minor's parents argued that the statutory scheme for dealing with runaways or children beyond the control of their parents violates the constitutional rights of parents because it does not allow a nonconsenting minor to be returned for a 21-day period after the child is taken into limited custody pursuant to section 3-4 of the Act (**705 ILCS 405/3-4**) even when the child's parents seek his or her return. The Court reasoned that if a child is forced to return home during the statutory cooling-off period, there is a substantial risk that the child will repeat his or her behavior. The purpose of the 21-day period before a nonconsenting child can be returned home by court order is to attempt to resolve the differences through nonjudicial intervention services without the need for court involvement.

2.05 TAKING INTO LIMITED CUSTODY

705 ILCS 405/3-4

A) WHEN MAY A MINOR BE TAKEN INTO CUSTODY?

A law enforcement officer may, without a warrant, take into limited custody a runaway or a minor who is beyond the control of his or her parents and whose circumstance place the minor at risk of substantial or immediate danger of physical harm. *See, e.g.,* ***People v. Kolakoski***, 319 Ill. App. 3d 200 (1st Dist. 2001) (detective has the authority to take a minor into limited custody as a runaway where the child's mother's has reported the minor missing).

705 ILCS 405/3-7, as amended by **Public Act 096-1087** (effective 1/1/2011), now reads:

Sec. 3-7. Taking into temporary custody.

(1) A law enforcement officer may, without a warrant, take into temporary custody a minor (a) whom the officer with reasonable cause believes to be a minor requiring authoritative intervention; (b) who has been adjudged a ward of the court and has escaped from any commitment ordered by the court under this Act; or (c) who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment or hospitalization; *or (d) whom the officer with reasonable cause believes to be a minor in need of supervision under Section 3-40.* (Minor involved in Electronic Dissemination of Indecent Visual Depictions).

B) DUTIES OF LAW ENFORCEMENT

The law enforcement officer must notify the minor of the reasons for limited custody and must attempt to contact the minor's parents, guardian, or custodian. If the minor agrees to return home, the officer should make efforts to ensure the minor's safe return and may further refer the minor and his or her family for medical or other social services.

If the minor refuses to return home or if the minor's family cannot be reached, the officer must arrange for the minor to go to a crisis intervention center or, if no such service exists, to the probation or court services department. Where indicated, the minor may also be taken into a mental health facility.

C) PLACE OF LIMITED CUSTODY

No minor taken into limited custody may be placed in a jail, municipal lockup, detention center, or secure correctional facility. **705 ILCS 405/3-4(f)**. Note that **P.A. 98-61 § 5** amended the Juvenile Court Act, § 3-12, Notice of Parent's and Children's Rights to Rehearing on Temporary Custody, 6): "Minors under 18 years of age must be kept separate from confined adults . . . ."

D) LENGTH OF LIMITED CUSTODY

A minor may not be kept in limited custody for more than six hours from the time of original contact with the law enforcement officer. **705 405-3-4(e)**.

2.10 INTERIM CRISIS INTERVENTION SERVICES

705 ILCS 405/3-5

A) IN GENERAL

Prior to adoption of the MRAI statute, a runaway or other minor beyond the control of his or her parent was subject to detention in county juvenile detention facilities if he or she refused to return home or if the minor's parents refused to permit the child to return to the family residence.

The MRAI statute now provides that a minor who refuses to return home or one whose parents, guardian or custodian cannot be contacted must be taken to an agency providing crisis intervention services if such an agency exists or to local court services or probation department if no such agency exists. Currently, all Illinois counties have some form of crisis intervention services for juveniles.

B) AGENCY DUTIES

The agency must immediately investigate the minor's circumstances, explain to the minor the reasons for limited custody, make reasonable efforts to contact the child's parents, and, if the minor agrees, arrange for return of the minor to his or her home.

C) TEMPORARY LIVING ARRANGEMENT

705 ILCS 405/3-5(b)

If a minor refuses to return home or if those responsible for the minor cannot be reach, the minor may be sheltered in a temporary living arrangement while the agency continues to attempt to resolve the matter.

Unless a minor's parents' consent or unless the agency documents its unsuccessful efforts to reach the minor's family, the minor may not be kept in a temporary living arrangement for no longer than 48 hours, exclusive of Saturdays and Sundays or court holidays. If reasonable efforts to contact the family fail, the minor may be sheltered up to 21 days.

Comment: The Act does not directly address what happens if the 48-hour period expires and the parents refuse to consent to the temporary living arrangement and the minor continues to refuse to return home. Presumably at that point, pursuant to section 6(b) of the Act (**705 ILCS 405/3-6(b)**), the minor or his or her parent, guardian or custodian, or a person properly acting at the minor's request, may file a petition alleging that the minor requires authoritative intervention and further alleging the need for a shelter care hearing. The minor would then be taken into temporary custody pursuant to section 3-9 of the Act (**705 ILCS 405/3-9**) and, after a shelter care hearing, placed in a foster family or other shelter facility designated by the court.

If a parent, guardian or custodian refuses to permit a child to return home, the Act directs the agency to file a petition alleging that the minor is neglected, abused, or dependent. **705 ILCS 405/3-5(b)**.

D) ALTERNATIVE VOLUNTARY RESIDENTIAL PLACEMENT

705 ILCS 405/3-6

A minor and his or her parent, guardian, or custodian may agree to an alternative voluntary residential placement of the minor for an indefinite period of time without court order.

If, after the crisis intervention and provision of temporary living arrangements the minor continues to refuse to return home or if the minor and his or her family cannot agree on a continued alternative voluntary residential placement, the minor or his

or her parent, guardian or custodian or a person properly acting at the minor's request may file a petition alleging that the minor requires authoritative intervention.

2.15 INITIATING JUDICIAL PROCEEDINGS

A) FILING A PETITION

(1) Persons Who May File

705 ILCS 405/3-15

Section 3-15 of the Act provides that any adult person, agency or association or the court on its own motion may direct the filing through a State's Attorney of a petition alleging that the minor is a minor requiring authoritative intervention.

In addition, section 3-6 of the Act (**705 ILCS 405/3-6**), provides that if a minor and his or her parent, guardian or custodian cannot agree on voluntary residential placement and the minor refuses to return home, the minor, or his or her parent, guardian or custodian, or a person properly acting at the minor's request may file a MRAI petition.

(2) When May the Petition Be Filed?

Section 3-3 of the Act (**705 ILCS 405/3-3**) provides in pertinent part:

"Any minor taken into custody***may not be adjudicated a minor requiring authoritative intervention until the following number of days have elapsed***21 days for the first instance of being taken into limited custody and 5 days for the second, third, or fourth instances. For the fifth or any subsequent instance [in a given year], ***the minor may be adjudicated***without any specified period of time expiring after his or her being taken into limited custody***."

In some counties, the petition alleging MRAI status is not filed until the 21 day period has passed. This practice may be consistent with the definition of an MRAI as one who has committed a status offense and who has been offered interim crisis intervention services. (**705 ILCS 405/3-3**). In other counties a petition may be filed any time after the minor is taken into limited custody but the adjudicatory hearing on such a petition is delayed pending expiration of the 21-day cooling-off period.

(3) Contents of the Petition

The verified petition must contain (a) facts alleging that the minor is a minor requiring authoritative intervention and must include (b) the name, age and residence of the minor; (c) the names and residences of the minor's parents; (d) the name and residence of his or her legal guardian or custodian or nearest known relative; (e) the shelter care hearing or order date, if any, and (f) an allegation that it is in the best interest of the minor and public that he or she be made a ward of the court. **705 ILCS 405/3-15**.

(4) Supplemental Petition

Supplemental petitions may be filed at any time before dismissal of the petition or discharge of wardship under section 3-15(5) of the Act. **705 ILCS 405/3-15(5)**.

B) NOTICE AND SUMMONS

705 ILCS 405/3-17, 3-18

The summons is directed at the minor, the minor's legal guardian or custodian and each person named as a respondent in the petition unless the minor is under 8 years of age, has been appointed a guardian *ad litem* and the guardian *ad litem* has appeared on behalf of the minor.

The summons may be served personally or by certified mail or notice by publication under the provisions of sections 3-17 and 3-18 of the Act. **705 ILCS 405/3-17, 3-18**.

As a matter of good practice, a copy of the summons and the petition should be provided at the time of the person's appearance.

2.20 SHELTER CARE HEARING

705 ILCS 405/3-12

A) HEARING

(1) Timing of Shelter Care Hearing

A minor taken into temporary custody and not released to his or her parents must be given a shelter care hearing within 48 hours of being taken into custody, exclusive of Saturdays, Sundays and court holidays. **705 ILCS 405/3-11(1)**.

(2) Hearing Procedures

(a) Notice

The minor, the minor's parents, guardian or responsible relative are entitled to written or oral notice of the temporary custody hearing; however, oral notice is allowed only if written notice is unreasonable under the circumstances. If notice cannot be served on the party respondent, the proceedings may be held *ex parte*. Section 12-3 (**705 ILCS 405/12-3**) sets forth the procedures to be followed in *ex parte* proceedings.

If a person entitled to notice does not receive actual notice of the hearing, that individual may file for a rehearing to be held within 48 hours of the time of the filing of the request, excluding Sundays and holidays. **705 ILCS 405/-12(4)**.

(b) Rights of the parties

The Act provides that at the time of the parties' first appearance in court, the court must explain the nature of the proceedings and advise them of their right to be represented by counsel, to be heard, to present evidence and to cross-examine witnesses. Each adult respondent must be furnished a written 'Notice of Rights' at or before the first hearing at which he or she appears. **705 ILCS 405/1-5(1)**.

(c) Appointment of guardian *ad litem*

705 ILCS 405/3-19. *See also* "4.05 Rights of Parties Respondent" for changes to **705 ILCS 405/1-5** regarding guardians *ad litem*.

In the case of a minor requiring authoritative intervention, the court may appoint a guardian *ad litem* because of the inherent conflict in such a case between the minor and minor's parents or guardian. Because a child must be represented by an attorney under section 1-5 of the Act (**705 ILCS 405/1-5**), the court should consider appointing the child's attorney as guardian *ad litem*.

With regard to any conflicts arising from counsel serving as attorney for the minor and for the guardian *ad litem* as well, *see* ***In re J.D.***, 351 Ill. App. 3d 917 (4th Dist. 2004) (the Juvenile Court Act does not require that a minor's counsel and guardian *ad litem*'s counsel be distinct individuals where nothing in record suggests that the position the minor's attorney would be charged with presenting to

the court might result in a conflict with the representation of the guardian *ad litem*).

(d) Agreed orders

The parties may seek to enter an agreed order on some or all of the issues for determination at the shelter care hearing. When the parties present the court with a proposed order, the court should ensure that the order contains stipulations that probable cause exists and/or that removal from the home is a matter of immediate and urgent necessity, and/or that reasonable efforts have been made to reunite the family. The court should make findings on the record to support entry of the order and should indicate whether the order is entered with or without prejudice.

(e) Evidence

All evidence, including hearsay, which is relevant to the questions to be decided may be introduced at the hearing.

(3) Issues at Hearing

The court must resolve and make findings on three separate issues at the shelter care hearing:

- whether there is probable cause to believe the minor, who is the subject of the petition, is a minor who requires authoritative intervention;

- whether there is immediate and urgent necessity for the protection of the minor that he or she be placed outside the home. In ***In re Polovchak***, 97 Ill. 2d 212 (1983), the State failed to meet its burden of immediate and urgent necessity where the record did not reflect that the minor, who had been away from home for five days, would not return home; and

- whether reasonable efforts have been made to eliminate the need for removal from the home. (This element of the inquiry would seem to be met upon a showing that efforts at family reconciliation were unsuccessful during the cooling-off period).

(4) Findings

(a) No probable cause

If the court finds that there is not probable cause to believe that the minor is a MRAI, it must dismiss the petition. **705 ILCS 405/3-12(1)**.

(b) Probable cause

If the court finds probable cause, it should proceed to address the questions of immediate urgent necessity and efforts to prevent removal.

(5) Shelter Care Order

If the court decides that a child should remain in shelter care pending adjudication, the court should enter written findings of fact and supporting evidence as to why the child should remain in shelter care, and it should:

- Enter a shelter care order.

  The court may order placement in suitable shelter care designated by the court or may, with the consent of DCFS, make temporary placement with DCFS for designation of temporary care as DCFS designates. **705 ILCS 403/3-9**.

- Enter other appropriate orders relating to temporary custody, including orders for medical and dental care and orders for provision of services to the family.

(6) Post-shelter Care Proceedings

Any interested party may file a motion to vacate a temporary custody order pursuant to section 3-12(8) of the Act (**705 ILCS 405/3-12(8)**). A hearing on the motion is to be held within 14 days of the filing of the motion.

2.25 ADJUDICATION

A) DATE FOR ADJUDICATORY HEARING

705 ILCS 405/3-16

(1) Minor in Shelter Care

If the minor is in shelter care, the adjudicatory hearing must be held within 10 judicial days after the date of the order directing shelter care or the earliest possible date consistent with notice requirements, but no later than 30 days after the order of shelter care.

Comment: This requirement appears to conflict with section 3-3 of the Act (**705 ILCS 405/3-3**) which states that a minor taken into limited custody may not be adjudicated a MRAI until after 21 days have elapsed.

(2) Minor Not in Shelter Care

If the minor is not in shelter care, an adjudicatory hearing must be held within 120 days of a demand made by any party. This period may be extended for 30 days upon a showing of cause and due diligence. The parties may waive the statutory time periods.

B) ADJUDICATORY HEARING

(1) Rights of Parties

At the beginning of the adjudicatory hearing, the court should advise the parties of their rights, including the right to be present and to be heard, the right to be represented by counsel, the right to present evidence and to cross-examine witnesses, and the right to appeal from any final judgment. The minor must be represented by counsel.

(2) Admission

A minor may admit to being a minor requiring authoritative intervention. To ensure that a minor's admission is voluntary, the court should admonish the minor, explaining that he or she has a right to a trial on the allegations in the petition, that the State has the burden of proving those allegations by a preponderance of the evidence, and that if the minor is found to be a minor requiring authoritative intervention, he or she could be placed outside the home and subject to other court-imposed conditions. The minor also should be told of the possible consequences if the court's orders are not followed.

After admonishing the minor, the court should determine whether there is a factual basis for the admission and should make a finding of voluntariness for the record.

(3) Rules of Evidence

The rules of evidence applicable in other civil proceedings apply to MRAI adjudicatory proceedings. **705 ILCS 405/3-20**.

(4) Sufficiency of the Evidence

(a) In general

In ***People v. R.G.***, 131 Ill. 2d 328, 362 (1989), the Illinois Supreme Court listed the findings which must be made before a court can adjudicate a minor as one requiring authoritative intervention. A court must find that the minor:

(i) is absent from home without parental consent, or is beyond the control of his or her parents in circumstances which pose physical danger to the minor;

(ii) is taken into custody;

(iii) refuses to return home;

(iv) is provided with crisis intervention services for 21 days; and

(v) fails to agree with his or her parents or guardians on an alternative placement.

(b) Absent from home without consent

A minor is one who requires authoritative intervention under this subparagraph if he or she is under the age of 18 and is absent from home without consent of parent, guardian or custodian. This provision is directed at runaway children.

In ***People v. R.G.***, 131 Ill. 2d 328 (1989), the supreme court held that the statutory phrase "in circumstances which constitute a substantial or immediate danger to the minor's physical safety" does not modify subsection (a) which applies to minor's absence from home without parental consent. Thus, the State need only show that a minor was away from home without permission, not that he or she

was at risk of immediate danger during the minor's period of absence.

(c) Beyond the control of parents

This ground for finding a minor requires authoritative intervention applies in situations where a minor's actions place him or her beyond the control of parents or guardian in situations other than where the minor is a runaway. Unlike in the case of the runaway, where a petition alleges that the minor is beyond parental control the State must demonstrate that the minor's behavior has placed the minor in circumstances which constitute a substantial or immediate danger to the minor's physical safety. ***In re Polovchak***, 97 Ill. 2d 212 (1983), the Illinois Supreme Court upheld a First District Appellate Court determination that a single act by a minor can establish that he or she is beyond the control of parents, but only if such an act poses a serious hazard to the minor's well-being. An isolated act which poses no serious hazard to the minor or public is insufficient to prove that the minor is beyond parental supervision. In ***Polovchak***, a 12-year old who left his parents' home for five days and went to live with an adult cousin because he did not wish to return to the Soviet Union was not a minor beyond control of his parents where the State failed to show that the minor was in serious physical danger during his stay away from home.

In ***In re J.M.***, 170 Ill. App. 3d 552 (2d Dist. 1988), *overruled on other grounds*, ***People v. R.G.***, 131 Ill. 2d 328, 341 (1989) (proof of a child's drug abuse and absence from the home was sufficient to sustain a finding that the minor required authoritative intervention).

C) FINDINGS AND ADJUDICATION

(1) Failure of Proof

If the court finds that there is not a preponderance of evidence sustaining the allegations in the petition, the court should dismiss the petition and discharge the minor from shelter care, if applicable. **705 ILCS 405/3-22(1)**.

(2) Legally Sufficient Proof

Where the court finds that the evidence supports a finding that the minor requires authoritative intervention, the court should:

(a) State on the record the statutory finding that the minor is a ward of the court and the evidentiary basis for the finding;

(b) Order a predispositional investigation;

(c) Arrange for the clerk to send summons to any absent party, notifying the party of the date, time, and place of the dispositional hearing; and

(d) Enter all other appropriate orders, including custody, guardianship, order of protection and medical or counseling care orders.

2.30 CONTINUANCE UNDER SUPERVISION

705 ILCS 405/3-21

A) PRECONDITIONS TO ENTRY OF SUPERVISION ORDER

The court may enter an order of continuance under supervision either upon an admission or stipulation by the respondent of the facts supporting the petition before proceeding to findings and adjudication if no party objects to the order.

B) CONDITIONS OF SUPERVISION

The court may enter an order with conditions which must be complied with by those who are the subject of the supervision order.

C) DURATION OF SUPERVISION ORDER

The order should specify a definite period of time for the supervision. At the time of entry of the order, the court should continue the case to a given date and time at which time the court should review compliance with the order and consider further action as circumstances require.

D) VIOLATION OF ORDER

If the State files a petition alleging violation of the supervision order, the court must hold a hearing on the allegations of the State's petition. The hearing must be held within 15 days of the filing of the petition. The supervision period is tolled during the pendency of the violation proceedings. If the court finds a violation has occurred, it may proceed to findings and disposition.

The provision that a hearing must be held within 15 days of a state filed petition applies, however, only when the CUS would "lapse by its own terms while the petition to revoke is pending, *i.e.,* when the automatic tolling provision is needed to continue CUS." ***In re S.P.***, 323 Ill. App. 3d 352 (2001).

E) CONTINUANCE UNDER SUPERVISION FEE

"The court must impose upon a minor under an order of continuance under supervision or an order of disposition under this Article III, as a condition of the order, a fee of $25 for each month or partial month of supervision with a probation officer. If the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee, the court may impose a lesser fee. The court may not impose the fee on a minor who is made a ward of the State under this Act. The fee may be imposed only upon a minor who is actively supervised by the probation and court services department." **705 ILCS 405/3-21(6)**.

2.35 DISPOSITION

A) DISPOSITIONAL HEARING

(1) Adjudication of Wardship

705 ILCS 405/3-23

The first determination which must be made at a dispositional hearing is whether or not it is in the child's best interest that he or she be made a ward of the court. A juvenile court may not exercise its dispositional powers without first having adjudged the minor a ward of the court. The court should make a record on this point before proceeding to the matter of disposition. *See* ***In re M.W.W.***, 125 Ill. App. 3d 833 (2d Dist. 1984). *See* ***In re P vs. S.K.***, 137 Ill. App. 3d 1065 (1985) which holds that the Court should make this finding at the Adjudicatory hearing and before Disposition.

If the court finds that it is in the best interest that the minor be made a ward of the court, the court should consider what dispositional alternative(s) best serve the needs of the individual child.

(2) Hearing Procedures

(a) Notice

Notice of the dispositional hearing in compliance with sections 3-17 and 3-18 of the Act (**705 ILCS 405/3-17, 3-18**) must be given to all parties respondent prior to a dispositional hearing. ***In re J.M.***, 170 Ill. App. 3d 552 (2d Dist. 1988) (MRAI dispositional order reversed where minor's father did not receive proper notice of dispositional hearing, even where father appeared at hearing), *overruled on other grounds*, ***People v. R.G.***, 131 Ill. 2d 328 (1989). ***In re J.M.*** is also cited in subsections (c) "Right to Counsel" and (e) "Reports and social investigation records."

(b) Parties present

The same parties and nonparties as are allowed at the adjudicatory hearing may be present and heard at the dispositional hearing.

(c) Right to counsel

Parties have the same right to counsel as they had at the adjudicatory phase of the proceeding. *See* ***In re J.M.***, 170 Ill. App. 3d 552 (2d Dist. 1988) (father improperly denied right to counsel at dispositional phase where appointed counsel withdrew after adjudicatory hearing and court proceeded to disposition without permitting respondent to secure counsel).

(d) Evidence

All evidence which is helpful to the court in determining what disposition is in the best interest of the minor is admissible at the dispositional hearing, including hearsay evidence.

(e) Reports and social investigation records

The court must advise the parties of the factual conclusions and contents of any report "prepared for the use of the court and considered by it" (**705 ILCS 405/3-23(2)**). If requested, parties must be given a chance to controvert such material. The court may order that only the attorneys for the parties have access to the contents of the reports. *See* ***In re J.M.***, 170 Ill. App. 3d 552 (2d Dist. 1988) (failure to provide adequate notice of a dispositional hearing deprived father of fair chance to controvert alleged inaccuracies in social history investigation report).

(f) Prior continuance under supervision

A record of prior continuance under supervision is admissible.

(g) Continuance of hearing

A dispositional hearing may be adjourned for a reasonable time to receive other reports or evidence which may aid the court in assessing the best interests of the child. The court may order a continuance on its own motions if it believes additional evidence will assist the court in its dispositional decision.

B) DISPOSITIONAL ALTERNATIVES

(1) In General

In selecting a dispositional alternative in an MRAI proceeding, the court should be guided by what is in the best interest of the minor. That decision must be based on the evidence before the court. Ultimately, it is the court's responsibility to ensure that sufficient information has been presented so that selection of a dispositional order is as informed as possible. The dispositional decision rests within the sound discretion of the court.

(2) Kinds of Dispositional Orders

705 ILCS 405/3-24

A judge who finds that a minor is one who requires authoritative intervention and who further finds that it is in the minor's best interest to be made a ward of the court may enter the following kinds of orders of disposition:

- commit to DCFS if DCFS agrees;
- place under supervision and release to his or her parents, guardian or legal custodian;
- place outside the home in accordance with section 3-28 of the Act (**705 ILCS 405/3-28**), with or without also being placed under supervision. If this option is selected, the court shall provide for the parents or guardian to pay the legal custodian or guardian such sums as are necessary for the minor's needs, or
- order partially or completely emancipated.
- In any order of disposition the court may provide for protective supervision under section 3-25 of the Act (**705 ILCS 405/3-25**) or may enter an order of protection under section 3-26. The court may also order the minor to make restitution where appropriate. **705 ILCS 405/3-24(4)**.

Statutory Amendments:

705 ILCS 405/3-24 has been *amended* by **P.A. 92-329** (effective 8-9-01) to add subsection (7) relating to the fee for supervision with a probation officer, which reads as follows:

(7) The court must impose upon a minor under an order of continuance under supervision or an order of disposition under this Article 111, as a condition of the order, a fee of $25 for each month or partial month of supervision with a probation officer. If the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee, the court may impose a lesser fee. The court may not impose the fee on a minor who is made a ward of the State under this Act. The fee may be imposed only upon a minor who is actively supervised by the probation and court services department. The fee must be collected by the clerk of the circuit court. The clerk of the circuit court must pay all monies collected from this fee to the county treasurer for deposit into the probation and court services fund under Section 15.1 of the Probation and Probation Officers Act.

C) DURATION OF WARDSHIP

All proceedings under the Act, as well as the wardship, custodianship or guardianship of the minor, automatically terminate upon the minor's attaining the age of 19 years, except that a court may continue the wardship of a minor until age 21 for good cause when there is satisfactory evidence presented to the court that the best interests of the minor and the public require the continuation of the wardship.

D) PROTECTIVE SUPERVISION

705 ILCS 405/3-25

(1) Definition

An order of protective supervision is one in which the court enters a dispositional order leaving the child in the custody of his or her parent or legal guardian but authorizes a probation officer or other designated person to supervise the placement.

(2) Conditions

The court may attach conditions to a protective supervision order and these conditions may be modified. *See* ***In re Rider***, 113 Ill. App. 3d 1000 (4th Dist. 1983) (father entitled to be heard before court could enter an order of supervision requiring him to act affirmatively).

A noncustodial parent can be the subject of an order of supervision.

E) ORDER OF PROTECTION

705 ILCS 405/3-26

(1) When the court may make an order of protection as part of any order authorized by the Act.

(2) Conditions

The court may set out reasonable conditions to be observed by the person or persons subject to the order for a period of time to be specified in the order. Such an order may require a person to:

(a) stay away from the minor;

(b) permit a parent to visit the minor;

(c) refrain from certain kinds of conduct;

(d) seek counseling;

(e) other appropriate orders;

(f) "cooperate with the agency in custody of the minor."

705 ILCS 405/3-26(1) provides:

Such an order may require a person:

(a) To stay away from the home or the minor;

(b) To permit a parent to visit the minor at stated periods;

(c) To abstain from offensive conduct against the minor, his parent or any person to whom custody of the minor is awarded;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency to which custody of a minor is entrusted by the court or with an agency or association to which the minor is referred by the court;

(f) To prohibit and prevent any contact whatsoever with the respondent minor by a specified individual or individuals who are alleged in either a criminal or juvenile proceeding to have caused injury to a respondent minor or a sibling of a respondent minor;

(g) To refrain from acts of commission or omission that tend to make the home not a proper place for the minor.

(3) Persons Subject to an Order of Protection

An order of protection may be entered against any person, whether or not that person is a party to the proceeding. A person who is not a parent, guardian or responsible relative is not a party by virtue of having an order of protection entered against him or her and is not entitled to the rights of a party other than those specifically set out in the Act. Unless ordered otherwise, a nonparty does not have a right to appointed counsel, to be present at proceedings other than the hearing on the issuance of a protective order, or to inspect the court file. **705 ILCS 405/3-26(7)**.

(4) Rights of Person Subject to Order of Protection

The person against whom an order of protection is sought has a right to notice and a hearing, including service of a copy of the petition seeking the order. Unless the petition is in connection with a temporary custody hearing and the person has received notice, the notice must be by personal service at least 3 days before the hearing or in writing 5 days before the hearing. The person also has a right to counsel (although not court-appointed counsel) the right to be present at the order of protection hearing and the right to cross-examine and present witnesses.

(5) Order

The protective order must be in writing. Unless the person against whom the order was entered was in court, the order shall be served in conformity with service of process in civil cases. After service, the recipient may seek modification within 7 days of actual receipt. The court should schedule a date for review of the order to ensure compliance with its terms.

(6) Violations

A violation of a protective order may subject the violator to a contempt finding. *See* ***In re J.A.***, 108 Ill. App. 3d 426 (3d Dist. 1982).

2.45 OUT-OF-STATE RUNAWAYS

On occasion a juvenile court judge will be asked to enter orders in a case where an Illinois youth has run away to another state or where a minor from another state is residing in Illinois. The procedures for dealing with such a request are contained in the Interstate Compact on Juveniles Act, **45 ILCS 10/0.01** ***et seq.***

2.50 POST-DISPOSITION REVIEW

Once the court enters an adjudication of wardship order, the court's dispositional power continues until final discharge of wardship. ***In re S.J.K.***, 149 Ill. App. 3d 663 (5th Dist. 1986).

The court may require the custodian or guardian to make a report within 10 days of the court's request.

A guardian or custodian must file an updated case plan every 6 months. An agency with guardianship must file a supplemental petition for court review every 18 months after entry of an order for shelter care.

The minor or any person interested in the minor may apply to the court for a change of custody at any time prior to the termination of the wardship order.

CHAPTER 3. TRUANT MINOR IN NEED OF SUPERVISION

3.01 JURISDICTION

705 ILCS 405/3-33.5 (P.A. 94-1011, § 15, eff. July 7, 2006)

In 2006, the legislature repealed the former truant minor in need of supervision section 3-33 and replaced it with section 3-33.5. Sections 3-33 and 3-33.5 are substantially similar. Section 3-33.5 adds the requirement that before filing a petition alleging a minor is a truant in need of supervision, the office of the regional superintendent of schools, the Office of Chronic Truant Adjudication, or a community truancy review board must certify that the local school has provided appropriate truancy intervention services to the truant minor and his or her family. ***Id.*** at **3-33.5(a)**. "Truancy intervention services" are "services designed to assist the minor's return to an educational program, and includes but is not limited to: assessments, counseling, mental health services, shelter, optional and alternative education programs, tutoring, and educational advocacy." ***Id.*** The truancy intervention services prerequisite is not required when the comprehensive community based youth service agency is incapable to provide intervention services. ***Id.***

A minor may be subject to the provisions of the Juvenile Court Act if he or she has been reported as a chronic truant by a regional superintendent or, in cities over 500,000, by the Office of Chronic Truant Adjudication.

The definition of a "chronic truant" for purposes of the Juvenile Court Act is the same definition used in the School Code. **705 ILCS 405/3-33(a-3)**. The Illinois School Code defines a "chronic truant" as "a child subject to compulsory school attendance who is absent without valid cause from such attendance for 10 percent or more of the previous 180 days of regular attendance days." **105 ILCS 5/26-2a**. The same provision defines "valid cause" as "illness, observance of a religious holiday, death in the immediate family, family emergencies, . . . other situations beyond the control of the student as determined by . . . the board of education, or such other circumstances which cause reasonable concern to the parent for the safety or health of the student.

3.05 PROCEDURES

Because the truant minor in need of supervision was "tacked on" to the MRAI provision, the Act does not specifically address the procedures to be followed when a petition alleging truancy jurisdiction is filed.

Presumably, however, the general provisions of the MRAI statute (*e.g.,* those involving the filing of petitions, notice, adjudication and dispositional hearing) also apply in cases involving truant minors. *See* ***In re C.W.***, 292 Ill. App. 3d 201 (4th Dist. 1997) ("[w]e believe that the provisions of article III, where applicable, should control a proceeding initiated under 3-33 of the Act.").

3.10 STATUTORY PRESUMPTIONS

The Act creates a rebuttable presumption that a chronic truant is a truant minor in need of supervision. **705 ILCS 405/3-33.5(a-1)**. It also creates a rebuttable presumption that school records of a minor's attendance are authentic. ***Id.*** at **3-33.5(a-2)**.

3.15 SUFFICIENCY OF THE EVIDENCE

Once the State has established that a minor is a chronic truant, the burden shifts to the minor to satisfy the court that he or she should not be considered a truant in need of supervision. **705 ILCS 405/3-33.5(a-1)**. The Act does not specify the nature of the minor's burden or under what circumstances the statutory presumption may be overcome.

Comment: The trial court should be aware that the School Code defines a "truant minor" (as distinguished from a "chronic truant") as a minor to whom supportive services have been offered and refused or failed. **105 ILCS 5/26-2a**.

3.20 DISPOSITIONAL ALTERNATIVES

705 CS 405/3-33.5(b)

After dispositional hearing, the court may enter any of the following dispositions in the case of a minor found to be a truant in need of supervision:

- committed to the regional superintendent for a multidisciplinary case staffing, individualized educational plan or service plan, or referral to comprehensive community-based youth services;

- required to comply with an individualized educational plan or service plan as specifically provided by the appropriate regional superintendent of schools;

- ordered to obtain counseling or other supportive services;

If the court has made an express written finding that a truancy prevention program previously has been offered to the minor in need of supervision, the minor also may be:

- fined in an amount in excess of $5 but not more than $100 per day for each day of an unexcused school absence;

- required to perform some reasonable public service work such as picking up litter or maintenance of a public facility;

- subject to having his or her driver's license or driving privileges suspended up to age 18.

3.25 POST-DISPOSITIONAL ISSUES

A) DURATION OF SUPERVISION

The trial court should set a date for termination of a supervision order in a truancy proceeding. ***In re C.W.***, 292 Ill. App. 3d 201 (4th Dist. 1997) (citing **705 ILCS 405/3-32(1)**).

B) VIOLATION OF COURT ORDER

705 ILCS 405/3-33(6)(c)

Violation of court orders can subject a minor truant to a contempt of court finding. If found in contempt, the court may impose whatever sanction is appropriate. *See* ***In re G.B.***, 88 Ill. 2d 36 (1981) (a court has inherent power to impose contempt sanction against minor who violates a supervision order even if the sanction is not expressly authorized by the Act). However, while the Supreme Court of Illinois has sanctioned trial courts use of their contempt powers to enforce orders of supervision under the Juvenile Court Act, "in the absence of a statute allowing such a procedure, contempt may not be used as punishment for minors who violate orders of supervision entered on municipal ordinance violations which themselves do not permit imprisonment." ***City of Urbana v. Andrew N.B.***, 211 Ill. 2d 456, 476-77 (2004).

C) DISCHARGE FROM WARDSHIP

A truant minor in need of supervision is not entitled to automatic discharge upon reaching age 16, the maximum age for compulsory school attendance in Illinois. Instead, a court may retain jurisdiction until it determines that discharge is in the minor's best interest or until the minor turns age 19. ***In re C.W.***, 292 Ill. App. 3d 201 (4th Dist. 1997).

ARTICLE IV

ADDICTED MINORS

Article IV gives the Juvenile Court jurisdiction over children under the age of 18 who are determined to be addicts or alcoholics as defined in the Alcoholism and Other Drug Abuse and Dependency Act, **20 ILCS 301/1-1 *et seq.*** Although this provision is not frequently used, it should be considered as a basis for juvenile court jurisdiction in cases where alcohol and/or drug abuse is the underlying reason for a minor's behavior, circumstances or needs.

CHAPTER 1. PRE-FILING ISSUES AND PROCEDURES

1.01 JURISDICTION

The Juvenile Court has jurisdiction over minors who are addicted to drugs or alcohol. The Illinois Alcoholism and Other Drug Abuse and Dependency Act, **20 ILCS 301/1-103** defines addict, addiction, alcoholic and alcoholism as follows:

"Addict" means a person who exhibits the disease known as "addiction";

"Addiction" means a disease process characterized by the continued use of a specific psycho-active substance despite physical, psychological or social harm. The term also describes the advanced stages of chemical dependency;

"Alcoholic" means a person who exhibits the disease known as "alcoholism";

"Alcoholism" means a chronic and progressive disease or illness characterized by preoccupation with and loss of control over the consumption of alcohol, and the use of alcohol despite adverse consequences. Typically, combinations of the following tendencies are also present: periodic or chronic intoxication; physical disability; impaired emotional, occupational or social adjustment; tendency toward relapse; a detrimental effect on the individual, his family and society; psychological dependence; and physical dependence. Alcoholism is also known as addiction to alcohol. Alcoholism is described and further categorized in clinical detail in the DSM and the ICD.

CHAPTER 2. INITIATING JUVENILE COURT PROCEEDINGS

2.01 TAKING INTO CUSTODY

705 ILCS 405/4-4

A) ARREST WITHOUT A WARRANT

A law enforcement officer may take a minor into temporary custody if there is reasonable cause to believe the minor is an addicted minor, or if the minor is a ward of the court who has escaped from court ordered commitment, or who is found in a public place suffering from sickness or injury which requires medical care. A law enforcement officer may not, however, consent to medical treatment of a minor in temporary custody. *See* ***In re General Order of October 11, 1990***, 256 Ill. App. 3d 693 (1st Dist. 1993).

B) ARREST WITH A WARRANT

If a petition has been filed and the court finds that the conduct and behavior of the minor may endanger himself or herself or others, or the court believes that the circumstances of the minor's home environment may pose a threat, a court may issue a warrant to take the minor into immediate custody.

C) DETENTION OF MINOR IN TEMPORARY CUSTODY

Minors taken into custody under Article IV may not be placed in a jail, municipal lockup, detention center or secure correctional facility. **705 ILCS 405/4-4(4)**; **1-4.1; 4-9(5)(6)**.

D) DUTY OF LAW ENFORCEMENT OFFICER

A law enforcement officer must investigate the circumstances surrounding the minor's being taken into custody. The minor should be released to his or her parent, guardian or custodian unless the investigator finds that further temporary custody is necessary. **705 ILCS 405/4-7**.

After taking a minor into temporary custody, a law enforcement officer must immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor's care, or the person with whom the minor resides, that he or she has been taken into custody and where he or she is being held.

The officer must also take the minor to the nearest juvenile police officer or shall surrender the minor to a juvenile police officer in the city where the alleged offense occurred. **705 ILCS 405/4-5**.

2.05 PETITION

705 ILCS 405/4-12

A) WHO MAY FILE?

Any adult person, agency or association by its representative, or the court on its own motion may direct the filing through the State's Attorney, of a petition alleging that the minor is addicted.

B) CONTENTS OF THE PETITION

The verified petition must contain (a) facts alleging that the minor is addicted; (b) the name, age and residence of the minor; (c) the names and residence of the minor's parents; (d) the name and residence of his or her legal guardian or custodian or nearest known relative; (e) the shelter care hearing or order date, if any; and (f) an allegation that it is in the best interest of the minor and public that he or she be made a ward of the court.

C) SUPPLEMENTAL PETITIONS

Supplemental petitions may be filed at any time before the dismissal of the petition or discharge of wardship.

2.10 NOTICE AND SUMMONS

705 ILCS 405/4-14; 4-15

A) SUMMONS

The summons is directed to the minor, the minor's legal guardian or custodian and each person named as a respondent in the petition.

B) SERVICE

The summons may be served personally or by certified mail or notice by publication under the terms and conditions set out in section 4-14 and 4-15.

C) WAIVER OF SERVICE

The appearance of the minor or the minor's legal guardian or custodian constitutes waiver of service of summons and submission to the court's jurisdiction.

2.15 PRELIMINARY CONFERENCE

705 ILCS 405/4-11

The court may authorize the probation department to confer in a preliminary conference with any person seeking to file a petition, the prospective respondent, and other interested persons concerning the advisability of filing the petition, with a view to adjusting suitable cases without filing a petition. This provision does not apply, however, if the State's Attorney or the minor insists on court action.

Following the initial conference, the probation officer formulates a written nonjudicial adjustment plan which may include the following: up to six months informal supervision;

- up to twelve months of informal supervision with a probation officer;
- up to six months probation with release to a person other than a parent;
- referral to a special education, counseling or rehabilitative program;
- referral to a residential treatment program;
- any other appropriate action with the consent of the minor and his or her parents.

CHAPTER 3. INITIAL APPEARANCE OF MINOR AND PARENT

3.01 SHELTER CARE HEARING

705 ILCS 405/4-8; 4-9

A) SETTING A SHELTER CARE HEARING

Once there has been a determination that the minor should continue in custody, the probation officer should file a petition and should cause the clerk of the court to set the matter for hearing on the shelter care calendar within **48 hours** of the time the minor was taken into custody, exclusive of Saturdays, Sundays and legal holidays. If a parent, guardian or responsible relative is present at the time the petition is filed, and if court is in session, the shelter care hearing should be held immediately. If the minor is not given a shelter care hearing within the statutory time frame, he or she is entitled to be released from temporary custody. **705 ILCS 405/4-8**.

B) SHELTER CARE HEARING

(1) Rights of Parties

At the time of the first appearance, the court should explain to the parties the nature of the proceedings and advise them of their right to be represented by counsel, to be heard, to present evidence and to cross-examine witnesses. Each adult respondent should be furnished a written Notice of Rights at or before the first hearing at which he or she appears.

(2) Guardian *ad litem*

705 ILCS 405/4-16(2)

In the case of an addicted minor, section 4-16 provides that a guardian *ad litem* shall be appointed if (a) no parent, guardian, custodian or relative appears at the first or any subsequent hearing; (b) the petition prays for the appointment of a guardian with power to consent to adoption; or (c) the petition results from a report made under the Abused and Neglected Child Reporting Act.

The court may appoint a guardian *ad litem* whenever it finds that there may be a conflict of interest between the minor and his or her parent or custodian or if it is otherwise in the minor's interest to do so.

(3) Agreed Orders

The parties may seek to enter an agreed order on some or all of the issues for determination at the shelter care hearing. When the parties present the court with a proposed order, the court should ensure that the order contains stipulations that probable cause exists and/or that removal from the home is a matter of immediate and urgent necessity, and/or that reasonable efforts have been made to keep the minor in the home. The court should make findings on the record to support entry of the order and should indicate whether the order is entered with or without prejudice.

(4) Issues at Shelter Care Hearing

The court must hear evidence, determine, and make findings on three separate issues at the shelter care hearing:

- whether there is probable cause to believe the minor is an addicted minor;

- if so, whether there is immediate and urgent necessity for the protection of the minor that he or she be placed in shelter care; and

- if so, whether reasonable efforts have been made to eliminate the need for removal from the home or good cause why reasonable efforts cannot eliminate removal. The court must require documentation on this point.

(5) Release to Family

If the court finds there is probable cause to believe a minor is addicted, the court may release the minor to his or her parent, guardian, or custodian if that person appears to take custody and agrees to abide by a court order which requires the minor and his or her parent, guardian or legal custodian to complete an evaluation by an entity licensed by the Department of Human Services and complete any treatment recommendations indicated by the assessment.

(6) Shelter Care

If the court finds probable cause, immediate and urgent necessity and the existence of reasonable efforts, the court may order shelter care in a shelter care facility designated by DCFS, a licensed child welfare agency, or in a facility or program licensed by the Department of Human Services.

(7) Court Order

(a) Findings

The court's findings should be part of its written order and the order should be given to the minor and his or her parent, guardian, or custodian.

(b) Services

The court may order the provision of services to the minor or his family as part of a shelter care order. Acceptance of such services is not an admission of any allegation in a petition, nor is a referral of services to be considered as evidence in proceedings under the Act, except where the issue is whether the Department made reasonable efforts to reunite the family.

(8) Post-Shelter Care Proceedings

Any interested party may file a motion to vacate a shelter care order. A hearing on the motion is to be held within 14 days of the filing. **705 ILCS 405/4-9(8)**.

CHAPTER 4. ADJUDICATION

4.01 DATE FOR ADJUDICATION

705 ILCS 405/4-13

The adjudicatory hearing must be held within 120 days of a demand made by a party. That period may be extended up to 30 days on a showing of need by the State. The Act sets forth several situations in which the statutory speedy trial requirement is tolled.

If the adjudicatory hearing is not held within the statutory time period, the court shall, upon motion, dismiss the petition with prejudice.

4.05 ADJUDICATORY HEARING

A) EVIDENCE

The rules of evidence and standard of proof are those used in civil proceedings. **705 ILCS 405/4-17**.

B) ADMISSIONS

The minor may enter an admission to the petition. The Act does not set forth the procedures to be followed by the court in accepting an admission. Because of the "quasi-criminal" nature of such a proceeding, prior to accepting an admission of addiction, a judge should advise the minor of his or her right to a trial and right to have the State prove that he or she is an addicted minor by a preponderance of the evidence. The minor should be advised of the dispositional alternatives which are available to the judge upon a finding of addiction. Additionally, in connection with acceptance of the admission, the court should make a record that a factual basis for the admission exists and that the minor has entered the admission voluntarily after being admonished of his or her rights and of the dispositional alternatives available upon finding of addiction and wardship.

C) SUFFICIENCY OF THE EVIDENCE

The determination of whether a minor is an alcoholic or an addict depends on the facts presented in each case. *See* ***People v. Miller***, 43 Ill. App. 3d 290 (5th Dist. 1976). There is no reported appellate decision which discusses a finding on these matters under the Act. Cases which require a finding of addiction under other Illinois statutes can be used to guide the court in determining whether the State has met its burden of proving that a minor is an addict. *See, e.g.*, ***People v. Carroll***, 258 Ill. App. 3d 371 (4th Dist. 1994) (finding of alcoholism despite sobriety for several months and ability to hold job); ***People v. Brown***, 267 Ill. App. 3d 482 (1st Dist. 1994) (defendant admitted drug use on daily basis); ***People v. Nolan***, 188 Ill. App.

3d 251 (5th Dist. 1989) (defendant admitted spending up to $150 a day on drugs); ***People v. Fuentes***, 172 Ill. App. 3d 874 (3d Dist. 1988) (pattern of drug use and crime). *But see* ***People v. Pietruszynski***, 189 Ill. App. 3d 1071 (1st Dist. 1989) (evidence that defendant had used drugs in the past and had been in a rehabilitation center insufficient to prove current addiction), *abrogated on other grounds by* ***People v. Williams***, 174 Ill. Dec. 829 (1992); ***People v. Davenport***, 176 Ill. App. 3d 142 (1st Dist. 1988) (no admission and no corroboration by physician, family member or parole officer).

D) FINDINGS AND ADJUDICATION

705 ILCS 405/4-19

After hearing the evidence at adjudication, the court must make and note in the minutes a finding of whether the minor is an addict. If the court finds the minor is not an addict, it must dismiss the petition. If it finds by a preponderance of the evidence that the minor is an addict, it must set a time for dispositional hearing. The court may also order a social investigation and dispositional report concerning the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, juvenile court involvement, personal habits or any other information that may be helpful to the court.

4.10 CONTINUANCE UNDER SUPERVISION

705 ILCS 405/4-18

The court may enter an order of continuance under supervision under the following circumstances:

- Upon an admission or stipulation by the minor of the facts supporting the petition and before proceeding to findings and disposition, or after hearing the evidence at the adjudicatory hearing but before noting in the minutes a finding of whether or not the minor is an addict, *and*

- If no objection to the supervision order is voiced by the minor, defense counsel, State's Attorney, parent, guardian, or custodian. If any of these individuals objects to the order, the court must proceed to finding and adjudication.

When a hearing is continued under this section, the court may permit the minor to remain at home subject to conditions set out in a written supervision order. The period of supervision should be for a specified period of time. The minor and all others affected by the supervision order should be given a copy of the order and should be informed of their responsibilities under the order as well as the consequences of failure to comply with the terms of the order.

If a violation of the order is alleged, the court should conduct a hearing pursuant to the requirements of section 4-18(2) (**705 ILCS 405/4-18(2)**). If, after hearing, the court finds that the terms of the supervision order have not been satisfied, the court may proceed to findings, adjudication and disposition.

When the court imposes an order of continuation under supervision, it must impose upon the minor, as a condition of the order, a fee of $25 for each month or partial month of supervision with a probation officer. The court may impose a lesser fee if the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee. The court may not impose the fee on a minor who is made a ward of the State under the Act. The fee may be imposed only upon a minor who is actively supervised by the probation and court services department. **705 ILCS 405/4-18(6)**.

CHAPTER 5. DISPOSITION

5.01 ADJUDICATION OF WARDSHIP

705 ILCS 405/4-20(1)

The first determination to be made at disposition is whether it is in the best interests of the minor and the public that he or she be made a ward of the court. If the court answers this inquiry in the negative, it should dismiss the petition.

If the court finds that it is in the best interest of the child and public that the child be made a ward of the court, it should proceed to hearing and disposition.

5.05 DISPOSITIONAL HEARING

A) NOTICE

Notice of the dispositional hearing must be given as required by sections 4-14 and 4-15 (**705 ILCS 405/4-14, 4-15**).

B) EVIDENCE

Section 4-20 (**705 ILCS 405/4-20(1)**) provides that all evidence helpful in determining the best interest of the child and public is admissible at the dispositional hearing, including hearsay evidence. A record of a prior continuance under supervision, whether or not successfully completed, is admissible at the hearing. **705 ILCS 405/4-20(3)**.

C) REPORTS

The court must advise the parties of the factual conclusions and contents of any report prepared for the court's use in arriving at its decision regarding disposition. If requested, the parties must be given a chance to refute information in the report. The court may order that only the attorneys have access to the contents of the report. The court may adjourn the hearing for a reasonable time to receive additional reports or other evidence. **705 ILCS 405/4-20(2)**.

5.10 DISPOSITIONAL ALTERNATIVES

After hearing, the trial court may order that the minor be:

- committed to the Department of Children and Family Services in conformity with the provisions of the DCFS Act;
- placed under supervision and released to parents, guardian or legal custodian;
- placed outside the home, with or without supervision in accord with the provisions of 4-25 (**705 ILCS 405/4-25**), but not in secure detention;
- required to attend an alcohol or drug abuse treatment or counseling program on an inpatient or outpatient basis instead of or in addition to any other disposition;
- ordered emancipated;
- subjected to having his or her driver's license suspended for any amount of time determined by the court up to age 18.

Additional orders may include a protective order, a supervision order, and/or restitution. A parent may be ordered to pay a portion of the support for a minor placed outside the home or for the minor's treatment.

As a condition of a supervision order, a fee of $25 for each month or partial month of supervision with a probation officer. If the court determines the inability of the minor, or the parent, guardian, or legal custodian of the minor to pay the fee, the court may impose a lesser fee. The court may not impose the fee on a minor who is made a ward of the State under this Act. The fee may be imposed only upon a minor who is actively supervised by the probation and court services department. **705 ILCS 405/4-18,** as amended by **P.A. 92-329** (effective 8-9-01).

Commitment to the Department of Corrections is not a dispositional alternative under Article IV. *See* ***In re M.S.S.***, 154 Ill. App. 3d 677 (2d Dist. 1987).

5.15 POST-DISPOSITION REVIEW

705 ILCS 4-5/4-26

The court may require any legal custodian or guardian to report periodically to the court or may cite such an individual or agency to appear in court within 10 days to make a written or oral report.

The guardian or custodian must file updated case plans every 6 months.

Court review of the case must take place every 18 months from the date of dispositional order.

The minor or any interested person may apply for a change in the minor's status at any time prior to termination of wardship. No legal custodian or guardian may be removed without his or her consent until given notice and an opportunity to be heard.

5.20 DURATION OF WARDSHIP

705 ILCS 405/4-29

All proceedings under the Act, as well as the wardship, custodianship or guardianship of the minor, automatically terminate when the minor turns 19, except that a court may continue the wardship until age 21 for good cause. The court may terminate wardship at any time it decides that wardship is no longer in the best interest of the minor or the public.

ARTICLE V

DELINQUENT MINORS

(Includes Juvenile Justice Reform Provisions of 1998)

CHAPTER 1. INTRODUCTION

PURPOSE AND POLICY

The Illinois General Assembly has articulated four purposes to be served by the delinquency provisions of the Juvenile Court Act (**705 ILCS 405/5-101**):

- To protect citizens from juvenile crime.

- To hold each juvenile offender directly accountable for his or her acts.

- To provide an individualized assessment of each alleged and adjudicated delinquent juvenile, in order to rehabilitate and to prevent further delinquent behavior through the development of competency in the juvenile offender. As used in this Section, "competency" means the development of educational, vocational, social, emotional, and basic life skills which enable a minor to mature into a productive member of society.

  To provide due process . . . through which each juvenile offender and all other interested parties are assured fair hearings at which legal rights are recognized and enforced.

DEFINITIONS

The definition of certain terms can be found at **705 ILCS 405/5-105**.

CHAPTER 2. PRE-FILING ISSUES AND PROCEDURES

2.01 IMMEDIATE INTERVENTION PROCEDURES

A) COMMUNITY DISCRETION

705 ILCS 405/5-300

The General Assembly concluded that "each community or group of communities is best suited to develop and implement immediate intervention programs to identify and redirect delinquent youth." While not mandating any of the following, Article 2001 allows individual communities to adopt one or more of the following immediate intervention programs.

The State's Attorney retains discretion to file charges where they deem appropriate. **705 ILCS 405/5-330**.

B) STATION ADJUSTMENTS

705 ILCS 405/5-301

(1) Informal Station Adjustment

A procedure that allows a juvenile police officer to impose reasonable restrictions on a minor where there is probable cause to believe the minor committed an offense without adjudicating the minor a delinquent.

A juvenile police officer may impose conditions as part of an informal station adjustment, including curfew, school attendance, community service, no contact orders, community mediation, teen court, or limited restitution.

(2) Formal Station Adjustment

A formal station adjustment is a procedure used when a juvenile police officer finds probable cause to believe that a minor has committed an offense, the minor admits to involvement, and the minor and his or her parents agree in writing to the formal station adjustment. The minor's statement is admissible in any subsequent judicial proceedings to the extent it is admissible under the rules of evidence governing such a proceeding.

As a condition of formal station adjustment, a juvenile police officer may impose the same conditions as for informal station adjustments and, in addition, may require reporting to the officer and non-possession of weapons. The period of formal station adjustment cannot exceed 120 days

and may be revoked in writing by the minor or the minor's parents within 30 days.

If a minor violates any condition of the station adjustment, the juvenile police officer may continue the formal station adjustment, extend it, add community service hours, or refer the case to court.

C) PROBATION ADJUSTMENT

705 ILCS 405/5-305

In cases where neither the State's Attorney nor minor insist on court action, the court may administratively authorize the probation office to hold a preliminary conference with the minor, his or her parents, the victim, juvenile police officer and others to examine alternatives to filing a petition. If a probation adjustment is appropriate, the probation officer prepares a written non-judicial probation adjustment plan that may include up to 12 months of informal supervision, community service, social service referral and other conditions. Statements made by the minor during the preliminary conference are not admissible in subsequent proceedings prior to conviction.

D) COMMUNITY MEDIATION

705 ILCS 405/5-310

The State's Attorney may create community mediation panels composed of citizens to informally hear cases referred by police officers, probation officers or State's Attorneys as a diversion from prosecution. To be eligible, minors must admit responsibility for the offense. After hearing, the community mediation panel may refer the minor for services, require community service, require restitution, require a minor and his or her parents to be screened for substance abuse, and require school attendance.

E) TEEN COURT

705 ILCS 405/5-315

Counties and municipalities may create or contract for teen court programs.

CHAPTER 3. JURISDICTION

3.01 JUVENILE COURT JURISDICTION IN DELINQUENCY CASES

In general, Article V gives the Juvenile Court exclusive jurisdiction over a minor under the age of 18 who is alleged to have violated or attempted to violate any federal or State law or municipal ordinance. The Act, however, removes certain types of alleged violations from the Juvenile Court's jurisdiction, either automatically or after hearing as set forth below. *See* ***In re Gabriel W***., 2017 IL App. (1st) 172120.

Age refers to a minor's age at the time the alleged offense occurred. *See* ***People v. Anderson***, 108 Ill. App. 3d 563 (1st Dist. 1982) (court does not recognize fractions of a day in computing age so although offense occurred at 1am on 11/22/1978, and he was born at 8:45am on 11/22/1961, court found that juvenile had turned 17 at the time of the offense).

There is no minimum age for asserting a court's jurisdiction. *See* ***In re Dow***, 75 Ill. App. 3d 1002 (1st Dist. 1979) (rejecting argument that Juvenile Court had no jurisdiction over minor under age 13). ***In re Rodney H.***, 223 Ill. 2d 510 (2006). Provision of the Act permitting court to place ward under guardianship of DCFS only if they're under 13 did not violate proportionate penalties clause of IL Constitution on its face.

3.05 PRINCIPLES OF JURISDICTION

The question of jurisdiction may arise in a number of ways.

A) SUBJECT MATTER JURISDICTION

(1) Generally, the filing of a petition alleging that the minor was under the age of 18 years and has committed a delinquent (*i.e.* criminal) act confers subject matter jurisdiction on the Juvenile Court regardless of where the act occurred. *See* **705 ILCS 405/5-120**. See ***In re Kelan W.,*** 2021 IL App. (5th) 210029. (trial court had jurisdiction to adjudicate respondent for an offense that was committed in Missouri). Unlike Criminal offenses/statute, jurisdictional portion of the Juvenile Court Act allows hearing so long as there is a violation of any federal, state, county, or municipal ordinance, without regard to where the offense occurred (including outside of the state).

Although the juvenile court may have subject matter jurisdiction, personal jurisdiction, and inherent authority to adjudicate the petition, the Juvenile Court Act does not authorize the State to institute juvenile delinquency proceedings against Respondent if he is 21 or over when the petition was filed. Juvenile court correctly dismissed petition, and without a valid juvenile petition, no discretionary transfer to criminal court was permitted under the Act. ***In re Luis R.***, 2013 IL App (2d) 120393 (2013). By way of

clarification, while proceedings might be brought under the Juvenile Court Act where a 21-year-old defendant was under the age of 15 at the time of the alleged offense, there can be no proceedings if the state fails to file an initial petition or a motion to transfer or extend jurisdiction when the defendant was 20 years old or earlier, and this precluded prosecution of the defendant as a juvenile after his 21st birthday. ***People v. Rich***, 2011 IL App (2d) 101237 (2d Dist. 2011). *But see* ***People v. Fiveash***, 39 N.E.3d 924 (2015)—defendant may be tried in adult court, where defendant was 23 years old when proceedings instituted, charged with acts he allegedly committed when he was 14 and 15 years old. Juvenile court has no jurisdiction. See also ***People v. Colasurdo****,* 2020 IL App (3d) 190356*See also* ***People v. Baum***, 2012 IL App (4th) 120285, where at age 19 a Defendant was criminally charged with sexual assault of complainant when she was 10 and when he was 16. The State declined the court's offer to transfer charges to juvenile court. The court made such an offer because the Defendant was not yet 17 at the time of the alleged assaults, and none of exceptions allowing State to prosecute criminal laws applied. Thus, the State was unauthorized to charge Defendant criminally, and the court properly dismissed charges. ***Id.***

(2) Additionally, the Juvenile Court having acquired subject matter jurisdiction due to the filing of a petition alleging the commission of a delinquent act by a minor under 18 years of age, may lose subject matter jurisdiction if proper notice of all proceedings is not given to the minor and parents. However, the State's failure to give notice to minor's father of an *amended* delinquency petition, as required by the Juvenile Court Act, did *not* deprive trial court of subject matter jurisdiction to adjudicate the petition, and did not divest court of personal jurisdiction over minor's father. ***In re M.W.***, 232 Ill. 2d 408 (2009). This principle will be discussed further below under "Notice—Subject Matter Jurisdiction," and under Section 5.15 "Notice and Summons," *infra*.

Even where neither parent was served with a summons or copy of petition *to revoke probation* and commit minor to Department of Juvenile Justice, the trial court had subject matter jurisdiction over the delinquency petition, because failure to serve parents was *waived by father appearing in court and participating in proceedings and by failure of respondent to object* (parents were married and living together during proceedings). ***In re Nathan A.C.***, 385 Ill. App. 3d 1063 (4th Dist. 2008). *But see* ***In re Keyonne D.***, 376 Ill. App. 3d 1023 (1st Dist. 2007) (order entered by trial court finding that respondent violated terms of her probation and committing her to the Department of Juvenile Justice was void because although State knew address of respondent's non-custodial father, who was served with process and appeared at proceedings on *original* delinquency petition, State failed to provide him with any notice of *supplemental* petitions, and thus the court was *deprived* of subject matter jurisdiction).

(3) Trial court did not impermissibly expose 16-year-old defendant, charged with armed robbery while carrying a firearm, to double jeopardy when, after defendant pled guilty, it dismissed petition for wardship due to lack of subject matter jurisdiction, and then refused to dismiss criminal indictment alleging same offense. Double jeopardy does not bar subsequent prosecution under the Criminal Code. ***In re Gilberto G.-P.***, 375 Ill. App. 3d 728 (2d Dist. 2007).

B) PERSONAL JURISDICTION

(1) Personal jurisdiction must be acquired over the person of every necessary party.

(a) As to the minor and each parent, guardian, or legal custodian whose address is known, personal jurisdiction is affected by service of summons. **705 ILCS 405/5-525**.

(b) If the parent resides outside of the State of Illinois summons may be served by certified mail, delivery limited to addressee only. **705 ILCS 405/5-525(2)**.

(c) If, after diligent inquiry, the location of a parent cannot be ascertained, personal jurisdiction may be obtained by publication. **705 ILCS 405/5-525(2)(b)**.

(2) Once personal jurisdiction has been properly acquired, no further service of summons or publication is necessary **705 ILCS 405/5-525(3)**.

(3) If a party appears and does not object to a failure to serve him or her with summons, that party waives such service and submits himself or herself to the personal jurisdiction of the court. **705 ILCS 405/5-525(4)**.

C) NOTICE—SUBJECT MATTER JURISDICTION

(1) Minor and Custodial Parent/Guardian- Due process requires that a minor and the minor's parents be given notice of each hearing. ***In re Gault***, 387 U.S. 1 (1967).

The failure to provide notice to a parent or minor of a hearing, be it trial, sentencing or probation revocation, violates the minor's right to due process of law, deprives the court of subject matter jurisdiction, renders that hearing and all subsequent orders void and subject to direct (appellate) or collateral attack at any time. ***In re J.E.***, 228 Ill. App. 3d 315 (2d Dist. 1992).

If a parent or other party is provided proper notice of the initial hearing and the subsequent hearing is scheduled at that initial hearing, the parent need not be given new notice of the subsequent hearing. Thus, if all hearings conducted in a juvenile proceeding consist of an unbroken chain, each

hearing being scheduled at the preceding hearing, only notice of the initial hearing need be provided. ***In re G.L.***, 133 Ill. App. 3d 1048 (3d Dist. 1985).

(2) Non-Custodial Parent – Section 5-525 provides that a summons need not be directed "to a parent who does not reside with the minor, does not make regular child support payments . . . and has not communicated with the minor on a regular basis." **705 ILCS 405/5-525(1)(a)(ii)**. However, the State is not absolved of its responsibility to act diligently in serving notice upon a non-custodial parent whose address may be easily discovered. ***In re Willie W.,*** 355 Ill. App. 3d 297 (2nd Dist. 2005)

(3) The State's failure to give notice to minor's non-custodial father of an *amended* delinquency petition adding a new charge, as required by the Juvenile Court Act, does not deprive a trial court of subject matter jurisdiction to adjudicate the petition, and did not divest court of personal jurisdiction over minor's father. ***In re M.W.***, 232 Ill. 2d 408 (2009).

(4) Parents or Other Parties Whose Identity and Location Are Known

Reasonable diligence must be exercised to locate and notify a parent whose location is unknown whether that parent is custodial or noncustodial. ***In re C.H.***, 277 Ill. App. 3d 32 (3d Dist. 1995).

(b) However, even when a noncustodial parent's location is known, the failure to give notice to that parent may not violate the minor's due process rights when the minor did not have regular contact with or significant relationship with the father. ***In re Darren M.***, 368 Ill. App. 3d 24, 32 (1st Dist. 2006).

In ***Darren M.***, *supra* the court found the failure to provide the noncustodial father with notice of the minor delinquency proceedings did not violate minor's due process rights where (1) minors' mother had sole custody, (2) State had served the minor's mother, (3) the mother was present for all of the proceedings, (4) mother knew where the father lived though she did not know his address, (5) father paid no child support, and (6) record failed to establish that minor had regular contact with or significant relationship with the noncustodial father. The criteria are essentially the same criteria for lack of notice to the non-custodial mother. ***In re C.L.***, 392 Ill. App. 3d 1106 (3d Dist. 2009) (additionally, in that case, lack of notice was not raised before trial court).

(c) A minor or other party who appears and does not object to the failure to identify or locate a noncustodial parent whose identity or address is not known to the State at the outset, and who raises no question as to the diligence of the State's efforts to locate and notify that parent, waives the right to claim on appeal or collaterally that reasonable diligence was not exercised to identify, locate or notify

the missing parent. ***In re Ricardo A.***, 356 Ill. App. 3d 980 (1st Dist. 2005) (failure to complain about lack of notice of non-custodial father and minor's own complicity with the proceedings before the trial court prevents the minor from raising the issue on appeal, especially where the mother had sole custody and was served and present for all proceedings, and there was no evidence that the minor and his father had a significant relationship).

Diligence on the part of the state may be assumed if some question of failure to locate or identify such party is not raised at the outset of proceedings. ***In re B.L.***, 315 Ill. App. 3d 602 (2d Dist. 2000).

(d) However, if a parent's identity or location is described in the petition as unknown, and it is later discovered that parent's identity and location were or should have been known to the State from the outset, all orders entered without notice to that parent are void and may be attacked by the minor at any time directly or collaterally. ***In re C.H.***, 277 Ill. App. 3d 32 (3d Dist. 1995).

D) CONCURRENT JURISDICTION

705 ILCS 405/5-125

Where a child is alleged to have violated a traffic offense (including DUI, reckless homicide), boating, fish, and game law, or municipal or county ordinance, the State's Attorney has the option of proceeding under the Juvenile Court Act or in adult court. If a minor is detained pending trial, detention must be in compliance with new Article V.

The different treatment of juvenile traffic, etc., offenders from other juvenile misdemeanants does not violate equal protection. *See, e.g.*, ***City of Urbana v. Andrew N.B.***, 211 Ill. 2d 456, 476-77 (2004) (concurrent jurisdiction section did not violate defendants' equal protection rights, even though defendants, having been charged with an ordinance violation, were not entitled to the same procedural rights as minors facing delinquency petitions, because juvenile detention was harsher than the consequences for someone in defendants' position, and thus the conclusion that minors in the juvenile justice system were entitled to greater procedural safeguards was rational). Nor does it violate due process. ***City of Champaign v. Montrell D.H.***, 336 Ill. App. 3d 558 (4th Dist. 2003), *rev'd on other grounds,* ***City of Urbana v. Andrew N.B.***, *supra*.

E) EXCLUDED JURISDICTION

Article V excludes certain offenses allegedly committed by minors under the age of 18 from Juvenile Court jurisdiction. In general, matters excluded from the

Court's jurisdiction involve serious crimes committed by older juveniles. If an offense is excluded from Juvenile Court jurisdiction, it is tried in adult court, with all rights and procedures otherwise applicable in adult prosecutions. *See e.g.*, ***People v. M.R***., 2018 IL App. (2d) 170342 (possession of stolen vehicle is not violation of a traffic law such that juveniles could be tried as adult under 5-125).

The following section describes the categories of cases automatically excluded from Juvenile Court consideration or subject to transfer after a hearing in juvenile court.

CHAPTER 4. TRANSFER

SEE TRANSFER CHECKLIST: APPENDIX

4.01 AUTOMATIC TRANSFER CASES

Certain offenses allegedly committed by older minors must be tried in adult criminal court. Illinois courts have consistently upheld the constitutionality of the Act's automatic transfer provisions. *See* ***People v. Patterson***, 25 N.E.3d 526 (2014)—upholding automatic transfer pursuant to **705 ILCS 405/5-130** against constitutional challenges. *See also* ***People v. Croom***, 975 N.E.2d 1107 (Ill. 2012) (defendant, age 16 at time of incident, was not denied substantive due process when he was automatically transferred to adult court and was convicted, after jury trial, of first-degree murder of three-year-old by striking him in abdomen); ***People v. Jackson***, 965 N.E.2d 623 (2012) (automatic transfer provision of Juvenile Court Act, where juveniles age 15 charged with certain Class X felonies are automatically transferred to criminal court, does not impose any punishment, and thus is not subject to eighth amendment's prohibition against cruel and unusual punishment).

While the automatic transfer provisions have been upheld, the automatic transfer provision in Illinois was amended, changing the age of automatic transfer from 15 to 16. Subsequent appellate history in the above-mentioned ***Patterson*** case, addresses the retroactivity of the age requirement of the transfer rule. *See* ***People v. Patterson***, 67 N.E.3d 291, 2016 IL App (1st) 101573-B (2016), which was decided after the amendment of the automatic transfer statute. Patterson was found guilty in 2008 of aggravated criminal sexual assault committed when he was 15; based on statute in effect at that time, which provided for mandatory transfer at 15 ("shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with . . . aggravated criminal sexual assault"), the trial court sentenced him as an adult to 36 years in prison. Appellate court reversed and remanded for retrial (2012). IL Supreme Court reversed the Appellate court's judgment and rejected arguments for a new trial, remanding to the Appellate court for consideration of sentencing issues. After Supreme Court's decision, the General Assembly amended the statute, raising the minimum age for mandatory transfer to 16, and Patterson argued that the case should be remanded to juvenile court. Court found that the automatic transfer process was procedural, and thus the amendment retroactive, and vacated sentence, remanding to the Juvenile court for a hearing on whether to transfer. *See also* ***Alvarez v. Howard***, 72 N.E.3d 346 (Ill. 2016) (following Patterson and explaining that if the juvenile transfer statute is purely procedural, amendment to 5-130 was procedural, which would apply retroactively). However, the result may be different for cases on direct appeal. *See* the Supreme Court's opinion in ***People v. Hunter***, 2017 IL 121306 (decided November 2017), questioning whether "a different result is warranted" on the issue of whether the amendments to section 5-130 of the Juvenile Court Act (**705 ILCS 405/5-130** (amended by P.A. 99-258 (eff. Jan. 1, 2016))), apply to a case pending on appeal at the time the amendments became effective. *See also* ***People v. Smolley***, 2018 IL App. (3d) 150577. While automatic transfer provision is not retroactive for cases on direct appeal, sentencing

court must consider age; sentence vacated and remanded. See ***People v. Kyles****,* 2020 IL App (2d) 180087.

(1) Requirements for cases subject to automatic "transfer" are:

(a) The minor was at least 16 years old at the time of the offense and the minor is charged with one of the following offenses:

(i) first degree murder

(ii) aggravated criminal sexual assault

(iii) aggravated battery with a firearm where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012.

(2) Juvenile Court Jurisdiction

705 ILCS 405/5-130(1)(b)(i)

Although the juvenile court has no original jurisdiction in cases subject to the Act's excluded jurisdiction provisions, if an indictment or information is filed before trial or plea in criminal court that does not include the excluding offense (*e.g.*, first degree murder by minor over the age of 16), the State may only proceed with the prosecution in Juvenile Court under the provisions of Article V if the minor waives the right in writing. The appellate court has held, however, that a defendant was not entitled to have his criminal conviction reversed where the defendant's oral waiver was made understandingly. ***People v. Mathis***, 357 Ill. App. 3d 45, 52-53 (1st Dist. 2005).

People v. Hunter, 2017 IL 121306. Hunter sought remand to juvenile court for sentencing, following amendment to **5-130(1)(a)**, which removed two offenses from the automatic transfer list. Court followed ***Alvarez v. Howard***. New procedural rules only apply to ongoing proceedings "so far as practicable." Act did not become effective until after trial court proceedings concluded; no reversible error necessitating remand for further proceedings to which the amended statute could apply. *See* ***People v. Ingram***, 2018 IL App. (4th) 160099. State charged Ingram with armed robbery with a firearm under **720 ILCS 5/18-2(a)(4)**, excluding him from juvenile court. He later pled to armed robbery with a dangerous weapon; amended charge did not divest the trial court of jurisdiction.

Retroactive application here would not be practicable, as ***Hunter*** (now 22) is no longer subject to jurisdiction of the Juvenile court. *See also* ***People v. Foxx****,* 2018 IL App. (1st) 162345. Defendant was 34 years old at the time of his resentencing; transfer would have been impracticable because the juvenile court would no longer have had authority to proceed against him under the Act. Failed to establish prejudice for ineffective assistance of counsel claim.

(3) Sentencing in Excluded Jurisdiction Cases

(a) Conviction for excluded jurisdiction offense

705 ILCS 405/5-130(1)(c)(i)

See ***People v. Aikens***, 63 N.E.3d 223 (Ill. App. 1 Dist. 2016), holding that adult sentencing scheme as applied to defendant violated the proportionate penalties clause of the Illinois Constitution, as it shocks our evolving standard of moral decency (20-year sentence for underlying offense and 20-year enhancement for discharge of a firearm during the offense).

However, if a minor is convicted of the offense that gave rise to the exclusion from juvenile court, he or she may be sentenced to any adult sentence authorized under Chapter V of the Uniform Code of Corrections. *See* ***People v. Glazier***, 38 N.E. 3d 531 (2015) (upholding automatic transfer and 60-year sentence for 17-year-old murder defendants against 8th Amendment claims despite defense arguments that defendant had just turned 17, lacked a prior criminal history and played a secondary role in homicide). Sentence was within the statutory limit, not in variance with the purpose of the law and therefore not excessive. ***Id.*** But see IL Supreme Court decision in ***People v. Glazier***, 144 N.E. 3d 1170, directing the 5th Dist. to vacate resentence on other grounds considering ***Buffer*** and ***Miller***.

(b) Conviction for non-excluded offense

See ***People v. Clark***, 2020 IL App (1st) 182533. Defendant was convicted but not yet sentenced when 2016 amendment to section 5-130 of the Juvenile Court Act took effect (raising age from 15 to 17); appellate court held that the amendment applied retroactively. State should have opportunity to file petition to request hearing pursuant to 5-130(1)(c)(ii) because defendant committed an enumerated offense but no longer meets the provision's age requirement. Court cited ***Fort*** and ***Hunter*** and remanded the case to the trial court with directions to vacate sentence and give the State 10 days to file a petition requesting a hearing under 5-130(1)(c)(ii). If after a hearing the trial court determines that he is not subject to adult sentencing, the proceedings should be discharged, as he's no longer eligible for commitment as a juvenile.

705 ILCS 405/5-130(1)(c)(ii)

If a minor is convicted in criminal court of an offense other than the offense that gave rise to the exclusion of juvenile court jurisdiction, the criminal court judge must sentence the minor under the provisions of the Juvenile Court Act unless, after a hearing requested by the State's Attorney, the

judge decides that the minor should be sentenced under the Uniform Code of Corrections. In making this determination, the court must consider several statutory criteria, including (a) whether the offense was committed in an aggressive and premeditated manner; (b) the minor's age; (c) the minor's history; (d) the availability of appropriate rehabilitative facilities in the juvenile corrections system, (e) public security; and (f) whether the minor possessed a deadly weapon. At the hearing, the rules of evidence apply.

In ***People v. Scott***, 69 N.E.3d 870 (Ill. App. 1 Dist. 2016), the defendant was acquitted of the armed robbery offense, for which he had been automatically transferred to adult court, but convicted him of aggravated robbery (not an automatic transfer offense). The trial court sentenced him as an adult for the aggravated robbery and he appealed. The appellate court vacated the defendant's sentence on the aggravated robbery and remanded for resenting in juvenile court, at which time state could argue to transfer defendant to adult court. *See also* ***People v. Fort***, 88 N.E.3d 718 (IL 2017) (Circuit Court clearly erred in sentencing defendant as an adult, overruling ***People v. Toney***, 354 Ill. Dec. 345, 957 N.E.2d 939) (2011).

Cases that discuss a criminal court judge's sentencing discretion and options under this provision include:

People v. Champ, 329 Ill. App. 3d 127 (1st Dist. 2002) (adult sentence vacated where minor was convicted of a non-excluded offense and the State failed to request a hearing to determine whether the minor should be sentenced as an adult);

People v. Luckett, 295 Ill. App. 3d 342 (3d Dist. 1998) (court properly considered statutory factors and did not abuse discretion in imposing adult sentence);

People v. De Oca, 238 Ill. App. 3d 362 (1st Dist. 1992) (minor should have been sentenced as juvenile when convicted of second-degree murder).

4.05 VOLUNTARY TRANSFER

705 ILCS 405/5-130(9)

A minor, with consent of counsel, may at any time before commencement of an adjudicatory hearing file a motion for transfer to criminal court. The court must dismiss the juvenile petition and transfer the case. No hearing on the minor's motion is required. ***People v. Greve***, 83 Ill. App. 3d 435 (2d Dist. 1980). See also ***People v. Arnold,*** 323 Ill. App. 3d 102 (2001).

NOTE: Counsel and the minor should, however, be reminded that if a case is voluntarily transferred to criminal court for trial and the minor is convicted, the minor has waived the right to have any subsequent case heard in juvenile court. *See* **705 ILCS 405/5-130**.

4.10 MANDATORY TRANSFER

– Mandatory Transfer of juvenile cases to adult court was repealed by Public Act 99-258 eff. January 1, 2016.

4.15 PRESUMPTIVE TRANSFER

705 ILCS 405/5-805(2)

A) IN GENERAL

A minor 15 or older who is alleged to have committed a forcible felony is presumed not "a fit and proper subject" for to be dealt with in juvenile court. This legislative presumption may be rebutted if the juvenile court judge finds by clear and convincing evidence that the minor would be amenable to the care, treatment, and training programs available through the facilities of the juvenile court.

B) STATUTORY CRITERIA FOR PRESUMPTIVE TRANSFER

Presumptive transfer arises where the State files a petition prior to the commencement of trial alleging that:

(a) the minor is 15 or older and is alleged to have committed a forcible felony; and

(b) the minor was previously adjudicated a delinquent minor or found guilty of committing a forcible felony; and

(c) the act that constitutes the offense was committed in furtherance of criminal activity by an organized gang.

Section 805(2) states "forcible felony under the laws of this State"; the term forcible felony is not defined under the Juvenile Court Act. The Criminal Code defines "forcible felony" as "treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual." **(720 ILCS 5/2-8).**

The rebuttable presumption in favor of transfer arises only after the court finds at a hearing, probable cause to believe that the allegations in the petition and motion are true. ***In re K.J.***, 334 Ill. App. 3d 947 (1st Dist. 2002). Since the presumptive transfer hearing is dispositional, not adjudicatory, a minor defendant had no due process right to have a jury make those findings beyond a reasonable doubt. ***People v. Beltran***, 327 Ill. App. 3d 685, 690-91 (2d Dist. 2002). This provision is procedural in nature and may be applied retroactively without violating *ex post facto* principles. ***People v. Pena***, 321 Ill. App. 3d 538 (lst Dist. 2001).

Further, since the Presumptive Transfer Statute does not impose punishment, but merely determines the forum in which the minor's guilt will be adjudicated, its application does not fall under ***Apprendi***, calling for jury determinations of fact, or violate due process. ***People v. Perea***, 347 Ill. App. 3d 26 (1st Dist. 2004). Nor is the statute unconstitutionally vague as applied to minor defendants who were acquitted of predicate felony of attempted first degree murder for which they were transferred but were convicted of Class X felony of armed robbery, where, because of Class X status of crime of armed robbery, defendants knew that they would be subject to the sentencing provisions of the Criminal Code. ***Id.***

For purposes of an equal protection challenge, juveniles transferred to adult court under extended juvenile jurisdiction statute were not similarly situated to defendants who were transferred to adult court under the Presumptive Transfer Statute. ***People v. Perea***, *supra*. The Presumptive Transfer Statute applies automatically to defendants who commit Class X felonies and places the burden on a minor defendant to show amenability to care, treatment, and training programs available through facilities of juvenile court, while extended juvenile jurisdiction statute gives juvenile court more discretion when considering whether to transfer juveniles under extended juvenile jurisdiction. ***Id.*** Also, the Presumptive Transfer Statute mandates that a defendant juvenile convicted of a predicate felony different from the predicate felony which resulted in his transfer to the criminal court system, be sentenced as an adult; there is not discretion regarding as there is under the EJJ statute. ***Id.*** 347 Ill. App. 3d at 37.

If a defendant is convicted of attempted murder after his case was transferred to adult court under a presumptive transfer law that was later held unconstitutional as a violation of the single-subject rule, the minor is entitled to a new transfer hearing because "[t]he transfer is void just as the transfer statute is void," but if a juvenile court judge finds that transfer would have been appropriate under an earlier law, the conviction and sentence should stand. ***People v. Brown***, 225 Ill. 2d 188 (2007).

C) PRESUMPTIVE TRANSFER PROCEDURES

Upon a probable cause finding that the allegations in the petition regarding presumptive transfer are true, the judge must dismiss the juvenile court petition and transfer the case *unless* he or she makes a finding, based on clear and convincing evidence, that the minor is amenable to rehabilitation in the juvenile system.

In considering whether the statutory presumption favoring transfer has been rebutted, the court must evaluate the following statutory criteria (**NOTE:** These criteria are similar, but not identical to, the criteria used in discretionary transfer cases).

(1) the age of the minor;

(2) the history of the minor, including: (a) any previous delinquent or criminal history of the minor, (b) any previous abuse or neglect history of the minor, and (c) any mental health, physical, or educational history of the minor or combination of these factors;

(3) the circumstances of the offense, including: (a) the seriousness of the offense, (b) whether the minor is charged through accountability, (c) whether there is evidence the offense was committed in an aggressive and premeditated manner, (d) whether there is evidence the offense caused serious bodily harm, (e) whether there is evidence the minor possessed a deadly weapon;

(4) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(5) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections (a) the minor's history of services, including the minor's willingness to participate meaningfully in available services; (b) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction; (c) the adequacy of the punishment or services.

The statute requires the court to give greater weight to the seriousness of the alleged offense and the minor's history of delinquency. **705 ILCS 405/5-805(2)(b)**.

D) SENTENCING IN PRESUMPTIVE TRANSFER CASES

If a case has been transferred to a criminal court for trial under the rebuttable presumption provision and the defendant is not convicted of the crime that formed the basis for the original transfer, the trial court has discretion to sentence the minor as an adult or to return the case to juvenile court for sentencing. ***People v. A.T.***, ***Jr.***, 303 Ill. App. 3d 531 (2d Dist. 1999).

4.20 DISCRETIONARY TRANSFER

705 ILCS 405/5-805(3)

A) IN GENERAL

The State's Attorney may file a motion for transfer if a petition alleges commission of a crime by a minor **13** years of age or over. If, after hearing but before trial, the judge determines that there is probable cause to believe that the allegations in the motion are true and that it is not in the best interests of the public to proceed under the Act, the court may enter an order permitting prosecution under the criminal laws.

The constitutionality of the Illinois discretionary transfer statute has been upheld in several cases. *See* ***People v. Beck***, 790 N.E. 2d 429, 434 (5th Dist. 2003) (discretionary transfer is dispositional in nature and not adjudicatory and therefore does not implicate the constitutional concerns, such as the right to jury trial, raised in ***Apprendi)***; ***People v. Bryant***, 278 Ill. App. 3d 578 (1st Dist. 1996) (no separation of power issue).

Note: The State is prohibited by the "law of the case" doctrine from seeking extended jurisdiction juvenile (EJJ) designation following an unsuccessful attempt to obtain an order transferring the case to adult court. The state gets six factors pertinent to EJJ designation considered by the trial court and reviewed by the Appellate Court in an unsuccessful appeal of a denial of transfer. Thus, it would be unconstitutional to allow the state, after having eight transfer factors considered and rejected, to make second attempt under lesser burden (only six factors) for EJJ. ***In re Christopher K.***, 217 Ill. 2d 348 (2005).

When the trial court makes its discretionary determination that a juvenile's case should not be transferred to adult court, the ultimate issue is whether he should be tried and punished as an adult. Though the EJJ mechanism offers an extra opportunity for a juvenile to avoid an adult sentence by fulfilling the conditions of his juvenile sentence, the ultimate issue of whether the juvenile should, under any mechanism, be punished as an adult was already decided. ***Id.***

B) DISCRETIONARY TRANSFER CRITERIA

The statute sets forth the following factors to be considered by the court when considering a discretionary transfer:

(1) the age of the minor;

(2) the history of the minor, including: (a) any previous delinquent or criminal history of the minor, (b) any previous abuse or neglect history of the minor,

and (c) any mental health, physical, or educational history of the minor or combination of these factors;

(3) the circumstances of the offense, including: (a) the seriousness of the offense, (b) whether the minor is charged through accountability, (c) whether there is evidence the offense was committed in an aggressive and premeditated manner, (d) whether there is evidence the offense caused serious bodily harm, (e) whether there is evidence the minor possessed a deadly weapon;

(4) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(5) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections (a) the minor's history of services, including the minor's willingness to participate meaningfully in available services; (b) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction; (c) the adequacy of the punishment or services.

The statute requires the court to give greater weight to the seriousness of the alleged offense and the minor's history of delinquency. But see ***People v. Sistrunk***, 259 Ill. App. 3d 40 (1994) and ***People v. Luckett***, 295 Ill. App. 3d 342 (1998). "[Not] all of the statutory criteria must be resolved against the minor to justify treating him as an adult. See [Sistrunk]. Where the record shows that the trial court considered all the factors and its determination is not an abuse of discretion, then the ruling will be affirmed on appeal. See [Martin]." (Luckett at 347-48).

Prior decisions discussing these factors include the following:

(1) Seriousness of the Offense

See ***In the Interest of L.J.***, 274 Ill. App. 3d 977 (1st Dist. 1995) (trial court abused its discretion in not transferring 14-year-old accused of killing 13-year-old victim who refused to join the minor's gang).

(2) The Minor's History of Delinquency

See ***People v. Sistrunk***, 259 Ill. App. 3d 40 (1st Dist. 1994) (discretionary transfer upheld where juvenile accused of murder and armed robbery had three prior findings of delinquency for burglary and theft).

(3) Age

As a general rule, the younger the defendant, the stronger the State's case for transfer must be. Age is not only chronological age, but emotional, intellectual and social age. *See* ***People v. M.D.***, 101 Ill. 2d 73, 85-86 (1984) (rare reversal of determination to retain jurisdiction). See also ***People v. D.B.,*** 202 Ill. App. 3d 194 (1990) (analyzing the statutory factors in ***M.D.*** (5-4(3)(a) at the time, now 5-805(b)). See also ***Interest of L.J.,*** 274 Ill. App. 3d 977 (1995) (reversing trial court's denial on State's motion to transfer 15 years old, when "life experiences are that of someone way beyond his age." (member of a gang since he was 11, shot and killed a 13-year-old who would not join gang).

(4) Culpability of the Minor in Committing the Alleged Offense

See ***In re Burns***, 67 Ill. App. 3d 361 (1st Dist. 1978) (relevant that the minor did not personally kill). In murder cases, the question of determining the identity of the aggressor among co-defendants who actively caused the death is often critical. *See, e.g.,* ***People v. D.B.***, 202 Ill. App. 3d 194 (1st Dist. 1990).

(5) Premeditation and Aggression

Sufficient evidence of premeditation and aggression existed where the evidence showed that the defendant and his brother intentionally shot witnesses. ***People v. Beck***, 190 Ill. App. 3d 748 (5th Dist. 1989) (evidence that a juvenile assaulted a corrections officer while incarcerated was sufficient to show juvenile's violence). See ***People v. Stephens,*** 323 Ill. App. 3d 345 (4th Dist. 2001). Defendant delivered "crushing blows" to the back of the victim's skull after he was face down upon the ground and yelled in crude language. "This showed defendant's aggression in 'not just his actions, but also in his words and his thoughts.'"

(6) Previous History of Services

See ***People v. Fuller***, 292 Ill. App. 3d 651 (1st Dist. 1997) (history of past unsuccessful treatment); ***People v. Banks***, 29 Ill. App. 3d 923 (5th Dist. 1975) (evidence of juvenile's record of violence, hostility and rejection of authority sufficient to allow transfer); See ***People v. Stephens***, prior history weighed in favor of defendant except underage use of alcohol and drugs. Defendant had low IQ, clinical psychologist testified defendant was more a child than an adult in how he interacts with people.

(7) Adequacy of the Punishment or Services Available in the Juvenile System

Hearing to transfer a 14-year-old charged with committing two murders and one sexual assault was inadequate where the judge failed to consider the mandatory sentence of natural life if the minor was tried as an adult and failed to investigate the minor's history as it related to his potential for rehabilitation and failed to investigate the availability of rehabilitation services. ***People v. Clark***, 119 Ill. 2d 1 (1987).

Court's decision to transfer minor was *not an abuse* of discretion where only one facility would accept minor and that facility was not secure, not immediately available and had no program for fire-setters. ***People v. Brown***, 301 Ill. App. 3d 995 (2d Dist. 1998). *See also* ***People v. Morgan***, 306 Ill. App. 3d 616 (1st Dist. 1999) (court properly considered all statutory factors, including rehabilitative potential of juvenile court.

Trial court denial of transfer was an *abuse* of discretion where, among other factors, juvenile did not benefit from juvenile programs he received. ***People v. M.D.***, 101 Ill. 2d 73 (1984); *but see* ***People v. D.B.***, 202 Ill. App. 3d 194 (1st Dist. 1990) (minor never exposed to any juvenile programs). See ***Interest of L.J.,*** 274 Ill. App. 3d 977 (1995); defendant was still able to be confined in Juvenile Division of DOC, and so facilities are still available even if tried as adult; but has not benefited from juvenile court system, when he refused to attend specialty school, had disciplinary problems at detention center, refuses to work, refuses to comply with rules.

Trial court denial of a motion to transfer was *not an abuse* of discretion where the report indicated the need for long-term psychiatric care and the State offered little evidence of the availability of psychiatric care in adult facilities. ***In re R.L.L.***, 106 Ill. App. 3d 209 (4th Dist. 1982).

Not all factors need be present nor resolved against the minor to justify treatment as an adult. ***People v. Kolakowski***, 319 Ill. App. 3d 200, 208 (1st Dist. 2001). See also ***Luckett***, supra.

However, failure of the record to reflect that all statutory factors were considered constitutes abuse of discretion. ***People v. Clark***, 119 Ill. 2d 1 (1987). *But see* ***People v. Ollins***, 231 Ill. App. 3d 243 (1st Dist. 1992) (distinguishing ***People v. Clark***). Failure to transfer when the statutory criteria are met also constitutes an abuse of discretion. *See* ***In the Interest of J.O.***, 269 Ill. App. 3d 287 (1st Dist. 1994). *See* ***People v. Moore,*** trial court did not adequately address two statutory transfer factors and "since three transfer factors had no evidentiary support in the record and were not properly considered by the juvenile court, the court's transfer order was an abuse of discretion."

C) DISCRETIONARY TRANSFER PROCEDURES

A transfer hearing must be held prior to commencement of trial. If the minor is in detention, the hearing must be held within the statutory time frame for the detention order.

A minor must be represented by counsel at a transfer hearing. *See* ***In the Interest of J.E.***, 282 Ill. App. 3d 794 (1st Dist. 1996); **705 ILCS 405/1-5; 5-505**.

Hearsay is admissible at the transfer hearing, as are station adjustments. *See* ***In Interest of J.E.***, 282 Ill. App. 3d 794 (1st Dist. 1996); ***In the Interest of R.T. and J.B.***, 271 Ill. App. 3d 673 (1st Dist. 1995). The State bears the burden of proof. ***People v. D.B.***, 202 Ill. App. 3d 194 (1st Dist. 1990); ***In the Interest of L.J.***, 274 Ill. App. 3d 977 (1st Dist. 1995) (the State bears the burden of presenting "sufficient evidence to persuade the Juvenile Court to grant the motion to transfer"); *See also* ***People v. Morgan***, 197 Ill. 2d 404 (2001) (sufficient evidence is that needed to sustain a finding of probable cause).

While formal findings are not required, the juvenile court judge should ensure that the record supporting the ruling is sufficiently clear to permit meaningful review. ***People v. Cooks***, 271 Ill. App. 3d 25 (1st Dist. 1995). For example, where a Defendant, age 13, was convicted of armed robbery under Criminal Code and sentenced to 21 years in prison, it was held that the court did not adequately address two statutory transfer factors, and the critical non-statutory factor of potential term of sentence, in deciding to permit prosecution of juvenile under criminal law. ***People v. Moore***, 957 N.E.2d 555 (3d Dist. 2011). The state failed to present any evidence that the juvenile's gun was loaded; when officers recovered handgun, it was empty and inoperable, and thus it was held that the evidence did not support a discretionary transfer of the juvenile to adult court. ***Id.***

If a case is transferred, the juvenile petition is dismissed.

D) SENTENCING IN DISCRETIONARY TRANSFER CASES

A minor who is transferred and convicted of a lesser included offense may be sentenced in criminal court or the trial court may transfer the case back to Juvenile Court for sentencing. In exercising this discretion, the trial court should use the statutory criteria for discretionary transfer contained in the Juvenile Court Act. ***People v. Brown***, 301 Ill. App. 3d 995 (2d Dist. 1998). However, when the minor is not convicted of the charge that brought him to adult court, but an unrelated charge, the minor must be sentenced under the JCA unless the state moves for adult sentencing. ***People v. Fort***, 2017 IL 118966.

4.25 APPEALS IN TRANSFER CASES

A) INTERLOCUTORY APPEALS

(1) Appeal by Minor

A minor has no right to an immediate appeal of an order transferring a case to adult court. ***People v. Taylor***, 76 Ill. 2d 289 (1979).

(2) Appeal by State

The State may take an interlocutory appeal from denial of a motion to transfer. ***People v. Martin***, 67 Ill. 2d 462 (1977); *see also* ***People v. DeJesus***, 127 Ill. 2d 486 (1989) (state waived challenge to constitutionality of provision in transfer statute by failure to take appeal from the juvenile court judge's ruling).

B) BAIL

If the State takes an interlocutory appeal, the minor is entitled to have the juvenile court judge set bail pending the outcome of the appeal. ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982).

C) STANDARD OF REVIEW ON APPEAL

On appeal, the standard of review is whether the juvenile court abused its discretion in ruling on the State's transfer petition. ***People v. Clark***, 119 Ill. 2d 1 (1987); ***People v. Fuller***, 292 Ill. App. 3d 651 (1st Dist. 1997); ***In re R.L.***, 282 Ill. App. 3d 839 (1st Dist. 1996); ***In the Interest of L.J.***, 274 Ill. App. 3d 977 (1st Dist. 1995).

D) CASE LAW

(1) In the following cases the reviewing court sustained a trial court order allowing the State's petition to transfer: ***People v. Cooks***, 271 Ill. App. 3d 25 (1st Dist. 1995); ***People v. Booth***, 265 Ill. App. 3d 462 (1st Dist. 1994); ***People v. Sistrunk***, 259 Ill. App. 3d 40 (1st Dist. 1994).

(2) In the following cases the reviewing court reversed the trial court's decision to deny a motion to transfer:

In the Interest of L.J., *supra*; ***In the Interest of R.T. and J.B.***, 271 Ill. App. 3d 673 (1st Dist. 1995); ***In the Interest of J.O.***, 269 Ill. App. 3d 287 (1st Dist. 1994).

(3) In the following cases the reviewing court sustained the trial court's refusal to transfer; *see* ***People v. D.B.***, 202 Ill. App. 3d 194 (1st Dist. 1990).

(4) In the following case, transfer under an unconstitutional provision was reversed and remanded for reconsideration in light of the preceding version of that provision. Defendant challenged his transfer from juvenile to criminal court under the Safe Neighborhoods Law (Pub. Act 88-680), which occurred in 1996, but the law was declared unconstitutional in ***People v. Cervantes***, 189 Ill. 2d 80 (1999) because it violated the single-subject clause. The provisions under which defendant was transferred to criminal court, therefore, were void *ab initio*, meaning the statute has no force or effect, as if it had never been passed. As a result, defendant must have a new transfer proceeding in which pre-Safe Neighborhoods Law (Public Act 88-680) version of the statute must control because, since Safe Neighborhoods Law was void *ab initio*, the prior version controlled at the time of defendant's transfer. If defendant's new transfer hearing results in transfer, conviction stands. If not, conviction cannot be allowed to stand. ***People v. Brown***, 225 Ill. 2d 188 (2007).

CHAPTER 5. INITIATING JUVENILE COURT PROCEEDINGS

5.01 ARREST AND CUSTODY

705 ILCS 405/5-401 and 405

A) TAKING A MINOR INTO CUSTODY

If a petition has been filed under Section 5-520 and the court finds that the minor's conduct may endanger the health, person, welfare or property of the minor or others, *or* that the circumstances of his or her home environment may endanger the minor, the court may issue a warrant to take the minor into custody. **705 ILCS 405/5-405(2)**.

(1) Arrest with a Warrant **705 ILCS 405/5-405(1)**

A law enforcement officer who makes an arrest with a warrant must:

a) Immediately make a reasonable attempt to notify the parent, the person with whom the minor resides or another person responsible for the minor that the minor has been arrested and where the minor is being held.

b) Deliver the minor without unnecessary delay to the court or place designated by the court for the reception of minors.

(2) Arrest without a Warrant **705 ILCS 405/5-401(1) and 405(2)**

A law enforcement officer without a warrant ***may***:

a) Arrest a minor if there is probable cause to believe the minor is delinquent within the meaning of the Juvenile Court Act.

b) Take a minor into custody if the minor has been adjudicated a ward of the court and has escaped from a court-ordered commitment.

c) Take a minor into custody if he or she reasonably believes the minor has violated a condition of probation or supervision.

d) Release the minor (upon determining the true identity of the minor) to the parent, the person with whom the minor resides or other person responsible for the minor if the minor was taken into custody for a misdemeanor level offense.

A law enforcement officer who makes an arrest without a warrant (under Section 5-401) ***must***:

a) Immediately make a reasonable attempt to notify the parent, the person with whom the minor resides or another person responsible for the minor that the minor has been arrested and where the minor is being held (if the minor is not released).

b) Deliver the minor without unnecessary delay to the nearest juvenile police officer in the county of venue or surrender the minor to a juvenile police officer in the city or village where the offense was committed.

c) Upon any release, promptly notify a juvenile officer of the circumstances of any custody and release.

B) WHEN MAY A MINOR BE HELD IN A DETENTION FACILITY?

(1) In General

705 ILCS 410/5-2(a)

A minor, 10 years of age or older, who has been arrested or taken into custody because there is reasonable cause to believe the minor prior to his or her 18th birthday has violated or attempted to violate any federal, State, county or municipal law or ordinance may be kept or detained in an authorized detention facility. *See* ***In re Mathias H***., 2019 IL App. (1st) 182250 (2019), affirming trial court's rejection of Cook County ordinance prohibiting detention of child under 13 on grounds that it conflicted with the Detention Act (55 ILCS 75/9.2), and the JCA's power to detain delinquent juveniles over the age of 10. Detention can be authorized if:

1) Secured custody is a matter of immediate and urgent necessity for the protection of the minor or the of the person or property of another

2) The minor is likely to flee the jurisdiction of the court, or

3) The minor was taken into custody under a warrant

(2) Alternative placement must be sought

Minors under 13 years of age may not be held in an authorized detention facility until a local youth service provider is contacted about the minor and

it is determined that the provider is unable to accept the minor into its facility

(3) Exceptions

705 ILCS 405/1-4.1 and 405/5-401(3)

A minor may not be placed in a jail, municipal lockup, ***detention center*** or secure correctional facility for violating any federal, State, county or municipal law or ordinance, that does not constitute an offense for adults (*e.g.,* underage consumption, underage possession of alcohol, curfew violation), other than for a violation of a court order.

C) WHEN MAY A MINOR BE HELD IN COUNTY JAIL OR MUNICIPAL LOCKUP?

(1) In General

705 ILCS 405/1-4.1 and 405/5-105(3)

When a minor is arrested or taken into custody for either a violation of a court order or because there is reasonable cause to believe the minor prior to his or her 18th birthday has violated or attempted to violate any federal, State, county or municipal law or ordinance, the minor may be held in a county jail or municipal lockup only in accord with the requirements of Sections 5-410 and 5-501.

(2) Exceptions

705 ILCS 405/1-4.1 and 405/5-401(3)

A minor may not be placed in a jail, municipal lockup, detention center or secure correctional facility for violating any federal, State, county or municipal law or ordinance, that does not constitute an offense for adults (*e.g.,* underage consumption, underage possession of alcohol, curfew violation), other than for a violation of a court order.

(3) Procedures for Holding a Delinquent in a County Jail or Municipal Lockup

(a) Age limits

(i) No minor under the age of 12 may be detained in a county jail or municipal lockup for more than 6 hours. **705 ILCS 405/5-410(2)(a)**.

(ii) Minors 12 or older may be kept in a county jail or municipal lockup for up to 12 hours unless the charge involves a crime of violence in which case the minor may be held for up to 24 hours. **705 ILCS 405/5-410(2)(c)**.

(iii) Minors 15 or older, who are prosecuted under the criminal laws of this state, may be held in a county jail for longer than 24 hours by court order. **705 ILCS 405/5-410(2)(e)**.

(iv) Persons 18 or older who have a petition of delinquency filed against them may be confined in an adult detention facility. However, the court at a minimum must consider statutory factors (*age, delinquent or criminal history, abuse or neglect history, mental health or educational history*). **705 ILCS 405/5-410(2)(c)(v)**.

(b) Time limits

For purposes of calculating these time limits, the period of detention begins from the time the minor is placed in a locked room or cell or handcuffed to an object in a jail or municipal lockup. It does not include transportation time to the jail or lockup. **705 ILCS 405/5-410(2)(c)(i)**.

(c) Conditions of confinement

The Act imposes certain limits on where a minor may be held in a county jail or municipal lockup (*e.g.,* sight and sound separation from adults) and describes certain prerequisites (*e.g.,* training) and procedures (*e.g.,* logbook) that must be in place when minors are detained in county jails and municipal lockups. *See* **705 ILCS 705/5-410(c)(d)(e)**.

(d) Violation of time limits

Violation of the time limits for holding a minor in a county jail or municipal lockup does not make evidence obtained as a result of this violation inadmissible at trial. **705 ILCS 405/5-410(2)(c)(v)**.

(e) Notice to minors

A minor who is detained in a jail or lockup must be informed of the purpose for the detention, the time it is expected to last, and the maximum time allowed under the Act. **705 ILCS 405/5-410(2)(c)(iii)**.

(f) Processing and lineup exceptions

A minor may be taken to a county jail or municipal lockup for the purpose of appearing in a lineup or processing. The minor must remain under the supervision of a public safety officer; however, the Act's sight and sound separation provisions do not apply. **705 ILCS 405/5-410(2)(f)(g)**.

D) DUTIES AFTER ARREST OR TAKEN INTO CUSTODY

705 ILCS 405/5-405

(1) Release to Parents

705 ILCS 405/5-405(2)

If the offense for which the minor is taken into custody is a misdemeanor, the law enforcement officer ***may*** release the minor to the parent, the person with whom the minor resides or another person responsible for the minor.

If the minor is released, the law enforcement officer ***must*** promptly notify a juvenile police officer of the facts and circumstances of release.

The statute is silent as to the ability of the law enforcement officer to release the minor if the offense is a felony.

(2) Duty to Notify Parents

705 ILCS 405/5-405(1)(2)

A law enforcement officer who arrests a minor with or without a warrant (if the minor is not released) must immediately attempt to contact the parent, the person with whom the minor resides or other person responsible for the minor and inform that person that the minor has been taken into custody and disclose where the minor is being held.

One of the purposes of the statutory notice requirement is to permit minors to confer with parents and an attorney before making a statement. ***People v. Gonzalez***, 351 Ill. App. 3d 192 (2d Dist. 2004); ***People v. Williams***, 324 Ill.App.3d 419 (1st Dist. 2001); ***People v. Montanez***, 273 Ill. App. 3d 844 (1st Dist. 1995). See ***In re G.O.,*** 191 Ill. 2d 37, 55 (2000), cited in ***People v. Griffin,*** 327 Ill. App. 3d 538 (2002) for "courts have repeatedly held that police conduct which frustrates parents' attempts to confer with their child

is particularly relevant and a significant factor in the totality of the circumstances analysis." ***Griffin*** cites ***People v. McDaniel,*** 326 Ill. App. 3d 771 (2001); ***People v. Golden,*** 323 Ill. App. 3d 892 (2001), and others.

The parental notice requirement applies even if a minor is subsequently tried as an adult. ***People v. Montanez***, *supra*. Most Illinois courts also agree that the requirements of the Juvenile Court Act apply in automatic transfer cases up until the time minor is actually charged with an offense enumerated in **705 ILCS 405/5-130** (Excluded Jurisdiction). ***People v. Pico***, 287 Ill. App. 3d 607 (1st Dist. 1997) (provisions of Act apply at time of arrest until minor has been charged under Criminal Code) ***People v. Plummer***, 306 Ill. App. 3d 574 (1st Dist. 1999) (juvenile being held in custody without a warrant does not lose the protection of the Juvenile Court Act until charged with an offense subject to prosecution under Criminal Code); ***People v. Morgan***, 306 Ill. App. 3d 616 (1st Dist. 1999) (until such time as the minor is charged, the State cannot know whether minor will be tried pursuant to the Criminal Code as an adult or as a delinquent minor under the Act).

See ***People v. Griffin,*** "when a juvenile's parents are present, request to see their child, and are prevented from doing so by the police, the presumption arises that the juvenile's will was overborne." Citing ***In re J.J.C.,*** 294 Ill. App. 3d at 227, 237 (1998). "The relevant inquiry is whether the absence of a parent or other adult interested in the minor's welfare contributed to the coercive atmosphere of the interview." ***People v. Smith,*** 326 Ill. App. 3d 831 (2001). In ***Griffin,*** the trial court didn't believe the parents that they repeatedly asked to see the defendant, but they did find that the police refused to allow them to see their son. Appellate court found that "the police frustrated defendant's parents' attempts to see him 'so that they could create an intimidating atmosphere and obtain a confession.'" (citing ***In re Lashun H.,*** 284 Ill. App. 3d 545, 555 (1996).

However, a few courts have held that the statutory requirement that a parent or a youth officer be notified does not apply in automatic transfer cases once a juvenile is being held for a **section 5-130** offense, because the juvenile is not subject to the jurisdiction of the juvenile court but to that of the criminal court. *See* ***People v. Sevier*** (1992), 230 Ill.App.3d 1071 (1st Dist. 1992); But disagreeing with Sevier, see (***People v. Pico,*** 287 Ill. App. 3d 607 (1997). "We consider the holding in Sevier to constitute an unfounded application of the holding in Visnack to minors under age 17 who clearly fall within the ambit of the Act's protection"; ***People v. Plummer***, 306 Ill. App. 3d 574 (1st Dist. 1999) declining to extend *Sevier* line of cases).

Ultimately, statutory requirements of the Juvenile Court do not apply if a minor has been charged with a crime requiring automatic transfer prior to being interviewed by police. ***People v. Morgan***, *supra*.

(3) Duty to Take to Juvenile Police Officer

705 ILCS 405/5-405(2)

Arresting law enforcement officer who arrests a minor without a warrant must deliver the minor without unnecessary delay to the nearest juvenile police officer in the county of venue or surrender the minor to a juvenile police officer in the city or village where the offense was committed.

(4) Failure to Comply with Statutory Duties

Failure to notify parents or take a minor without delay to a juvenile police officer does not deprive the court of jurisdiction, nor does it constitute a *per se* violation of a minor's 4th or 5th Amendment rights. *See* ***In re R.T.***, 729 N.E.2d 889 (2000) (failure to notify juvenile's parents that juvenile has been taken into custody is not sufficient per se to mandate suppression of statements juvenile may have made to police).

(A violation of the act does not make juveniles immune from proper police investigation, nor does it render inadmissible voluntary statements to law enforcement officers); See ***People v. Hernandez,*** 267 Ill. App. 3d 429 (1994), "[t]he presence or absence of a parent is only one factor to be considered in evaluating the voluntariness of a statement or confession." citing ***People v. Brown,*** 182 Ill. App. 3d 1046 (1989). In ***Hernandez,*** no parent or juvenile officer was present, but defendant was advised of rights, interrogations were short, and record showed he was intelligent and in good physical condition; police talked with defendant's uncle before he was questioned.

People v. Bobe, 227 Ill.App.3d 681 (1st Dist. 1992) (minor's statement held to be voluntary, even though the defendant's father and another testified, without contradiction, that his father was not permitted to see him, a juvenile officer was not present during all interviews, and the defendant was handcuffed, unfed, and alone in a room for several hours). ***People v. McGhee***, 154 Ill. App. 3d 232 (1st Dist. 1987). *See also* ***People v. Lash,*** 252 Ill. App. 3d 239 (1993). "…and our cases have held that such violations do not make an incriminating statement *per se* inadmissible. Again, the test is the totality of the circumstances, with alleged violations of the Act being only material factors to consider in assessing the overall voluntariness of the confession." In ***Lash,*** defendant argued that the detective arranged the timing of the interview for while his parents worked and did not contact his attorney. (held voluntary)

With regard to a minor's opportunity to consult with a parent or other concerned person before being questioned, Illinois courts have rejected a per se rule of inadmissibility and have instead applied the totality of the circumstances test to determine the voluntariness of any confession. ***People v. Montanez***, 273 Ill. App. 3d 844 (1st Dist. 1995) (no per se right to consult with a parent or guardian); ***In re Stiff***, 32 Ill.App.3d 971 (1975) (voluntariness of a confession must be judged on the totality of the circumstances). However, whether a law enforcement officer did or did not notify parents or take a minor to a juvenile police officer is a material factor in determining the voluntariness of a minor's confession. ***In re G.O.,*** 191 Ill.2d 37 (2000) (determining whether a juvenile had an opportunity to confer with a "concerned adult," courts consider whether the police prevented the juvenile from conferring with a concerned adult and whether the police frustrated the attempts of a concerned adult to confer with the juvenile); ***People v. Morgan***, 197 Ill.2d 404 (2001); ***People v. Montanez***, *supra.* In a situation where the police have not contacted a juvenile's parent prior to interrogation, the relevant inquiry in determining whether juvenile's confession is voluntary is whether the absence of a parent or other adult interested in the minor's welfare contributed to a coercive atmosphere. ***People v. Gonzalez***, 351 Ill.App.3d 192 (2d Dist. 2004*);* ***In re L.L.***, 295 Ill. App. 3d 594 (2d Dist. 1998); ***In re A.R.***, 295 Ill. App. 3d 527 (1st Dist. 1998); In ***re V.L.T.***, 292 Ill. App. 3d 728 (2d Dist. 1997); ***People v. Montanez***, 273 Ill. App. 3d 844 (1st Dist. 1995); ***People v. Travis***, 122 Ill.App.3d 671(1st Dist. 1984). Other cases can be cited for the standard for determining voluntariness, and that juveniles could be "easy victim[s] of the law." (quoting ***Haley v. Ohio,*** 332 U.S. 596, 599 (1948)). In ***Travis,*** the defendant was picked up by police, arrested without probable cause, and the failure to make a reasonable effort to notify parents was "another factor contributing to our decision that defendant's statements should have been suppressed," though "under the circumstances, the failure of the police offers to make any reasonable attempt to locate defendant's parents becomes a consequential fact."

E) AUTHORITY OF JUVENILE POLICE OFFICER

705 ILCS 405/5-405(3)

If a minor is arrested or taken into custody without a warrant and delivered to a juvenile police officer, that juvenile officer has discretion to intake one of the following actions:

- Give the minor a station adjustment and release of the minor;

- Release the minor to his or her parents and refer the case to Juvenile court;

- Keep the minor in custody and deliver the minor to court or a court-designated reception center if after considering the statutory factors the juvenile police officer reasonably believes that there is an immediate and urgent necessity to keep the minor in custody.

- Perform any other appropriate action with the consent of the minor or the minor's parent.

- Factors that the officer must consider in making the decision to ***release or keep*** the minor include : (a) the nature of the allegations, (b) the minor's history and present situation, (c) the history of the minor's family and the family's present situation, (d) the minor's educational and employment status, (e) the availability of appropriate community services to aid or counsel the minor, (f) the minor's past involvement with and progress in social programs, (g) the attitude of the complainant and community toward the minor (h) the present attitude of the minor and his or her family.

5.05 PETITION

705 ILCS 405/5-520

A) IN GENERAL

The court's jurisdiction is triggered by the filing of a petition alleging that the minor is delinquent.

B) WHO MAY FILE?

The State's Attorney may file, or the court on its own motion may direct the filing through the State's Attorney, of a delinquency petition.

C) CONTENT

The petition shall allege and set forth the following:

- The minor is delinquent.

- Facts sufficient to bring the minor under the jurisdiction of the Juvenile Court pursuant to **705 ILCS 405/5-120** (**Exclusive Jurisdiction**) (*e.g.,* a minor under the age of 18 who has violated state, federal or municipal law).

  The petition typically need not meet the standards of a criminal charge. ***In re S.R.H.***, 96 Ill. 2d 138 (1983). However, the petition must be sufficiently specific to permit minor to prepare a defense ***In re S.R.H.***, *supra* (fundamental fairness demands a statement of facts leaving no real doubt as to the acts

charged) *See* ***People v. Hugo G.,*** 322 Ill. App. 3d 727 (2001), reaffirming holding of ***S.R.H.*** that 111-3 of the Code of Criminal Procedure does not apply to juvenile proceedings.

The petition must inform the minor respondent of the precise charge. *See* ***In re L.B.***, 276 Ill. App. 3d 43 (2d Dist. 1995) (adjudication order reversed where finding of delinquency was for an uncharged offense (unlawful use of weapon) which is not a lesser included offense of the original crime charged (aggravated discharge of a firearm)); ***In re J.A.J.***, 243 Ill. App. 3d 808 (2d Dist. 1993) (petition alleging theft did not advise minor of all requisite elements thus, minor could not be found delinquent on the offense of criminal trespass to property).

If the State intends to invoke Extended Jurisdiction Juvenile resulting in an adult sentence, the petition may be required to meet the standards of a criminal charge. *See* ***In re S.R.H.***, *supra*.

- Name, age, and residence of the minor.

- The names and residences of the minor's parents, legal guardian or the person or persons having custody or control of the minor or the nearest known relative if no parent or guardian can be found. If the names or addresses are unknown, the petition should include that information. *See* ***In re Willie W.***, 355 Ill.App.3d 297 (2nd Dist. 2005); (***In re Tyrone W***., 326 Ill.App.3d 1047 (2nd Dist. 2002); ***In re D.L.***, 299 Ill.App.3d 269 (4th Dist. 1998); ***In re C.T.A.***, 275 Ill. App. 3d 427 (2d Dist. 1995); ***In re C.H.***, 277 Ill. App. 3d 32 (3d Dist. 1995).

- If the minor upon whose behalf the petition is brought is detained or sheltered in custody, the petition shall state the date on which detention or shelter care was ordered by the court or the date set for a detention or shelter care hearing.

- A request or prayer that the minor be made a ward of the court. However, the petition doesn't have to specify any proposed disposition following adjudication of wardship.

D) VERIFICATION

The petition shall be verified, but statements of verification may be made on information and belief. **Supreme Court Rule 137** requires that all pleadings and papers be signed by an attorney of record or by a party if that party is unrepresented by counsel. Statutory requirements for verification of a petition are found in **735 ILCS 5/1-109**. Below are two examples of verification by certification.

VERIFICATION

Under the penalties of perjury as provided by law pursuant to section 1-109 of the code of civil procedure, the undersigned certifies that the statements set forth in this petition for Adjudication of Wardship are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

_____

Signature of Petitioner

VERIFICATION

The Petitioner hereby certifies that she/he has read this petition for Adjudication of Wardship and that the facts contained herein are true and accurate to the best of her/his knowledge.

_____

Signature of Petitioner

E) AMENDMENT

The State may amend the petition where no surprise or prejudice results. *See* ***In re Bardin***, 76 Ill. App. 3d 286 (1st Dist. 1979).

(Where a minor was adequately informed of the gist of the offense and no surprise or prejudice to minor is demonstrated, granting of an amendment to a petition is appropriate). If amendments are material, the petition should be re-verified. ***People v. Hill***, 133 Ill. App. 2d 147 (1st Dist. 1971) (amendments are material if they alter the essential elements of the crime charged); *but see* ***In re Gray***, 131 Ill. App. 3d 401 (4th Dist. 1985) (as long as a justiciable controversy exists, failure to verify amendment does not divest court of subject matter jurisdiction).

F) SUPPLEMENTAL PETITION

At any time before dismissal of the petition or before final closing and discharge from the Department of Juvenile Justice under **Section 5-750**, one or more supplemental petitions may be filed alleging the minor has (1) committed new offenses or (2) violated the court's orders. Respondents should be given notice of the filing of a supplemental petition. *See* ***In re G.L.***, 133 Ill. App. 3d 1048 (3d Dist. 1985); ***In re R. P.***, 97 Ill.App.3d 889 (3rd Dist. 1981) (Where the supplemental petition contains allegations which involve a different transaction than is alleged in

the original petition, minor's exposure to loss of their rights is just as great as in the original petition; therefore, the minor's notice must be just as adequate as is the notice required for the original petition).

G) MOTION TO DISMISS PETITION

Juvenile court judges have an obligation to consider the merits of any motion to dismiss a petition. ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982). See also ***In re James J.,*** 193 Ill. App. 3d (1st Dist. 1989) (distinguishing ***Vasquez*** and holding "that the circuit court is required to consider on its merits a motion to dismiss a petition for adjudication of wardship, whenever dismissal is deemed warranted by the State alone, because failure to do so overlooks the purposes behind the Act."

5.10 PARTIES

A) NECESSARY PARTIES

Necessary parties include the minor who is the subject of the proceeding and his parents, guardian, legal custodian or responsible relative. These individuals have a right to be present, to be heard, to present evidence, to cross examine witnesses, to examine pertinent court files and records, and to be represented by counsel. **705 ILCS 405/1-5(1)**.

"**Legal custody**" means the relationship created by an order of court in the best interests of the minor which imposes on the custodian the responsibility of physical possession of a minor and the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, except as these are limited by residual parental rights and responsibilities and the rights and responsibilities of the guardian of the person, if any. **705 ILCS 405/1-3(9).**

A responsible relative may be a party only if parents or legal guardians do not appear.

B) FOSTER PARENTS

Foster parents are not parties, although they may have a right to notice and to be heard by the court. **705 ILCS 405/1-5(2)(a).**

C) STEPPARENTS AND PUTATIVE FATHERS

A stepparent or putative father may have a right to be named as a party if the stepparent or putative father has cared for or otherwise established a sustained relationship with the child. *See* ***Stanley v. Illinois***, 405 U.S. 645 (1972) (denial of a fitness hearing to unwed father based on presumption of unfitness violated Equal Protection Clause); ***In re Anast***, 22 Ill. App. 3d 750 (1st Dist. 1974) (where

circumstances of a case indicate that a person other than a parent has a substantial interest in a minor in proceedings in the juvenile court, then under the Act that person is a necessary party to the proceedings). *Compare* ***In re R.D.***, 148 Ill. App. 3d 381 (1st Dist. 1986) (State was not required to notify stepfather because none of the minors' interests were jeopardized by the failure to notify. Stepfather had divorced minor's mother when minor was four years old and there was no indication that the minor maintained any contact with the stepfather, nor of any effort by the stepfather to adopt the minor).

D) DCFS Supreme Court Rule 662(a)

Formal notice to DCFS in its capacity as legal guardian for a minor named in a delinquency petition should be given. Active participation by DCFS in the proceedings, however, waives the notice requirement. ***In re J.O.***, 302 Ill. App. 3d 969 (2d Dist. 1999).

E) PERSONS WHO ARE NOT PARTIES

Persons having physical but not legal custody of a child do not become parties solely by virtue of physical custody. To afford party status, the custody must be the result of a blood or legal relationship or a court order. ***In re Winks***, 150 Ill. App. 3d 657 (4th Dist. 1986) (abuse and neglect/dependency context).

5.15 SERVICE AND NOTICE

A) IN GENERAL

Minors and their parents have both due process and statutory rights to adequate notice in delinquency proceedings. **705 ILCS 405/1-5(3)**; ***In re Gault***, 387 U.S. 1 (1967) (requiring that notice in juvenile proceedings be equivalent to that constitutionally required in criminal or civil cases). Due process requires that a minor and his or her parents be notified in writing of the specific factual allegations against the minor. ***In re BL***, 315 Ill. App.3d 602, (2nd Dist. 2000). Notice must be given as soon as possible and sufficiently in advance to permit adequate preparation for trial. ***In re Gault***, *supra.* However, the State's failure to give notice to minor's father of an *amended* delinquency petition, as required by the Juvenile Court Act, will not deprive trial court of subject matter jurisdiction to adjudicate the petition, and will not divest the court of personal jurisdiction over minor's father where the failure was not so serious as to affect the fairness of the minor's adjudication or undermine the integrity of the process. ***In re M.W.***, 232 Ill. 2d 408 (2009).

Noncustodial parents should be served personally or by mail whenever possible; however, it is notice to the custodial parent that is crucial***. In re BL***, supra; ***In re L.C.C.***, 167 Ill.App.3d 670 (4th Dist. 1988). See ***In re Tyrone W.,*** 326 Ill. App. 3d 1047 (2d Dist. 2002), citing ***B.L.*** 315 Ill. App. 3d 602 (2000).

Failure to provide service by publication to a non-custodial parent whose whereabouts are unknown shall not deprive the court of jurisdiction to proceed with a trial or a plea of delinquency by the minor. **705 ILCS 405/5-525(2)(b)**.

Where neither parent was served with a summons or copy of a subsequent petition *to revoke probation* and commit minor to Department of Juvenile Justice, however, the trial court had subject matter jurisdiction over the delinquency petition because failure to serve parents was *waived by father appearing in court and participating in proceedings and by failure of respondent to object.* ***In re Nathan A.C.***, 385 Ill. App. 3d 1063 (4th Dist. 2008) (parents were married and living together during proceedings). *But see* ***In re Keyonne D.***, 376 Ill. App. 3d 1023 (1st Dist. 2007) (order entered by trial court finding that respondent violated terms of her probation and committing her to the Department of Juvenile Justice was void because although State knew address of respondent's non-custodial father, who was served with process and appeared at proceedings on *original* delinquency petition, State failed to provide him with any notice of *supplemental* petitions, and thus the court was *deprived* of subject matter jurisdiction).

To minimize the possibility that the court's orders in a delinquency case will be challenged for failure to provide adequate notice, the following steps should be taken:

- A juvenile court judge should make every attempt to ensure that all parties are served with summons in accordance with the requirements of the statute and should make a record of all service efforts. If a party has not received advance notice in conformity with the requirements of the Act, at the time of the party's first appearance in court, the judge should note the party's presence, tender a copy of the pleadings to the party and have the party acknowledge receipt for the record. The court may also secure a written or oral waiver of service of summons the first time the party appears personally before the court.

- If a parent is an inmate in a correctional institution, in the absence of waiver by the parent and minor, the court may wish to direct the State's Attorney to issue a writ.

- If the petition alleges that a parent's identity or address is unknown, the judge should inquire of the other parent, the minor, probation officer, juvenile officer, State and any other available source in an attempt to obtain this information. If the missing information is unavailable, the court should order publication as to the unidentified or unlocated party.

B) PERSONS REQUIRING SERVICE BY SUMMONS
705 ILCS 405/5-525

Upon the commencement of a delinquency case, the court must issue a summons, attach a copy of the petition, and direct it to:

All Parties Respondents, including:

(1) The minor's parent,

(2) The minor's guardian or legal custodian, and

(3) Each named respondent.

But not, including:

(1) A minor respondent under 8 years of age for whom the court appoints a guardian *ad litem* if the guardian *ad litem* appears on behalf of the minor in any proceeding under this Act. **705 ILCS 405/5-525(1)(a)**.

(2) A parent who does not reside with the minor, does not make regular child support payments to the minor, to the minor's other parent, or to the minor's other legal guardian or custodian pursuant to a support order, and has not communicated with the minor on a regular basis. **705 ILCS 405/5-525(1)(a)(ii)**. *See, e.g.*, ***In re DeShawn A.***, 2012 IL App (1st) 103839-U (unpublished opinion).

However, there may be some question as to whether this exception is consistent with the due process rights of the parent and minor to have his or her parents notified at least when the location of the noncustodial parent is known. ***Lehr v. Robertson***, 463 U.S. 248 (1983) (putative father not entitled to personal notice where he never established a personal, custodial or financial relationship with child); *See* ***In re Ricardo A.***, 356 Ill. App. 3d 980 (2005) (respondent's failure to raise the issue of the State's lack of diligence in attempting to locate and serve his father forfeited the issue for appeal and, even if this were not so, the state was not required to serve notice upon respondent's father since respondent's custodial parent (his mother) was served and was present at all hearings and because there was no evidence that a significant relationship existed between respondent and his father); ***In re C.H.***, 277 Ill. App. 3d 32 (3d Dist. 1995) (lack of significant contact may excuse failure to notify parent whose whereabouts are unknown, but *not* where parent's address is known or easily discovered).

C) METHODS OF SERVICE

The preferred, and in most cases required, method for obtaining subject matter and personal jurisdiction in a delinquency case is by personal service of summons. Where this is not possible, the Act allows alternative means of service.

(1) Service by Personal Summons ***705 ILCS 405/5-525(1)(e)***

(a) Leaving a copy of the summons and petition with the person summoned at least three days before the time for appearance. *See* ***In re D.L.W.***, 187 Ill. App. 3d 566 (4th Dist. 1989) (telephone call to the minor's mother on the morning of the dispositional hearing is not sufficient); or

(b) leaving a copy at the person's usual place of abode with some person of the family over age 10, providing the person making service also mails a copy of the summons at least three days before the time stated for appearance; or

(c) leaving a copy of the summons with the guardian or custodian of the minor) at least three days before the date for appearance. If the guardian/custodian is an agency of the State, a copy may be delivered to any employee designated by the agency to accept service.

(2) Service by Certified Mail ***705 ILCS 405/5-525(2)(a)(d)***

(a) When permissible

If service by summons is not made within a reasonable time, or it appears that a respondent resides outside the State, service may be made by certified mail.

(b) Method of service

The clerk shall mail the summons and a copy of the petition to respondent by certified mail marked for delivery to addressee only.

(c) Proof of service

The regular return receipt for certified mail is sufficient proof of service.

(d) Date for trial

The date must be set 5 days or more after the mailing above.

(3) Service by Publication ***705 ILCS 405/5-525(2)(b)(c)(d)***

(a) When permissible

If service cannot be made in person or by certified mail within a reasonable time, or if any person was made a respondent under the designation of "All Whom It May Concern," or if a respondent's whereabouts is unknown.

(b) When required

To enable the court to enter an order, judgment against a respondent who has not appeared and who cannot be served with process other than by publication; or when a minor has been detained and summons has not been served personally or by certified mail within 20 days from the date of the court order directing detention.

However, failure to serve a noncustodial parent whose whereabouts are unknown shall not deprive the court of jurisdiction to proceed with a delinquency trial or plea;

(c) When notice by publication is not required

When the person alleged to have legal custody of the minor has been served with summons personally or by certified mail, notice by publication is not required. However, again the court may not enter any order or judgment against any person who cannot be served other than by publication unless notice by publication is given or unless that person appears.

(d) Method of service

The clerk of the court shall cause publication to be made once in a newspaper of general circulation in the county where the action is pending; or the clerk at the time of publication of notice shall mail to each respondent so notified a copy thereof at his last known address.

(e) Proof of service

The certificate of the clerk that he has mailed the notice is sufficient proof thereof.

(f) Date for trial

The date for trial must be set 10 days or more after publication of notice on any custodial parent. Publication is inadequate if the 10-day advance notice requirement is not met. ***In re E.D. Mc.***, 220 Ill. App. 3d 1093 (2d Dist. 1991).

If the date originally set for the trial must be changed to comply with the notice requirements set forth above, notice of the new date must be given by certified mail or other appropriate means to each respondent who was served personally or by certified mail.

(g) Objection and Waiver of service

The appearance of a person named as a respondent in the petition at any proceedings under the Act constitutes a waiver of service of summons and submission to the jurisdiction of the court. **705 ILCS 405/5-530(4)**; ***In re M.G.***, 301 Ill.App.3d 401, (1st Dist. 1998). However, the Act requires that a copy of the summons and the petition shall be provided to the person at the time of the appearance.

A party respondent who either has been properly served, or who appears before the court personally or by counsel at the adjudicatory hearing or at any earlier proceeding on a petition for wardship under this Act leading to that adjudicatory hearing, and who wishes to object to the court's jurisdiction on the ground that some necessary party either has not been served or has not been properly served must raise that claim before the start of the adjudicatory hearing conducted under any Article of this Act. No order or judgment is void because of a claim of inadequate service unless that claim is raised in accordance with this Section. **705 ILCS 405/1-15(a)**.

D) NOTICE FOR AMENDED OR SUPPLEMENTAL PETITIONS

705 ILCS 405/5-530

Upon presenting a supplemental or amended petition or motion to the court, the party presenting, must provide to all parties:

1) A copy of the petition or motion

2) Any accompanying affidavits

3) Written notice of the date, time, and place of the hearing in accordance with local rules

How to serve a party:

(a) To whom

If a party is represented by an attorney, then service must be sent upon the attorney. Otherwise, service must be sent to the party.

(b) Method of service

1) Personally, delivering the papers to the party's attorney or directly to the unrepresented party.

2) Leaving them in the office of the attorney with his or her clerk or person in charge of the office. Or by leaving them at the unrepresented party's residence with a family member of the age 10 years or older.

3) Mailing them by them in an envelope with postage fully pre-paid to the party's attorney or to the unrepresented party's business address or residence.

4) Faxing them to the party's attorney or directly to the unrepresented party if the party has consented to receiving the papers by fax.

A party or attorney may rescind their consent to receive the papers by fax but then that party or attorney cannot later serve another party by fax in that same case.

(c) Proof of service

Must be filed with the clerk and can include:

1) Written acknowledgment signed by the party served.

2) For personal delivery, certificate of the attorney, or affidavit of a person, other than an attorney who made delivery.

3) For service by mail, certificate of the attorney, or affidavit of a person, other than an attorney who deposited the paper in the mail.

4) For service by fax, certificate of the attorney, or affidavit of a person, other than an attorney who transmitted the fax.

(d) Date of service

1) Service of mail is complete 4 days after mailing.

2) Service by fax is complete the first court day following transmission.

The date must be set 5 days or more after the mailing above.

5.20 VENUE

705 ILCS 405/5-135

A) COUNTY OF VENUE

Venue lies in any county where: (1) the minor resides, (2) the minor allegedly violated any federal, State, county or municipal law or ordinance, or (3) a court order was originally issued and subsequently violated by the minor unless after the order was issued the case was transferred to another county.

All objections of improper venue are waived by a party respondent unless a motion to transfer to a proper venue is made by that party respondent before the start of an adjudicatory hearing conducted under any Article of this Act. No order or judgment is void because of a claim that it was rendered in the wrong venue unless that claim is raised in accordance with this Section. **705 ILCS 405/1-15(a)**.

B) TRANSFER OF VENUE

(1) Intrastate

If proceedings started in any county other than where the minor resides, the court may before or after adjudication of wardship transfer the matter to the county where the minor resides by transmitting an authenticated copy of the court record i.e., copy of all agency reports, minute orders and docket entries of the court) to the court in the county where the minor resides.

If the minor moves to another county, the matter may be transferred to the new county in the same manner.

(2) Interstate

Only after placement with DCFS may a ward of the court be placed outside the State without losing *in personam* jurisdiction in the matter. *See* Interstate Compact on the Placement of Children.

Transfer to another State for matters of trial may only be accomplished by dismissal of the petition in the local juvenile court and allowing the parties to seek relief elsewhere.

CHAPTER 6. INITIAL APPEARANCE OF MINOR AND PARENT

SEE FIRST APPEARANCE CHECKLIST: APPENDIX

6.01 JUDICIAL RESPONSIBILITIES

- At the initial court proceeding, on its own initiative the court should take several steps regardless of whether the minor has been taken into custody or is being held in detention. These include:

- Check the petition for necessary parties;

- Check for proper service of summons or notice by publication;

- Ensure that all parties have received a copy of the petition and provide a petition to any party who is present and who has not been served;

- Elicit a waiver of service of summons for parties who appear and who were not previously served;

- Order summons or service by publication for parties who do not appear, with a return date of approximately one week prior to trial. If summons is ordered, specify the method of service;

- Advise the parties and the minors of their rights and provide them with a written copy of rights if not already provided;

- Appoint counsel for the minor if private counsel has not been retained;

- If appropriate, appoint a guardian *ad litem* for the minor;

- Appoint counsel for parents if indigent and a conflict exists;

- Set a trial date;

- Inform minor and/or other persons of any pretrial conditions, restraining orders, orders of protection, together with admonishments regarding the consequences of failure to comply with such orders.

6.05 FIRST APPEARANCE PROCEDURES AND ORDERS

A) FAILURE TO APPEAR AFTER NOTICE

705 ILCS 405/5-525(1)(f)

The court may issue a bench warrant for a parent or other person (including a minor) who has signed a written promise to appear and bring a minor to court or who has waived or acknowledged service and who fails to appear.

B) RIGHTS OF PARTIES

705 ILCS 405/1-5

The rights of parties in delinquency proceedings are set forth in Article I of the Juvenile Court Act, **705 ILCS 405/1-5**. At the first appearance before the court by the minor, his parents, guardian, custodian or responsible relatives, the court should explain the nature of the proceedings and inform the parties of their rights. Each adult respondent must be furnished a written Notice of Rights at or before the first hearing at which he or she appears.

C) APPOINTMENT OF COUNSEL

(1) Minor's Right to Counsel

705 ILCS 405/1-5; 5-505

A minor has a constitutional and statutory right to counsel (or court appointed counsel if the minor cannot afford his or her own attorney) in delinquency proceedings, including pretrial conditions hearings ***In re Gault***, 387 U.S. 1 (1967); **705 ILCS 405/1-5(1); 5-505**. The minor's right to counsel is not violated if a law student engaged in representation under S.R. 711 is properly supervised, even if the minor did not consent to student representation. ***In re Denzel W.***, 237 Ill. 2d 285 (2010) (presence of a licensed attorney, is counsel for constitutional purposes and will not be "cancelled out" by the law student's participation, even if the law student has not complied with Rule 711).

(a) Time of appointment

No hearing on any petition or motion may be commenced unless the minor is represented by counsel. **705 ILCS 405/1-5; 5-505**; ***People v. Fleming***, 134 Ill. App. 3d 562 (1st Dist. 1985) See ***People v. Racanelli,*** 132 Ill. App. 3d 124 (1st Dist. 1985). Issuance of an arrest

warrant does not charge with a crime, and so the right to counsel did not attach at that time.

(Sixth amendment guarantee of right to counsel attaches at the time of the filing of the delinquency petition); ***In re M.W.***, 246 Ill. App. 3d 654 (5th Dist. 1993) (error to hold detention hearing without counsel for minor being present). *But see* ***In re M.L.K.***, 136 Ill. App. 3d 376 (4th Dist. 1985) (juvenile not prejudiced by failure to appoint counsel for minor at detention hearing where minor could have sought a rehearing and where he was represented by an attorney at trial).

(b) Waiver of counsel

Aminor may waive his or her constitutional right to counsel if the waiver is knowingly and intelligently made (*see* ***In re M.W.,*** 314 Ill. App 3d 64 (1st 2000). Many cases find a minor's waiver was not knowing and intelligent. "A valid Miranda waiver requires 'both an uncoerced choice and the requisite level of comprehension'" (citing ***People v. Bernasco****,* 138 Ill. 2d 349, 363 (1990)). Defendant was 13 ½ years old, had an IQ of 54, he was reading and spelling at the level of a second grader. Evidence showed that he didn't understand the meaning of the words in the Miranda warning; he wasn't able to define what "right" or "silent" meant.

The Juvenile Court Act provides that no hearing may be conducted unless the minor is represented by counsel. **705 ILCS 405/5-505(1)**.

(c) Role of counsel for minors

People v. Austin M., 2012 IL 111194 (2012). Illinois Supreme Court held that defense counsel provided "hybrid representation", functioning as both GAL and defense counsel, creating a per se conflict of interest. Defense counsel wasn't actually appointed GAL, but court explained to minors' parents that attorney represented the children and what was in their best interests, and counsel didn't correct the court's description as such. "[w]e find that there is an inherent conflict between the professional responsibilities of a defense attorney and a GAL." "We are mindful there are inherent conflicts that exist when an attorney acts as both a juvenile's attorney as well as his guardian ad litem." "When counsel attempts to fulfill the role of GAL as well as defense counsel, the risk that the minor's constitutional and statutory right to counsel will be diluted, if not denied altogether, is too great." "We conclude, therefore, that the interests of justice are best served by finding a per se conflict when minor's counsel in a delinquency proceeding simultaneously functions as both defense counsel and guardian ad litem." The court

found that the defendant's counsel did have a per se conflict of interest in this case.

In re R.D., 148 Ill. App. 3d 381 (1st Dist. 1986) (holding that a child's attorney and guardian *ad litem* have essentially the same obligations to a child client and to society). *But see* ***In re A.W.***, 248 Ill. App. 3d 971 (1st Dist. 1993) (giving a minor in a child protection proceeding the right to counsel of her choosing while maintaining appointment of original guardian *ad litem*). For a discussion of this line of cases *see* Geraghty, *Ethical Issues in the Legal Representation of Children in Illinois: Roles, Rules and Reforms*, 29 LOY.U.CHI.L.J. 289 (1998).

Courts have stated that "[i]ndependent counsel would be required when an attorney's dual representation creates a conflict between his two roles, e.g., when a minor is of an age to share with his attorney confidences the attorney would not be permitted to share with the guardian ad litem." ***In re B.K.***, 358 Ill. App. 3d 1166, 1173 833 N.E.2d 945 (5th Dist.2005) (quoting ***In re J.D.***, 351 Ill. App. 3d 917, 921 (4th Dist. 2004).

(d) Ineffective assistance of counsel

The Juvenile Court Act's right to be represented by counsel includes the right to be represented effectively. ***In re D.M.***, 258 Ill. App. 3d 669 (1st Dist. 1994). There is a strong presumption in favor of the conclusion that a minor's representation has satisfied the requirements of effective assistance of counsel. ***In re D.M.****, supra.*

Illinois courts have used the ***Strickland v. Washington***, 466 U.S. 668 (1984) standard when analyzing a claim of ineffective assistance of counsel. *See* ***In re Alonzo O.***, 40 N.E. 3d 1228 (2015).

See ***In re R.M.****,* 2022 IL App. (4th) 210426. Ineffective assistance claims not appropriate for direct review where there is no record; appellate court cannot consider attachments to briefs as supplements to the appellate record. While defendants in an equivalent situation would be required to raise ineffective assistance claims in postconviction proceedings, such proceedings are not available to juveniles. **IL Sup. Ct. Rule 329** allows supplementation of the record, but R.M. didn't do that. IL Sup. Ct. Rule 383 providing for motions to the Sup. Ct. for exercise of its supervisory authority may be an avenue for relief.

Cases not finding ineffective assistance of counsel in a delinquency proceeding include: ***In re T.W.***, 402 Ill. App. 3d 981 (1st Dist. 2010)

(the failure of the Community Defender's Office to recuse itself from the representation of a minor because that office erroneously believed it could not pay for a DNA expert, did not represent ineffective assistance of counsel where the error was harmless in light of the overwhelming nature of the State's DNA evidence); ***In re Westley A.F.***, ***Jr.***, 399 Ill. App. 3d 791 (2d Dist. 2010) (Counsel's failure to raise any issue in juvenile's oral motion to reconsider sentence did not prejudice juvenile so as to constitute ineffective assistance); ***In re J.B.***, 120 Ill. App. 3d 155 (5th Dist. 1983) (it is relevant to the question (and conclusion) of effectiveness of counsel that the evidence so overwhelmingly points to the guilt of the accused that there could be little effective defense).

On the other hand, cases finding or remanding for a determination of ineffective assistance of counsel in a delinquency proceeding include: ***In re Alonzo O.***, 40 N.E. 3d 1228 (2015) (remanded to consider counsel's failure to investigate and impeach victim-witness on basis of prior conviction); ***In re Austin M.***, 363 Ill. Dec. 220 (Ill. 2012) (a per se conflict exists when minor's counsel in delinquency proceeding simultaneously functions as both defense counsel and GAL, as risk that minor's constitutional and statutory right to counsel will be diluted or denied is too great). *See* ***People v. Price***, 2018 IL App. (1st) 161202 (2018) (court found counsel objectively unreasonable for failing to seek retroactive application of automatic transfer statute that amended minimum age from 15 to 16 when respondent was 15 years old at the time of his crime even though case holding that amendment applied retroactive had not yet been decided). *See* ***People v. Kyles****,* 2020 IL App (2d) 180087. Defendant made pro se claim of ineffective assistance and requested new counsel; court held hearing and appointed new counsel but didn't conduct the required *Krankel* inquiry on his ineffective assistance claim, and new counsel continued the pending motion without representing defendant on the ineffective assistance claims. Appellate court follows ***People v. Reed***, 2018 IL App (1st) 160609, "if the defendant has made a sufficient *pro se* claim of ineffective assistance and request for new counsel, the general appointment of new counsel does not eliminate the trial court's obligation to make a preliminary inquiry into the merits of the *pro se* claim." The *Kyles* court noted the importance of determining whether ineffective assistance claims are frivolous; if so, then no *Krankel* counsel is necessary, and if not frivolous, then the new counsel will be clear that they are appointed to represent defendant on their ineffective assistance claim, rather than generally appointed. New counsel (as *Krankel* counsel) should have moved to withdraw if not pursuing the ineffective assistance claims.

In another instructive case worth examining in depth, ***People v. Colon***, 225 Ill. 2d 125 (2007), a defendant who had been previously convicted on his plea of guilty to aggravated unlawful use of a weapon was subsequently charged with unlawful use of a weapon by a felon. The State petitioned to revoke defendant's probation. The Circuit Court consolidated, at defense counsel's request, the defendant's bench trial on charge of unlawful use of a weapon by a felon with his probation revocation hearing, acquitted defendant of unlawful use of a weapon by a felon and determined that defendant violated his probation. Defendant appealed, raising the ground of ineffective assistance of counsel by reason of agreeing to join the trial of the new charge and the probation revocation hearing.

The Supreme Court held that the principle of collateral estoppels did not preclude state from proceeding with probation revocation hearing after defendant was acquitted of substantive charge of unlawful use of a weapon by a felon; an acquittal in a criminal case did not preclude state from relitigating an issue in a subsequent action governed by a lower standard of proof. ***Id.*** Consequently, agreeing to the joinder was not of consequence, and was not ineffective assistance of counsel as a matter of law. ***Id.***

See ***In re Johnathan T.,*** 2022 IL 127222, (reversing in part the 5th District's decision in ***In re Johnathan T.,*** 2021 IL App. (5th) 200247). IL Supreme Court held the ***Krankel*** procedure applies in posttrial ineffective assistance of counsel claims in juvenile delinquency proceedings; also held the ***Krankel*** procedure applies equally to retained and to appointed counsel and held juvenile's statements in the social investigation report were sufficient to trigger the ***Krankel*** procedure.

(2) Parents' Right to Counsel

705 ILCS 405/5-610(4)

Although all parties may be represented by counsel in delinquency proceedings, **705 ILCS 405/5-505(1)**, under new Article V the court is only required to appoint counsel for a minor's parent, guardian, or legal custodian if that individual proves that he or she has an actual conflict of interest with the minor in the pending proceeding and that he or she is indigent. **705 ILCS 405/5-610(4)**.

If a judge anticipates entering an order of supervision or protection against a parent, or any other order which may result in a contempt finding or other sanction against the parent, the judge should ensure that the parent is

represented by counsel or has been informed of his or her right to counsel and made a knowing and voluntary waiver.

If counsel is appointed, it should not be the same attorney who represents the minor. As to whether two attorneys from the same public defender's office may represent the minor and parent, the judge may wish to consider two cases decided under the neglect/abuse Article of the Juvenile Court Act. ***People v. Lackey***, 79 Ill. 2d 466 (conflict where one public defender represented the parents, and his superior represented the child in a termination of parental rights case. Conflict is not improper, however, there is a clear conflict when there is potential undue pressure on an attorney which may cause the attorney to sacrifice his or her client's interests, because of his or her relationship with the other client or attorney. ***In the Interest of A.P. and N.C.***, 277 Ill. App. 3d 592 (4th Dist. 1996) (no conflict when two assistant public defenders of equal rank represented parent and child in a termination case).

D) APPOINTMENT OF GUARDIAN *AD LITEM*

705 ILCS 405/5-610

The court may appoint a guardian *ad litem* for a minor in a delinquency proceeding if the court finds that there may be a conflict of interest between the minor and his or her parents or other custodian or that appointment would be in a minor's interest. Unless the guardian *ad litem* is an attorney, an attorney must be appointed for the guardian *ad litem*. The court may charge the fee of the guardian *ad litem* to a minor's parents unless they are unable to pay, in which case the guardian *ad litem* is to be paid out of the county's general fees.

See ***In re M.G.***, 2022 IL App. (4th) 210679. Where juvenile's parents did not appear for delinquency proceedings, and juvenile was uncooperative and had mental health issues and allegedly got an order of protection against his mother, the appellate court acknowledged that the best practice would have been for the court to exercise its discretion and appoint a GAL. But there is no statutory right to a GAL; failure to appoint GAL in this case did not constitute plain error. Decision in Austin M. does not stand for the proposition that the court should appoint a GAL when a minor's parents do not appear for delinquency proceedings, as respondent argued.

E) PRE-TRIAL CONDITIONS ORDER

705 ILCS 405/5-505

If a minor is charged with a delinquent act the court may conduct a hearing to determine whether to order pre-trial conditions that are binding on the minor.

(1) Statutory Conditions Authorized under the Act:

The court may order a minor to:

(a) Not violate any criminal statute in any jurisdiction;

(b) Make a report to and appear before any person or agency;

(c) Refrain from possessing a firearm, weapon or automobile;

(d) Reside with parents or in a foster home;

(e) Attend school;

(f) Attend a non-residential program for youth;

(g) Comply with court-ordered curfew;

(h) Refrain from going into a certain geographical area except under conditions set by the court (*e.g.*, purpose, time, companion, advance approval of court);

(i) Refrain from contact with persons identified by the court;

(j) Comply with any other condition set by the court.

(2) Procedures for Entry of Pre-Trial Conditions Order

A minor must be represented by counsel at a pre-trial conditions hearing.

The court may enter the order if it finds that there is probable cause to believe the minor is a delinquent and that it is in the best interests of the minor that the court impose some or all of the statutorily authorized conditions.

If the court enters a pre-trial conditions order, it should inform the minor and provide a copy of the written order.

The order may be continued through the sentencing hearing if the court believes that it is reasonable and necessary. The minor or the State may apply for modification or dismissal of the order at any time during the pendency of the proceeding.

F) RESTRAINING ORDER AGAINST JUVENILE

705 ILCS 405/5-510

The court to conduct a hearing to determine whether to issue a restraining order against the minor, aimed at restraining the minor from harassing, molesting, intimidating, retaliating against, or tampering with a witness to or victim of the crime with which the minor is charged. A minor must be represented by counsel at such a hearing. If the court determines that there is probable cause to believe that the minor is a delinquent minor and that it is a matter of immediate and urgent necessity to the protection of a witness or victim, the court may issue the restraining order. The order and the court's findings of fact must be made a part of the court record and the court must inform the minor of the order. The order is effective from the time of first appearance before the court and remains in effect until after the sentencing hearing if the court deems that to be reasonable and necessary. The minor or the State's Attorney may request modification or dismissal of the restraining order at any time.

G) MEDICAL TREATMENT AND CARE

705 ILCS 405/5-515

The court may authorize a physician, hospital, or health care provider to provide medical, surgical or dental care, if necessary, to safeguard the minor's health or life if the minor is in detention, or shelter care. If the procedure is covered by the minor's health insurance plan, the court's order should provide for reimbursement to the county.

CHAPTER 7. DETENTION

SEE DETENTION HEARING PROCEDURAL CHECKLIST: APPENDIX

7.01 DETENTION PRIOR TO JUDICIAL HEARING

705 ILCS 405/5-410

A) NON-SECURE CUSTODY

705 ILCS 405/5-105(11); 5-410(1)

A minor arrested or taken into custody who requires care away from home, but who does not require physical restriction, is to be given temporary care in a foster home or shelter care facility designated by the court.

Non-secure custody is defined as "confinement where the minor is not physically restricted by being placed in a locked cell or room, handcuffed or similarly restrained." Examples of non-secure custody include electronic monitoring, foster home placement, home confinement, group home placement, or physical restriction of movement or activity by staff. **705 ILCS 405/5-105(11)**.

A minor may be kept in non-secure custody for up to 40 hours pending a detention hearing. **705 ILCS 405/5-410(3)**.

B) SECURE DETENTION

705 ILCS 405/5-410(2)

If a minor **10 years** or older is arrested and if there is probable cause to believe that he or she is a delinquent minor, the minor may be detained in an authorized detention facility if:

1. secured custody is a matter of immediate and urgent necessity for protection of minor or person or property of another; **or**

2. the minor is likely to flee the jurisdiction; **or**

3. the minor was taken into custody under a warrant.

C) MAKING THE PRE-HEARING DETENTION DECISION

(1) Use of Detention Screening Instruments

A county may develop a scorable detention screening instrument to determine whether a minor should be detained. If such an instrument was developed with input from the State's Attorney, the designated public safety officer charged with the detention decision may decide independently whether to detain or release a minor using the screening standards. **705 ILCS 405/5-410(2)(b-4)**.

(2) Release of Minor

If the person designated to make the detention decision does not use or adhere to a detention screening instrument and decides to release the minor pending trial, that decision may be made only after consultation with the State's Attorney in cases that involve certain serious crimes. **705 ILCS 405/5-410(2)(b-5)**.

(3) Place of Detention

Depending on the age of the minor and the nature of the charge, he or she may be held in an authorized detention facility, county jail or municipal lockup. **705 ILCS 405/5-410 (2)(c)(d)(e)**. *See* Section 5.01(B). Persons 18 years of age and older who have a petition of delinquency filed against them may be confined in an adult detention facility. In deciding whether to confine a person 18 years of age or older who has a petition of delinquency filed against the person, these factors, among other matters, shall be considered:

(A) The age of the person;
(B) Any previous delinquent or criminal history of the person;
(C) Any previous abuse or neglect history of the person; and
(D) Any mental health or educational history of the person, or both.

(4) Length of Detention Pending Detention Hearing

A minor may be confined in a juvenile detention facility for up to 40 hours, excluding Saturdays, Sundays and court holidays, as authorized by a written order of the probation officer or other designated person. **705 ILCS 405/5-410(2)(b)**. For a discussion of the length of time a minor may be held in a county jail or municipal lockup, *see* section 5.01(B)(3).

7.05 SETTING THE DETENTION HEARING

705 ILCS 405/5-415

A) TIME OF HEARING

(1) In General

Unless sooner released, a minor alleged to be a delinquent minor taken into temporary custody must be brought before a judicial officer within **40 hours, exclusive of Saturdays, Sundays, or court designated holidays** to determine whether he or she shall be further held in custody.

In ***County of Riverside v. McLaughlin***, 500 U.S. 44 (1991), the United States Supreme Court held that to satisfy the fourth amendment requirement of a prompt judicial determination of probable cause for a warrantless arrest, the probable cause determination must occur no later than 48 hours after the arrest. In computing the 48 hours, the Supreme Court specifically rejected the exclusion of weekends and holidays. Whether ***County of Riverside*** applies in juvenile delinquency cases remains an open question.

(2) Tolling of 40 Hour Requirement

The 40-hour period for pre-hearing detention is tolled if the minor is hospitalized or receiving medical treatment, if there is a question about the minor's true age, if delay is attributable to the minor, or to allow counsel for the minor to prepare for detention or shelter care hearing, upon a motion filed by counsel and granted by the court. **705 ILCS 405/5-415(1)**.

(3) Noncompliance with 40 Hour Requirement

If a minor is not brought before a judge within 40 hours, he or she must be released from custody. **705 ILCS 405/5-415(3)**.

Failure to hold a detention hearing within the statutory time period does not automatically warrant dismissal of the charges, nor is it a per se violation of due process. See ***Interest of J.E.,*** 282 Ill. App. 3d 794 (1st Dist. 1996). "Strict compliance with the 36-hour time limit is required. (citing ***People v. Clayborn,*** 90 Ill. App. 3d 1047 (1980). But it doesn't say anything about the remedy for not holding it within that time period. Just this: "A finding of no probable cause at the detention hearing is not final. The State is free to refile or reinstate its delinquency petition." And "The detention hearing is a statutory creation. If we were to search for an analogy, it would rest in the criminal law somewhere between the hearing on probable cause to detain an arrested person, … and the preliminary hearing conducted under our Criminal Code." (internal citations omitted). *See also* ***People v. D.T.,***

287 Ill. App. 3d 408 (1st Dist. 1997). If the minor is released, then it's not applicable anymore.

B) INITIATING THE DETENTION HEARING

(1) Initiation by the State

A detention hearing is initiated by a State's Attorney, probation officer or authorized person who decides that a minor should remain in detention pending trial. That individual files a petition for adjudication of wardship and includes a request that the minor be detained. The clerk of the court then sets the matter for a detention hearing. **705 ILCS 405/5-415(2)**.

(2) Parent's Request for Detention Hearing

If a parent, legal guardian, custodian, or responsible relative is present and requests an immediate detention hearing, such a hearing shall be held if the court is in session and the State's Attorney is prepared to go forward. If the hearing is not held immediately, it must be held at the earliest feasible time, but not until the minor has had adequate opportunity to speak with counsel. **705 ILCS 405/5-415(2)**.

C) NOTICE OF HEARING

The probation officer or other person who filed the petition should notify the minor's parents, legal guardian, custodian or responsible relative of the date, time and place of the detention hearing. Notice may be given orally. **705 ILCS 405/5-415(2)**.

7.10 DETENTION HEARING

705 ILCS 405/5-501

A) PURPOSE

The purpose of a detention hearing is to determine:

1. whether there is probable cause to believe the minor is a delinquent; and

2. whether secured custody is a matter of immediate and urgent necessity for protection of the minor or person or property of another; or whether the minor is likely to flee the jurisdiction.

See ***In the Interest of J.E.***, 282 Ill. App. 3d 794 (1st Dist. 1996); ***In re R.L.***, 282 Ill. App. 3d 839 (1st Dist. 1996).

B) RIGHTS OF PARTIES

The minor must be represented by counsel at a detention hearing. **705 ILCS 405/5-501**; ***In re M.W.***, 246 Ill. App. 3d 654 (5th Dist. 1993).

C) ISSUES TO BE DECIDED

(1) Probable Cause Determination

(a) Evidence

In making its probable cause determination, the court may receive all relevant information and evidence, including hearsay, affidavits filed with the petition, or by way of proffer based on reliable information offered by the State or minor. Any party may subpoena a witness to appear at the hearing for the purpose of giving testimony under oath and subject to cross-examination. *See* ***In the Interest of W.J.***, 284 Ill. App. 3d 203 (1st Dist. 1996) (right to cross-examination at a detention hearing). **NOTE:** The Act does not specify whether the State's Attorney or other person making the proffer must be placed under oath.

(b) Finding of no probable cause

If the court finds there is not probable cause to believe that the minor is a delinquent minor, it shall release the minor and dismiss the petition. The State may, however, bring a new petition to establish probable cause without violating the doctrine of *res judicata.* ***In re J.E.***, 228 Ill. App. 3d 315 (2d Dist. 1992); ***In re Gomez***, 100 Ill. App. 3d 299 (1st Dist. 1981). Alternatively, the court may reinstate the petition upon which the original finding of no probable cause was made. *See* ***In re S.I.***, 234 Ill. App. 3d 707 (4th Dist. 1992) (analogizing dismissal of a petition at a detention hearing to a finding of no probable cause at a preliminary hearing in a criminal case).

(2) Immediate and Urgent Necessity

Following a finding of probable cause, the court may order a minor held in detention pending trial if the court finds that secure detention is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another, or that the minor is likely to flee the jurisdiction of the court. **705 ILCS 405/5-501(4)(b)**.

At this stage of the hearing, the court may receive relevant evidence from any party who wishes to give evidence, including the minor, the minor's

parents, guardian, legal custodian, or other person able to give relevant testimony on the question. As long as the evidence is relevant and reliable, it is admissible even if it would not be admissible at trial. The court may also consider any evidence by way of proffer based on reliable information offered by the State or the minor.

In making the immediate and urgent necessity decision, the court must consider, along with other matters:

(a) the nature and seriousness of the alleged offense;

(b) the minor's record of delinquency offenses including whether the minor has delinquency cases pending;

(c) the minor's record of willful failure to appear following the issuance of a summons or warrant; and

(d) the availability of non-custodial alternatives including the presence of a parent, guardian or other responsible relative able and willing to provide supervision and care for the minor and to assure his or her compliance with a summons. *See* ***In re K.C***., 127 N.E.3d 1050, 2019 IL App. (4th) 180693 (2019).

(3) Release to Parents

Once the court finds that secure detention or placement outside the home is a matter of immediate and urgent necessity, the minor shall not be returned to the parent, custodian or guardian until the court finds that such placement is no longer necessary for the protection of the minor.

If, after hearing the evidence, the court does not find immediate and urgent necessity for detention, the court may release the minor. If neither the parent, guardian, nor custodian appears within 24 hours to take custody, a rehearing shall be set within seven days after the original order. At the same time, the probation department prepares a report on the minor. If the parent, guardian, or custodian does not appear at the rehearing, the court may order that the minor "be kept in a suitable place designated by the Department of Human Services or a licensed child welfare agency." The time during which a minor is in custody is considered as time spent in detention for purposes of scheduling the trial. **705 ILCS 405/5-501(6)**.

D) PLACE OF DETENTION

(1) Home Detention

If probable cause exists and there is a finding of immediate and urgent necessity, but the juvenile does not require secure detention, the court can order home detention.

(2) Secure Detention

Minors who are ordered held in detention pending trial may only be detained in a facility authorized for juvenile detention and only under the conditions for detention set forth in the Act. **705 ILCS 405/5-501(4)**.

E) PLACEMENT WITH DCFS

On and after January 1, 2017, a minor charged with a criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or adjudicated delinquent shall not be placed in the custody of or committed to the Department by any court, except (i) a minor less than 15 years of age committed to the Department under Section 5-710 of the Juvenile Court Act of 1987, ii) a minor under the ae of 18 for whom an independent basis of abuse, neglect, or dependency exists, which must be defined by departmental rule, or (iii) a minor for whom the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33 of the Juvenile Court Act of 1987. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency. **20 ILCS 505/(l)**.

F) BAIL

Bail is not available to juveniles detained prior to trial. *See* ***People v. Vazquez***, 92 Ill. 2d 132 (1982). Vazquez offers an extensive discussion of bail but note that the case is sometimes spelled Vasquez when it's cited by other courts, but it's Vazquez in the NE reporter. According to Vazquez: "This court has held that juveniles have the same right to be released on bail pending an appeal of an adjudication of delinquency as adults have to release on bail pending appeal of a criminal conviction." (citing ***In re Pulido***, 69 Ill. 2d 393 (1978). "We hold that minors detained on a charge of delinquency have the right to bail when the State appeals an order of the juvenile court denying a motion to prosecute them as adults." (***Vazquez***).

G) MODIFICATION OF DETENTION ORDER

705 ILCS 405/5-501(7)

Any party, including the State, the temporary custodian, an agency providing services to the minor or family, a foster parent or any of their representatives may file a motion to modify or vacate a detention order on any of the following grounds:

1. it is no longer a matter of immediate and urgent necessity that the minor remains in detention;

2. there has been a material change in circumstances in the home from which the minor was removed;

3. a person is now capable of assuming custody of the minor; or

4. services have been successful in eliminating the need for detention.

If a party petitions the court for modification of a detention order, the court must hear the petition at a hearing within 14 days.

Cases:

In re Gennell C., 968 N.E.2d 1258 (2012) (person seeking change in custody under Juvenile Act must explicitly "petition" or "apply", and the minor's custodian must have opportunity to be heard. A request for change in custody is not implicit in a request to "reconsider" the sentence).

H) REVIEW OF DETENTION ORDER

(1) Court Review

After the initial 40-hour period has elapsed, the court may review a minor's custodial status at any time prior to trial or sentencing hearing. If during this time new information becomes available about the minor's conduct and bears on the issue of whether the minor should be detained pending trial, the court may conduct a hearing to determine whether the minor should be placed in detention or a shelter care facility. The court may order placement in a secure facility if it finds that there is probable cause to believe the minor is a delinquent and that it is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another, or that the minor is likely to flee the jurisdiction. **705 ILCS 405/5-415(4); 5-501(8)**.

(2) Appellate Review

A detention order is not a final order and is not reviewable by appeal. ***In re Gomez***, 100 Ill. App. 3d 299 (1st Dist. 1981). Similarly, the State may not appeal dismissal of a petition after a finding of no probable cause at a detention hearing. ***In re S.I.***, 234 Ill. App. 3d 707 (4th Dist. 1992).

I) MEDICAL, DENTAL AND PSYCHOLOGICAL CARE

At all times during temporary custody, detention, or shelter care, the court has authority to authorize any medical or dental procedures or psychological services necessary to safeguard the minor's health. A petition need not be filed for the court to exercise this authority. ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982).

CHAPTER 8. PRE-TRIAL MOTIONS AND ISSUES

8.01 IN GENERAL

The Juvenile Court Act affords juveniles many of the same procedural rights given to adult criminal defendants. *See* **705 ILCS 405/5-101(3)**: "minors shall have all the procedural rights of adults in criminal proceedings, unless specifically precluded by laws which enhance the protection of such minors." Under the Code of Criminal Procedure of 1963, **725 ILCS 5/114**, a criminal defendant is entitled to file and have the court consider certain pretrial motions. Among these are motions to dismiss (**5/114-1**), motions for substitution of judge (**5/114-5**), motions for severance (**5/114-8**), and motions to suppress a confession and evidence (**5/114-11; 114-12**).

It is beyond the scope of this Bench book to provide a comprehensive discussion of cases involving pre-trial motions decided under the Code of Criminal Procedure. What follows is a list of the most common pre-trial motions filed in juvenile court proceedings, together with illustrative case law from delinquency and criminal cases that may be useful in deciding a minor's or the State's pretrial motion in a delinquency action.

8.05 MOTION FOR SUBSTITUTION OF JUDGE

725 ILCS 5/114-5

A) RIGHT TO SUBSTITUTION OF JUDGE

A minor has a right to a substitution of judge in a delinquency case so long as he or she complies with the statutory requirements that govern substitution motions in adult criminal proceedings (*i.e.* a written motion alleging prejudice filed within 10 days after assignment). *See* ***In re R.G.***, 283 Ill. App. 3d 183 (2d Dist. 1996) (rules of criminal procedure rather than civil procedure govern motions for substitution of judges in delinquency proceedings). The State also has a right to substitution of judge. *See* **725 ILCS 5/114-5(c)**. An issue may arise as to whether these rules will govern in an Extended Jurisdiction Juvenile proceeding, *i.e.* will rules in an adult criminal proceeding apply?

B) EXCEPTIONS TO RIGHT TO SUBSTITUTE

There are limited exceptions to the "absolute" right of substitution of judges. *See e.g.*, ***People ex rel. Baricevic v. Wharton***, 136 Ill. 2d 423 (1990) (an exception where the State's motion infringed on the chief judge's assignment power in violation of the separation of powers doctrine); ***People v. Langford***, 246 Ill. App. 3d 460, (5th Dist. 1993) (exception where motion brought to delay trial or where judge has already ruled on a substantive issue; *but see* ***In re Darnell J.***, 196 Ill. App. 3d 510 (1st Dist. 1990) (no exception to right of substitution in an abuse

proceeding where granting the motion threatened the smooth operation of the juvenile court).

8.10 MOTION FOR CHANGE OF PLACE OF TRIAL

725 ILCS 5/114-6

A minor in a delinquency proceeding has a right to change of place of trial on the ground that he or she cannot receive a fair trial because of prejudice on the part of the inhabitants in the original place of venue. ***In re Stiff***, 32 Ill. App. 3d 971 (2d Dist. 1975).

8.15 MOTION FOR SEVERANCE

725 ILCS 5/114-8

Statute:

A) MULTIPLE RESPONDENT MINORS

Illinois law recognizes two separate grounds for severance of jointly indicted co-defendants. The first is the confrontation problem which arises when the State attempts to utilize statements of one co-defendant which implicate the other defendant. The second ground for severance is when the co-defendants' defenses are so antagonistic that one co-defendant cannot receive a fair trial when tried jointly. ***People v. Olinger***, 112 Ill. 2d 324 (1986).

B) MULTIPLE OFFENSES

Factors to consider in determining whether offenses are part of the same comprehensive transaction for joinder purposes are their proximity in time and location, the identity of evidence to be presented, similarities in acts, and whether there was a common method of operation by the perpetrator. ***People v. Stevens***, 188 Ill. App. 3d 865 (4th Dist. 1989). *See* **725 ILCS 5/111-4(a)** (two or more offenses may be charged if the offenses are based on the same act or two or more acts which are part of the same comprehensive transaction).

C) SEX OFFENSES

"**Statute: P.A. 94-668, § 5** (eff. January 1, 2006), designated the existing text of **725 ILCS 5/114-8** as sub sec. (a), and added sub sec. (b), which states: "(b) In the case of a prosecution of multiple defendants for criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, or aggravated criminal sexual abuse arising out of the same course of conduct, the court, in deciding a motion to sever the charges and try the defendants

separately, must consider, subject to constitutional limitations, the impact upon the alleged victim of multiple trials requiring the victim's testimony."

8.20 MOTION TO SUPPRESS CONFESSION

725 ILCS 5/114-11

Amended Statutes:

705 ILCS 405/5-401.5, as amended by **P.A. 096-151**, eff. Jan. 1, 2011, now reads (with amended portion indicated) as follows:

Sec. 5-401.5. When statements by minor may be used.

(a) In this Section, "custodial interrogation" means any interrogation (i) during which a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response.

In this Section, "electronic recording" includes motion picture, audiotape, videotape, or digital recording.

In this Section, "place of detention" means a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency at which persons are or may be held in detention in connection with criminal charges against those persons or allegations that those persons are delinquent minors.

(a-5) An oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be inadmissible when the statement is obtained from the minor while the minor is subject to custodial interrogation by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee:

(1) continuously reads to the minor, in its entirety and without stopping for purposes of a response from the minor or verifying comprehension, the following statement: "You have the right to remain silent. That means you do not have to say anything. Anything you do say can be used against you in court. You have the right to get help from a lawyer. If you cannot pay for a lawyer, the court will get you one for free. You can ask for a lawyer at any time. You have the right to stop this interview at any time:" and

(2) after reading the statement required by paragraph (1) of this subsection (a-5), the public official or employee shall ask the minor

the following questions and wait for the minor's response to each question:

(A) “Do you want to have a lawyer?”

(B) “Do you want to talk to me?”

(b) An oral, written, or sign language statement of a minor who, at the time of the commission of the offense was under the age of 18 years, made as a result of a custodial interrogation conducted at a police station or other place of detention on or after the effective date of this amendatory Act of the 99th General Assembly shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding or juvenile court proceeding, for an act that if committed by an adult would be a misdemeanor offense under Article 11 of the Criminal Code of 20121 or any felony offense unless:

(1) an electronic recording is made of the custodial interrogation; and

(2) the recording is substantially accurate and not intentionally altered.

(b-5) (Blank).

(b-10) If, during the course of an electronically recorded custodial interrogation conducted under this Section of a minor who, at the time of the commission of the offense was under the age of 18 years, the minor makes a statement that creates a reasonable suspicion to believe the minor has committed an act that if committed by an adult would be an offense other than an offense required to be recorded under subsection (b), the interrogators may, without the minor's consent, continue to record the interrogation as it relates to the other offense notwithstanding any provision of law to the contrary. Any oral, written, or sign language statement of a minor made as a result of an interrogation under this subsection shall be presumed to be inadmissible as evidence against the minor in any criminal proceeding or juvenile court proceeding, unless the recording is substantially accurate and not intentionally altered.

(c) Every electronic recording required under this Section must be preserved until such time as the minor’s adjudication for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

(d) If the court finds, by a preponderance of the evidence, that the minor was subjected to a custodial interrogation in violation of this Section, then any statements made by the minor during or following that non-recorded custodial interrogation, even if otherwise in compliance with this Section,

are presumed to be inadmissible in any criminal proceeding or juvenile court proceeding against the minor except for the purposes of impeachment.

(e) Nothing in this Section precludes the admission (i) of a statement made by the minor in open court in any criminal proceeding or juvenile court proceeding, before a grand jury, or at a preliminary hearing, (ii) of a statement made during a custodial interrogation that was not recorded as required by this Section because electronic recording was not feasible, (iii) of a voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness, (iv) of a spontaneous statement that is not made in response to a question, (v) of a statement made after questioning that is routinely asked during the processing of the arrest of the suspect, (vi) of a statement made during a custodial interrogation by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made of the statement, provided that an electronic recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement, (vii) of a statement made during a custodial interrogation that is conducted out-of-state, (viii) of a statement given in violation of subsection (b) at a time when the interrogators are unaware that a death has in fact occurred, (ix) (blank), or (x) of any other statement that may be admissible under law. The State shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions described in this subsection (e) is applicable. Nothing in this Section precludes the admission of a statement, otherwise inadmissible under this Section, that is used only for impeachment and not as substantive evidence.

(f) The presumption of inadmissibility of a statement made by a suspect at a custodial interrogation at a police station or other place of detention may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.

(g) Any electronic recording of any statement made by a minor during a custodial interrogation that is compiled by any law enforcement agency as required by this Section for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, 2 and the information shall not be transmitted to anyone except as needed to comply with this Section.

(h) A statement, admission, confession, or incriminating information made by or obtained from a minor related to the instant offense, as part of any behavioral health screening, assessment, evaluation, or treatment, whether or not court-ordered, shall not be admissible as evidence against the minor on the issue of guilt only in the instant juvenile court proceeding. The

provisions of this subsection (h) are in addition to and do not override any existing statutory and constitutional prohibition on the admission into evidence in delinquency proceedings of information obtained during screening, assessment, or treatment.

(i) The changes made to this Section by Public Act 98-61 apply to statements of a minor made on or after January 1, 2014 (the effective date of Public Act 98-61).

Note the 2022 amendment, **705 ILCS 405/5-401.6**, added by PA 102-101 section 5, Eff. Jan 1, 2022. § 5–401.6.

Prohibition of deceptive tactics.

(a) In this Section:

"Custodial interrogation" means any interrogation (i) during which a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response.

"Deception" means the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law enforcement officer or juvenile officer to a subject of custodial interrogation.

"Place of detention" means a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency at which persons are or may be held in detention in connection with criminal charges against those persons or allegations that those persons are delinquent minors.

(b) An oral, written, or sign language confession of a minor, who at the time of the commission of the offense was under 18 years of age, made as a result of a custodial interrogation conducted at a police station or other place of detention on or after the effective date of this amendatory Act of the 102nd General Assembly shall be presumed to be inadmissible as evidence against the minor making the confession in a criminal proceeding or a juvenile court proceeding for an act that if committed by an adult would be a misdemeanor offense under Article 11 of the Criminal Code of 2012 or a felony offense under the Criminal Code of 2012 if, during the custodial interrogation, a law enforcement officer or juvenile officer knowingly engages in deception.

(c) The presumption of inadmissibility of a confession of a minor, who at the time of the commission of the offense was under 18 years of age, at a custodial interrogation at a police station or other place of detention, when such confession is procured through the knowing use of deception, may be

overcome by a preponderance of the evidence that the confession was voluntarily given, based on the totality of the circumstances.

(d) The burden of going forward with the evidence and the burden of proving that a confession was voluntary shall be on the State. Objection to the failure of the State to call all material witnesses on the issue of whether the confession was voluntary must be made in the trial court.

A) IN GENERAL

If a statement is given in a non-custodial situation, the statement is admissible if given voluntarily, *i.e.* without official coercion. *See* ***Colorado v. Connelly***, 479 U.S. 157 (1986). Although the United States Supreme Court has never held that juveniles are entitled to the right to be free from self-incrimination before trial (*see* ***Fare v. Michael C.***, 442 U.S. 707 (1979)), Illinois has long recognized the right of minors charged with crimes to be free from coercion during the course of custodial interrogation, and has barred the State from introducing a minor's statement if it is unable to show by a preponderance of the evidence that the statement was freely and intelligently given. ***In re J.J.C.***, 294 Ill. App. 3d 227 (2d Dist. 1998). In recent years, Illinois reviewing courts, citing children's age, lack of sophistication, and sensitivity to adult influence, have scrutinized minor's confessions with particular care. *See* ***People v. Griffin,*** 327 Ill. App. 3d 538 (1st Dist. 2002). No per se rule that juveniles must be allowed to consult with their parents prior to questioning, but courts have repeatedly held that police conduct which frustrates parents' attempts to confer with their child is particularly relevant and a significant factor in the totality of the circumstances analysis (citing G.O.). *See also* ***n re R.T.,*** 313 Ill. App. 3d 422, 430 (2000).

See ***People v. Williams,*** 324 Ill. App. Ed 419 (1st Dist. 2001). Defendant's statements voluntary when officer discontinued interview and only reinitiated when youth officer was available; *See also* ***In re G.O.,*** 191 Ill. 2d 37 (2000). Juvenile's confession should not be suppressed simply because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation, but that factor may be relevant in determining voluntariness. Juvenile's confession is "a sensitive concern", quoting ***People v. Prude,*** 66 Ill. 2d 470 (1977). *See also* ***In re Marvin M.,*** 383 Ill. App. 3d 693 (2d Dist. 2008). Statements voluntary where he was given Miranda warnings, appeared to be reasonably intelligent, able to read and understand English, able to ask clarifying question, time was reasonable, juvenile's parents were not prevented from meeting with him, made no requests of juvenile officer.

B) CUSTODIAL INTERROGATION

Warnings are required if a respondent is subjected to custodial interrogation. ***Miranda v. Arizona***, 384 U.S. 436 (1966); ***People v. Melock***, 149 Ill. 2d 423 (1992). *See* ***In re Jose A.,*** 2018 IL App. (2d) 180170. Error in suppressing statement minor made at high school to school Deans regarding investigation for distributing Xanax at school. Appellate court held "other public official or employee" in

401.5(a-5) means individual elected or appointed to hold government office or employed by government agency; school Deans were not other public official or employee. Requiring every official/employee to comply with 5-401.5(a-5) prior to taking a statement from a minor would result in absurdity and injustice.

C) WAS THE MINOR IN CUSTODY?

(1) A respondent bears the burden of showing that he or she subjectively believed that he or she was in custody. ***People v. Goyer***, 265 Ill. App. 3d 160 (4th Dist. 1994). If that burden is met, the court must determine, using an objective standard, whether a reasonable person in respondent's position would have believed that respondent was in custody. *See* ***Stansbury v. California***, 511 U.S. 318 (1994); ***People v. Melock***, *supra*.

(2) Whether or not an interrogation is custodial is determined by the totality of circumstances, including: "the location, length, mood, and mode of interrogation; the number of police officers present; any indicia of formal arrest or evidence of restraint; the intentions of the officers; the extent of the officers' knowledge; and the focus of the investigation."

In re Tyler G., 407 Ill. App. 3d 1089 (4th Dist. 2011) (juvenile was not in custody when he made statements to officer, and thus officer was not required to provide Miranda warnings; juvenile was questioned in his residence, the questioning was of limited duration and only lasted for 30 minutes, *juvenile's grandmother, who was his primary caretaker, was present during the questioning*, juvenile was not physically restrained, and no formal booking procedure took place after the questioning until more than one hour later when officer called juvenile's grandmother and asked her to bring him to the police station).

People v. Lopez, 229 Ill. 2d 322 (2008) (confession suppressed because an inference existed that defendant's Miranda warnings were deliberately withheld, and reasonable juvenile in defendant's position would not have felt free to leave or understand he could refuse to talk after Miranda warning, even though defendant was voluntarily at police station and police did not regard defendant as suspect; defendant was questioned and left in unlocked room for 5 hours, and orally confessed after confronted with other confession implicating defendant).

In re H.D.B., 301 Ill. App. 3d 234 (4th Dist. 1998) (minor questioned in trailer was in custody).

In re C.A.G., 259 Ill. App. 3d 595 (3d Dist. 1994) (citing ***People v. Brown***, 136 Ill. 2d 116 (1990) (15-year-old reasonably believed he was in custody when police told him that he had failed a polygraph test and that he might as well confess because they were going to arrest him anyway)).

People v. Booth, 265 Ill. App. 3d 462 (1st Dist. 1994) (minor left unsupervised in unlocked room at police station).

People v. Davis, 191 Ill. App. 3d 163 (4th Dist. 1989) (statements made by a juvenile when police regarded him only as a witness and not a suspect were not suppressed although no ***Miranda*** warnings were given).

In re E.M., 262 Ill. App. 3d 302 (2d Dist. 1994) (dean did not have to give juvenile ***Miranda*** warning before questioning student about stolen jacket).

D) MOTION TO QUASH STATEMENT PURSUANT TO ILLEGAL ARREST

For a detailed discussion of the law concerning the admissibility of a statement made after a minor's illegal arrest, *see* the following cases: ***Wong Sun v. U.S.***, 371 U.S. 471 (1963); ***People v. Fosky***, 136 Ill. 2d 66 (1990); ***In re H.D.B.***, 301 Ill. App. 3d 234 (4th Dist. 1998); ***People v. Jennings***, 296 Ill. App. 3d 761 (1st Dist. 1998); ***In the Interest of J.W.***, 274 Ill. App. 3d 951 (1st Dist. 1995).

E) INVOCATION OF RIGHT TO REMAIN SILENT

Before a minor may be questioned by police, he or she must be affirmatively warned of the right to remain silent and the right to have retained or appointed counsel present during the interview. The contours and details of that warning appear in 705 ILCS 405/5-401.5 (a-5), which states:

An oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be inadmissible when the statement is obtained from the minor while the minor is subject to custodial interrogation by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee:

(1) continuously reads to the minor, in its entirety and without stopping for purposes of a response from the minor or verifying comprehension, the following statement: "You have the right to remain silent. That means you do not have to say anything. Anything you do say can be used against you in court. You have the right to get help from a lawyer. If you cannot pay for a lawyer, the court will get you one for free. You can ask for a lawyer at any time. You have the right to stop this interview at any time:" and

(2) after reading the statement required by paragraph (1) of this subsection (a-5), the public official or employee shall ask the minor the following questions and wait for the minor's response to each question:

(A) "Do you want to have a lawyer?"

(B) "Do you want to talk to me?"

Similarly, there is no requirement that a respondent be advised that his or her confession may be introduced in a criminal trial if the case is transferred to adult court. ***In re G.O.,*** 191 Ill. 2d 37 (2000). are police obligated to admonish a suspect that making an incriminating statement as to one crime (*e.g.*, burglary) may also implicate the suspect in another crime (*e.g.*, felony murder). ***People v. Smith***, 306 Ill. App. 3d 82 (1st Dist. 1999).

If before or during questioning a minor invokes the right to remain silent, all questioning must cease. A minor's request for counsel constitutes a *per se* invocation of the right to remain silent and no further questioning may take place until he or she has consulted with an attorney or voluntarily initiates further conversation with the police. Not every vague reference to an attorney, however, is an indication that a minor in custody wishes to speak to an attorney. *See* ***People v. Torres***, 306 Ill. App. 3d 301 (1st Dist. 1999). A minor's request to speak to a parent or other interested adult does not automatically invoke his or her right to remain silent. ***Fare v. Michael C.***, 442 U.S. 707 (1979). *See* ***People v. Young,*** 365 Ill. App. 3d 753 (1st Dist. 2006). Court in ***Young*** held it was not an unambiguous invocation of counsel when juvenile's father asked to call his attorney. Also, "We, therefore, decline to now create the rule permitting third-party invocations of counsel for minors that defendant seeks."

In order to retract invocation of a minor's right to remain silent, there must be proof 1) that the circumstances surrounding a minor's conversation with police indicated a willingness to engage in a general conversation about the investigation and 2) the minor knowingly and voluntarily waived his or her right to silence and consultation when initiating the conversation. *See* ***Oregon v. Bradshaw***, 462 U.S. 1039 (1983); ***People v. Smith***, 306 Ill. App. 3d 82 (1st Dist. 1999); ***People v. Allen***, 249 Ill. App. 3d 1001 (1st Dist. 1993).

F) KNOWING AND INTELLIGENT WAIVER

(1) In General

If a statement is given in a situation which does require a ***Miranda*** warning, the statement must be voluntary and the person making the statement must do so with knowledge of the State's intention to use his statements to secure a conviction and that he has the right to remain silent and to request a lawyer. ***Moran v. Burbine***, 475 U.S. 412 (1986); ***People v. Bernasco***, 138 Ill. 2d 349 (1990). The State bears the burden of proving that the waiver was knowing and intelligent.

(2) Totality of the Circumstances Checklist

Whether the minor has knowingly and intelligently waived his or her right requires an examination of the totality of the circumstances surrounding the interrogation. ***People v. Bernasco***, 138 Ill. 2d 349 (1990); ***People v. McNeal***, 298 Ill. App. 3d 379 (1st Dist. 1998). Each case requires a fact-specific determination and must be evaluated on its own merits. ***People v. Plummer***, 306 Ill. App. 3d 574 (1st Dist. 1999). *See also* ***In re D.L.H.***, ***Jr.***, 32 N.E.3d 1075 (2015)—petition for wardship against nine year-old child, alleging that he committed first-degree murder of his 14-month old brother. Circuit court entered order finding child not guilty, ordering that supervised treatment be extended to maximum of five years. On child's appeal, the Illinois Supreme Court held that child was not in custody, but that child's statements to detective during second of two interviews were not voluntary based on totality of circumstances. The totality of the circumstances must include the age, background, experience and conduct of the respondent. ***People v. Bernasco***, *supra*. No one factor is dispositive on the question of whether a minor's waiver is knowing and intelligent. ***People v. Torres***, 306 Ill. App. 3d 301 (1st Dist. 1999). *See* ***People v. Westmorland***, 866 N.E.2d 608 (2d Dist. 2007) (17-year-old boy's confession was suppressed when he was denied the right to call his mother, he was immature, he was intimidated by the presence of guns and a large police officer, and he was inexperienced with criminal law). An example of the use of the "totality of the circumstances to sustain a confession" is: ***In re M.W.***, 369 Ill. Dec. 424 (1st Dist. 2013). There, a sixteen-year-old was held to have knowingly and intelligently waived his Miranda rights. ***Id.*** Though the minor had attention deficit disorder and a learning disability, a clinical psychologist who examined him at defense counsel's request, testified that his learning disability did not appear to significantly affect his functional communication skills, and that the minor had "street smarts." Moreover, the police interrogation of defendant only lasted several minutes, police took great care in advising defendant of his rights, and *defendant's mother accompanied him for the entirety* of the questioning.

(a) Capacity

(i) Chronological age;

(ii) Intellectual ability;

While limited intellectual ability alone does not indicate a respondent is incapable of waiving constitution rights, a low IQ is a factor to consider. ***People v. Bernasco*** (IQ of 80-90); ***In re M.M.***, 255 Ill. App. 3d 300 (1st Dist. 1993) (IQ of 71 and mental age of 10). *But see* ***Rice v. Cooper***, 148 F. 3d 747 (7th Cir. 1998) (fact that minor was illiterate and mildly

retarded did not mean he lacked capacity to waive rights); ***In re Kenneth W.***, 966 N.E.2d 381 (Ill. 2012) (a 15-year-old juvenile made a knowing, intelligent, and voluntary waiver of his *Miranda* rights despite one psychologist's testimony that juvenile could not have voluntarily done so); ***People v. Croom***, 2012 IL App (4th) 100932 (knowing and voluntary nature of Defendant's statement to police was not diminished by finding that he was unable to assist in his defense (unfit) at time of trial, many months after statement was made); ***In re W.C.***, 167 Ill. 2d 307 (1995) (confession knowingly and intelligently made despite minor's retardation and inability to understand words such as "right," "hire" or "appoint").

(iii) Reading level

People v. Bernasco 138 Ill. 2d 349 (1990) (fourth grade reading level); ***In re M.M.***, 255 Ill. App. 3d 300 (1st Dist. 1993) (diminished reading level and vocabulary skills). ***People v. Salgado***, 263 Ill. App. 3d 238 (2d Dist. 1994) (fact that 15-year-old murder suspect had only a fifth-grade reading level did not render his confession inadmissible). *But see* ***In re Lashun H.***, 284 Ill. App. 3d 545 (1st Dist. 1996) (learning disability with limited experience lacked capacity to waive rights).

(b) Experience

(i) Experience with law enforcement.

Compare ***Bernasco***, *supra* (respondent had no prior experience with police), *with* ***In re M.M.***, *supra*, (respondent had extensive interactions with law enforcement and judicial systems).

(c) Conduct

(i) Reading statement

Respondent in ***In re M.M.***, *supra,* read and corrected a written version of his statement.

(ii) Judicial observation

In ***Bernasco****, supra*, the trial judge observed that minor had substantial difficulty understanding relatively simple concepts.

(d) Whether under influence of alcohol or drugs

(e) Misleading statements by police

The general statement by police to a 16-year-old armed robbery/murder suspect that it was in his best interest to confess and that his record would be expunged after he became an adult was not enough to render the confession involuntary. ***People v. Wagner***, 189 Ill. App. 3d 1041 (4th Dist. 1989); *see also* ***In re T.S.***, 151 Ill. App. 3d 344 (4th Dist. 1986). In ***People v. Johnson***, 368 Ill. App. 3d 1073 (2d Dist. 2006), a confession was not involuntary when police lied to 16-year-old of average intelligence about the evidence they had against him when juvenile did not confess until after he saw videotaped statement giving evidence against him. In addition, fact that juvenile officer was not present at all times, fact that juvenile's statement was not reduced to writing, fact that police did not inform juvenile of potentially exculpatory evidence, fact that police did not inform him that he could be tried as an adult until after he had started giving his statement, and fact that the police did not offer him food or beverages did not make confession involuntary. ***Id.*** Police deception will not render a confession involuntary when the deception did not induce the confession. ***People v. Minniti***, 2007 WL 1288165 (2d Dist. 2007) (juvenile officer was present, explained the defendant's ***Miranda*** rights, and ensured that he understood those rights).

(f) Access to a parent or youth officer

See also ***People v. Walls****,* 2020 IL App (2d) 130761-B. While a juvenile does not have a *per se* right to consult with a parent before questioning or to have a parent present during questioning, the presence of a concerned adult can be one factor in the totality of circumstances test used to determine the voluntariness of an incriminating statement. *See, e.g.,* ***People v. Murdock***, 2012 IL 112362, (incriminating statements to police by a 16-year-old juvenile were voluntary under the totality of the circumstances, despite the absence of a concerned adult, because the defendant was able to understand and give full, concise, and clear answers to questions and appeared to be of normal intelligence and mental capacity for someone his age; also, there was no evidence of mental

or physical abuse as the defendant was not handcuffed during the interview, interviewing officer's tone was conversational, the defendant appeared calm and alert on a video recording of the interview, and the actual interview lasted only three hours during a six-to-seven-hour detection); ***People v. Lee***, 335 Ill. App. 3d 659 (1st Dist. 2002) (police did not unreasonably prevent juvenile from conferring with his mother during interrogation, and his statement was voluntary under the totality of the circumstances, which included being informed of his constitutional rights, his age, education, and intelligence, the limited duration of questioning and lack of inducement or physical punishment, his emotional characteristics, and previous experience with the criminal justice system).

In ***In re Arthur E.***, 236 Ill. 2d 505 (2010), however, the Supreme Court declined to render a decision as to whether a juvenile *must* consult with a parent or concerned adult in order to give a knowing and intelligent waiver of their *Miranda* rights).

Cases:

People v. Ronald Patterson, 363 Ill. Dec. 818 (1st Dist. 2012) (minor's youth, lack of exposure to the criminal justice system, and lack of any concerned adult during questioning was significant, and, when added to that, where police make no attempt to contact the parents or legal guardian of a juvenile before questioning him, a statement cannot be considered freely and voluntarily given).

People v. Westmorland, 372 Ill. App. 3d 868 (2d Dist. 2007) (17-year-old boy's confession was suppressed when he was denied the right to call his mother, he was immature, he was intimidated by the presence of guns and a large police officer, and he was inexperienced with criminal law).

In re Christopher K., 217 Ill. 2d 348 (2005) (where 14-year-old boy asked police "Do I need a lawyer?" and police allowed him to confer in private with his mother before resuming questioning, "acted appropriately" by allowing the juvenile to speak to his mother, although they were not obligated to cease questioning when he asked whether he needed a lawyer).

People v. Williams, 324 Ill. App. 3d 419 (1st Dist. 2001) (defendant's statements to the police officer regarding his involvement in the shooting were voluntary under the following circumstances: (1) after determining that defendant was 15 years old, the police officer discontinued interviewing defendant and only

reinitiated the questioning when the youth officer was available; (2) the police officer phoned defendant's mother several times; (3) the youth officer was present for all interviews with defendant and the reading of ***Miranda*** rights to defendant; and (4) in his court-reported confession, defendant indicated that he understood his rights under ***Miranda***, that he understood he would be tried and sentenced as an adult, and that he was treated well by the police).

In ***In re G.O.***, 191 Ill. 2d 37 (2000), a minor's confession outside the presence of a parent who was in the station and sought to speak with a 13-year-old son in a murder investigation was found voluntary. The Supreme Court, affirming the trial court, held that it will give great deference to the trial court to determine whether a confession was voluntary and will reverse those findings only if they are against manifest weight of evidence, but it will review de novo the ultimate question of whether confession was voluntary. ***Id.*** This case overruled ***People v. Oaks***, 169 Ill. 2d 4091328 (1996);

People v. Robinson, 301 Ill. App. 3d 634 (2d Dist. 1998) (juvenile not permitted to confer with parent or juvenile office, mother denied contact and juvenile had limited mental capacity);

In re J.J.C., 294 Ill. App. 3d 227 (2d Dist. 1998) (creating a presumption of involuntariness where a parent is at the station, asks to speak with his or her child, and the request is refused until after a statement is made);

In re A.R., 295 Ill. App. 3d 527 (1st Dist. 1998) (access to a parent or youth officer is relevant in determining voluntariness);

People v. Montanez, 273 Ill. App. 3d 844 (1st Dist. 1995) (statement involuntary where minor questioned throughout night, mother advised not to come until called and no meaningful effort to notify youth officer);

People v. Williams, 275 Ill. App. 3d 249 (1st Dist. 1995) (failure to contact parent only one factor to be considered);

People v. Anderson, 276 Ill. App. 3d 1 (1st Dist. 1995) (although mother not contacted, youth officer present and minor was given medical attention and food);

People v. Hernandez, 267 Ill. App. 3d 429 (1st Dist. 1994) (no suppression required where minor did not request the presence of an adult);

People v. Denton, 256 Ill. App. 3d 403 (1st Dist. 1993) (police officer's failure to notify the minor's parents of the taking of the minor into custody and failure to take the minor to a juvenile police officer did not require suppression of minor's statement);

People v. Lash, 252 Ill. App. 3d 239 (1st Dist. 1993) (juvenile's incriminating statement was not *per se* inadmissible due to officer's failure to notify the juvenile's parents of questioning of juvenile held in detention);

People v. Bobe, 227 Ill. App. 3d 681 (1st Dist. 1992) (allowing 16-year-old murder suspect to speak to a youth officer mitigated fact that police did not allow the youth's father to see him during questioning);

In re D.C., 244 Ill. App. 3d 55 (1st Dist. 1992) (no right to have parent present before or during questioning);

People v. Brown, 235 Ill. App. 3d 479 (1st Dist. 1992) (5-hour delay in presenting juvenile suspect to youth officer did not render confession involuntary);

People v. R.B., 232 Ill. App. 3d 583 (1st Dist. 1992) (statement suppressed where police interrogated respondent 3 times in 15 hours before notifying youth officer or parents);

People v. Knox, 186 Ill. App. 3d 808 (1st Dist. 1989) (minor's confession suppressed where father of 15-year-old refused to accompany him to station, no effort was made to locate mother, and mother was turned away at the station);

People v. Brown, 182 Ill. App. 3d 1046 (1st Dist. 1989) (minor's confession involuntary where uncle was available and showed interest);

People v. Arias, 179 Ill. App. 3d 890 (3d Dist. 1989) (although the police refused to allow minor to contact father after arrest, confession held voluntary because minor was not under duress and family members knew the minor had been taken to the police station);

People v. Davis, 191 Ill. App. 3d 163 (4th Dist. 1989) (confession is not rendered involuntary because minor did not understand principles of criminal accountability (that he would be prosecuted based on statements he made as a witness) and implications of his acts (that he could be tried as an adult)).

(g) Physical Duress

People v. Richardson, 334 Ill. Dec. 675 (2009) (juvenile defendant sustained an eye injury while he was in lockup, but the state provided clear and convincing evidence that a defendant's injury was not inflicted in order to obtain an inculpatory statement).

(h) Material witness rule

In ***People v. R.D.***, 155 Ill. 2d 122 (1993), the Supreme Court repudiated the material witness rule, holding that the State is not required to call all material witnesses at a suppression hearing where respondent alleges that his or her confession was involuntary.

(3) Reinvocation of ***Miranda*** Rights

An in-custody suspect who has waived his or her ***Miranda*** rights may subsequently reinvoke those rights. ***Edwards v. Arizona***, 451 U.S. 477 (1981). The test for reinvocation is an objective one, requiring a suspect to reinvoke the right in a way that "a reasonable police officer in the circumstances would understand the statement to be a request for counsel." ***Davis v. United States***, 512 U.S. 452 (1994).

(4) Standard of Review

Whether the respondent knowingly and intelligently understood his ***Miranda*** rights sufficiently is a finding of fact which will not be overturned unless it is against the manifest weight of the evidence. ***People v. Bernasco***, 138 Ill. 2d 349 (1990).

(5) Interlocutory Appeals of Orders on Motions to Suppress Confessions

Where a trial court granted a minor's motion to suppress his confession for failure to advise him of his Miranda rights, and the appellate court dismissed the State's appeal for lack of jurisdiction, the Illinois Supreme Court found that the policy shift in making juvenile delinquency proceedings more like criminal proceedings provides juveniles with many of the protections of criminal defendants, and that the State has the same interest in appealing a suppression order in a juvenile case as in a criminal case. The Court further held that **Supreme Court Rule 660(a)** should be modified to allow the State to appeal interlocutory orders suppressing evidence in a juvenile delinquency proceeding. ***In re B.C.P.***, 2013 IL 113908 (2013). In addition, pursuant to its decision in ***B.C.P.***, the court amended **Rule 660(a)** to incorporate **Rule 604(a)(1)**, eff. July 1, 2013. Unless there is good cause for a delay, the appellate court is required to file its decisions in juvenile appeals

within 150 days after the filing of the notice of appeal.

8.25 MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED

725 ILCS 5/114-12

A) IN GENERAL

The fourth amendment right to suppress illegally obtained evidence extends to juveniles. *See* ***In re Marsh***, 40 Ill. 2d 53 (1968).

For a case in which evidence was suppressed in a delinquency proceeding, *see* ***In re D.D.H.***, 221 Ill. App. 3d 150 (5th Dist. 1991) (arresting officer's stop based on mere suspicion rather than observations leading to reasonable inference of criminal conduct). *See also* ***In re Mario T.***, 376 Ill. App. 3d 468 (1st Dist. 2007) (trial court erred when it denied motion to suppress evidence of crack cocaine seized during stop and frisk encounter). A call to officers to investigate potential burglary of apartment on floor of building known by officer to be frequent location of drug dealing, respondent's presence in group of youths that outnumbered officers, knowledge that respondent was not resident of building, and subjective fear of female officer, are not enough to justify frisk of respondent. ***Id.***

For cases in which evidence was not suppressed, *see* ***In re C.K.***, 250 Ill. App. 3d 834 (2d Dist. 1993) (arresting officer's search of juvenile's person was the result of reasonable belief that juvenile found sleeping was a resident of the premises which were the subject of a search warrant and probable cause for the search of the juvenile was established by the belief that he was in constructive possession of narcotics found lying near him); ***In re J.C.***, 260 Ill. App. 3d 872 (1st Dist. 1994) (trial court's denial of motion to suppress upheld where court found that police officers were more credible witnesses than minor's parents).

For another case in which evidence was not suppressed, *see* ***In re Rogelio S.***, 378 Ill. App. 3d 211 (1st Dist. 2007) (Fourth Amendment challenge to mandatory extraction of DNA pursuant to § 5-4-3 of the Code of Corrections was denied because the constitutionality of that provision has previously been upheld by the Illinois Supreme Court, and thus § 5-4-3 does not violate a juveniles' right to be free from unreasonable searches and seizures). *See also* ***In re Lakisha M.***, 227 Ill. 2d 259 (2008) (§ 5-4-3 is not unconstitutional as applied to a minor who is adjudicated delinquent for a nonsexual felony offense; statute had previously been upheld as applied to adult felons, and juvenile is not entitled to greater Fourth Amendment protection by virtue of her minority) (2009).

B) SCHOOL SEARCHES

A juvenile court judge may be asked to suppress contraband seized from a minor

by school officials. The United States Supreme Court has held that the Fourth Amendment prohibition against unreasonable searches and seizures applies to searches conducted by public school officials. ***New Jersey v. T.L.O.***, 469 U.S. 325 (1985). The Court has, however, defined the "reasonableness" of a search differently in the school context. First, school officials are not required to obtain a warrant before searching a student who is under their authority. Secondly, school officials do not need probable cause to conduct a search. Instead, they may engage in a search if they have: reasonable suspicion to believe that a minor possesses contraband in violation of a school disciplinary rule or the law; and the search as conducted was reasonably related to the objective of the search and was not unreasonably intrusive.

For a discussion of the law of school searches in Illinois, *see* ***People v. Williams***, 339 Ill. App. 3d 956 (2d Dist. 2003). In that case, a police officer, who was assigned as high school's resource officer, needed only reasonable suspicion, and not probable cause, to search student's car in school's parking lot, even though the search was related to officer's burglary investigation. The search was minimally intrusive, in that officer had individualized suspicion that a stolen gun was located in car, and limited his search to student's car, the state had compelling interest in maintaining safe school environment, and high school officials requested officer to search car after they obtained keys from student. ***Id.*** *See also* ***In re Marquita M.***, 2012 IL App (4th) 110011 (minor was found to have a steak knife in pocket of her hooded sweatshirt at school, and minor admitted to school administrator that she was going to fight with another student that day, but minor was not in custody for ***Miranda*** purposes when she made the statements: only one police officer was present who did not restrain minor, display weapon, or show force, and questioning was of limited duration); ***People v. Dilworth***, *See also* ***In re Jose A.,*** 2018 IL App. (2d) 180170 (2018). High school deans do not satisfy "other public official or employee" definition under **705 ILCS 405/5-401.5(a-5)**. Note the statutory amendment in 2017 to add a-5 ("an oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be inadmissible when the statement is obtained from the minor while the minor is subject to custodial interrogation by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee: (reading the juvenile ***Miranda*** warning)).

169 Ill. 2d 195 (1996) (upholding a search by a school liaison officer and using an analysis set forth by the U.S. Supreme Court in ***Vernonia School Dist. 47J v. Acton***, 515 U.S. 646 (1995). *See also* ***People v. Pruitt***, 278 Ill. App. 3d 194 (1st Dist.1996) (upholding the constitutionality of a school metal detector search). See also ***People v. Kline****,* 355 Ill. App. 3d 770 (2005). Student removed from class by dean and police officer based on tip that he had cannabis; anonymous tip w/o any information that could be corroborated did not rise to reasonable suspicion to justify student's seizure from class.

C) CONSENT SEARCHES

(1) In General

Outside the school context, unless a judicially created exception applies, the Fourth Amendment requires law enforcement officers to secure a search warrant prior to conducting the search of a person and his or her premises or effects. An individual may waive the requirement of a warrant by consenting to the search. Minors often live with others, particularly parents or close relatives. This fact raises the issue of whether the State may properly introduce inculpatory evidence against a minor if it was obtained during a search consented to by another. The following discussion is intended as an introduction to complex and often inconsistent case law in this area.

(2) The Doctrine of Common Authority

(a) As a general matter, one who has common authority over the premises to be searched may validly consent to a search and obviate the requirement of a search warrant. ***United States v. Matlock***, 415 U.S. 164 (1974). The burden of establishing common authority is on the State. ***Illinois v. Rodriguez***, 497 U.S. 177 (1990). *But see* ***Georgia v. Randolph***, 547 U.S. 103 (2006) (warrantless search of shared residence was invalid when one resident, the defendant's wife, consented to the search, but the defendant, who was also physically present, expressly did not consent).

(b) When a person resides with parents or close relatives, it is presumed that there is common authority over the bedroom. *See, e.g.*, ***People v. Brooks***, 277 Ill. App. 3d 392 (1st Dist. 1996). This presumption may be overcome, however, by evidence indicating that the accused had exclusive possession of the premises. ***People v. Bliey***, 232 Ill. App. 3d 606 (1st Dist. 1992).

(d) In the case of minors, it appears that at least two appellate districts may be willing to extend the common authority doctrine further by establishing an irrebuttable rule of common authority. *See* ***People v. Daniel***, 238 Ill. App. 3d 19 (1st Dist. 1992). *But see* ***People v. Nunn***, cert. denied (1974), 416 U.S. 904.55 Ill. 2d 344 (1973). See also ***People v. Brown***, 162 Ill. App. 3d 528 (1987), upheld owner's granddaughter's authority to consent to search an unlocked bedroom; restates a California case on presumption of common authority, and that presumption may be overcome by evidence indicating that defendant had exclusive possession of the searched premises. *See also* ***People v. Seidel,*** 115 Ill. App. 3d 471 (1983), which says that the ***Nunn*** test is no longer the proper test for third

party consent cases, reanalyzed the ***Nunn*** facts under the ***Matlock*** "mutual use" test, and under that test, mother (in Nunn) did not have mutual use. ***Nunn***: 19-year-old son had locked bedroom door in mother's house, told mother not to enter or allow anyone else to enter. Mother did not object, and only entered to clean; did not have authority to consent to search bedroom. However, note that ***Stacey*** is not a juvenile case.

8.30 MOTION TO QUASH ARREST

Before a citizen may be seized, taken into custody or arrested by a peace officer in the absence of a warrant, the peace officer must have reasonable grounds to believe that the person is committing or has committed an offense. *See* ***In re J.C.,*** 163 Ill. App. 3d 877 (1987), probable cause test equally applicable to cases where a juvenile is taken into custody.

In re Foster, 66 Ill. App. 3d 193 (5th Dist. 1978) (allegation that arrest was illegal*). See* ***In re D.G.,*** 144 Ill. 2d 404 (1991). Possession of $1,000 by a 13-year-old is not a crime, and it does not create probable cause to believe the minor has committed a crime.

In See ***In re Kendale H.,*** 2013 IL App. (1st) 130421. Nothing suspicious about walking down the street with hands in pockets in Chicago in October.

In the Interest of a M.N., 268 Ill. App. 3d 893 (1st Dist. 1994) (officer's approach and questioning of minor who was hanging out in an area of known gang activity during school hours was permissible under ***Terry v. Ohio***, 392 U.S. 1 (1968)). *But see, e.g.*, ***In re D.L.,*** 2017 IL App. (1st) 171764. Officer lacked reasonable suspicion to stop juvenile whom he had observed only for five seconds as he was walking quickly away from an area where shots had been fired. Officer had no other suspicion that juvenile had committed or was committing criminal offense.

8.35 PRETRIAL DISCOVERY

There is no constitutional right to discovery in delinquency proceedings. ***In re C.J.***, 166 Ill. 2d 264 (1995) (destruction by DCFS of potentially exculpatory evidence in a delinquency case did not violate due process, at least where there was no showing of bad faith and proof of significant prejudice).

In addition, criminal pretrial discovery rules do not apply in delinquency proceedings. ***In re C.J.***, *supra.*

The degree to which civil discovery is allowed in delinquency cases rests within the discretion of the trial court. ***In re C.J.***, *supra*; ***People ex rel. Hanrahan v. Felt***, 48 Ill. 2d 171 (1971).

In many counties, the general practice is to share as much information as is available with the criminal defendant under **Supreme Court Rule 412**. Query: Will **Supreme Court Rules 412 and 413** apply to Extended Jurisdiction Juvenile proceedings? *See* Chapter 10, *infra*.

Cases:

People v. K.S., 387 Ill. App. 3d 570 (1st Dist. 2008) (case remanded to have the trial court conduct an in-camera inspection of the school records of juvenile witnesses because the witnesses' testimony at trial constituted the only direct evidence against defendant and minor alleged certain facts in those records potentially helpful in cross-examination regarding competency of a witness; minor should have anything material to witnesses' credibility).

In re Julio C., 386 Ill. App. 3d 46 (1st Dist. 2008) (trial court correctly found that State committed a discovery violation in petition alleging felony murder, but it erred when it dismissed the delinquency complaint as a sanction for the violation; although the State allowed the defense to believe that vehicle in which minor was traveling at time of alleged felony murder would be preserved, and it violated **SCR 412** when it sold van at auction without notifying defense, since the van was not essential to, and determinative of, the finding of guilt, trial court abused its discretion when it dismissed the charges).

8.40 MOTION FOR COMPETENCY HEARING

725 ILCS 5/104-10 et. seq. It is within the discretion of the trial court to determine whether a *bona fide* doubt exists as to whether the accused is competent to stand trial. ***In re E.V.***, 190 Ill. App. 3d 1079 (1st Dist. 1989) (factors to be considered in determining an accused's fitness for trial is the ability to understand the charge, the nature and purpose of the proceeding, the ability to cooperate in his own defense, prior treatment of any mental disability and accused's demeanor at trial). *See also* ***People v. Weeks,*** 393 Ill. App. 3d 1004 (2009). In determining fitness, defendant bears burden of proving bona fide doubt; to determine whether bona fide doubt exists, court may consider irrational behavior, demeanor in court, and any prior medical opinion on competence to stand trial. Representation by defense counsel also important to consider. In ***Weeks,*** Defense counsel believed defendant had ability to understand and cooperate; defendant had psychological problems and was on medication but had rational discussions with counsel and court and understood proceedings.

8.45 MOTIONS *IN LIMINE*

In cases when a juvenile is charged with a sex crime against a child under the age of 13 years, the State frequently will move to admit out of court statements by the child victim. Section 115-10 of the Code of Criminal Procedure of 1963 (**725 ILCS 5/115-10**) provides a statutory hearsay exception in such cases. Once the State files the requisite notice under section 115-10, the court must conduct a hearing to determine the reliability of the out of court statements.

This statute, which would allow during trial for sexual acts perpetrated against a child admission of testimony regarding victim's out-of-court statement describing the alleged act, even if child was unavailable as a witness, so long as trial court found "sufficient safeguards of reliability" and "corroborative evidence of the act which is the subject of the statement" is not *facially* unconstitutional; subsection of statute envisioned confrontation

and cross-examination and safeguard of reliability in such instances would provide more protection than that required by confrontation clause. ***People v. Reed***, 361 Ill. App. 3d 995 (4th Dist. 2005). *But see* ***In re Rolandis G.***, 232 Ill.2d 13 (2008) (where child advocate was acting as police representative during the interview, done at the behest of police and witnessed by a detective, interview was not conducted to a substantial degree, for treatment rather than investigative purposes). Thus, the statute was held to violate the confrontation clause of the Sixth Amendment to the extent that it permits introduction of a testimonial out-of-court statement where the defendant did not have an opportunity to cross-examine the child. ***Id.***

Other motions *in limine* may be filed when appropriate.

CHAPTER 9. DATE OF TRIAL, GUILTY PLEAS, CONTINUANCE UNDER SUPERVISION AND TRIAL

9.01 DATE OF TRIAL

705 ILCS 405/5-601

A) IN GENERAL

(1) Applicability of Criminal Speedy Trial Provisions

The speedy trial provisions of the Criminal Code do not apply in delinquency proceedings. ***People v. Woodruff***, 88 Ill. 2d 10 (1981); "Juvenile offenders are not criminals; proceedings under the Act are not criminal prosecutions; adjudications under the Act are not convictions and a minor so adjudicated does not suffer the consequences of a criminal conviction." ***Woodruff*** at 19. *See also* ***In Re C.J.,*** 328 Ill. App. 3d 103 (2002). ***In re R.G.***, 283 Ill. App. 3d 183 (2d Dist. 1996); ***In re Gilbert E.***, 262 Ill. App. 3d 716 (1st Dist. 1994); ***In re M.A.***, 132 Ill. App. 3d 444 (1st Dist. 1985) (no equal protection violation).

(2) Transfer Cases

(a) The speedy trial provisions of the Juvenile Court Act do not apply in excluded jurisdiction cases. ***People v. Rodriguez***, 276 Ill. App. 3d 33 (2d Dist. 1995).

(b) In cases transferred for trial to the adult court, the 120-day speedy trial provision runs from the date of the transfer order. ***People v. Woodruff***, *supra*.

(3) Speedy Trial in Delinquency Cases

In ***In re S.G.***, 175 Ill. 2d 471 (1997), the Illinois Supreme Court interpreted the speedy trial provision governing the date for adjudicatory hearings in child protection proceedings under the Juvenile Court Act. The Court concluded that a) the Act's speedy trial requirement is mandatory, not permissive; b) under the language of the Act the hearing must be completed, not merely commenced within the statutory time limit for hearings; and c) the Act's speedy trial provision does not violate separation of powers principles despite the Act's policy of promoting children's interests.

In response to the Court's opinion in ***S.G.***, the General Assembly subsequently modified the language of the statute to require only that the adjudicatory hearing be commenced within the statutory speedy trial time

frame. *See* **705 ILCS 405/2-14**. Although the ***S.G.*** case arose in a child protection proceeding, the court's analysis suggests that the opinion may also control the statutory interpretation of the speedy trial provision in delinquency cases. **Section 2-14** has been amended to state that the adjudicatory hearing in child protection cases need only be started within the statutory limit. **Section 5-601** was not similarly amended. It continues to require that trials in delinquency hearings "must be held within" 120 days. Query: Given the Supreme Court's statutory construction of identical language in ***S.G.***, must delinquency cases be *completed* within the statutory time limits of **Section 5-601** pending possible amendment of that provision or does the amendment of **Section 2-14** in the wake of the decision in ***S.G.*** also apply inferentially in delinquency trials?

Because the phrase "any party" was not intended to include the state, the state cannot force a juvenile to proceed within 120 days against his wishes. ***People ex rel. Devine v. Sharkey***, 221 Ill. 2d 613 (2006).

B) SPEEDY TRIALS FOR MINORS NOT IN CUSTODY

705 ILCS 405/5-601(1)

(1) General Rule

A trial must be held within **120 days of a written demand** made by any party. A demand requires that a party make an affirmative request on the record. Answering ready for trial does not constitute a demand. ***In re A.F.***, 282 Ill. App. 3d 930 (1st Dist. 1996) (court's marking case's next date as "final" and setting it for trial were indications that the court and State knew the minor had demanded trial).

(2) Time Extensions

Where the State exercising due diligence is unable to obtain evidence and reasonable grounds exist to believe that such evidence will be found, the court may allow the State's motion to postpone the case for an **additional 30 days**. *See* ***In re Gilbert E.***, 262 Ill. App. 3d 716 (1st Dist. 1994) (trial court need not use particular language in granting State's motion to continue case for 30 days). **705 ILCS 405/5-601(1)**.

Where the court determines that the State has used due diligence in obtaining the results of DNA testing and that such results may be obtained at a later date, it may allow a State motion to continue the trial date **for an additional 120 days**. **705 ILCS 405/5-601(5)**.

(3) Multiple Delinquency Petitions

Where juvenile has multiple delinquency petitions pending in the same county and simultaneously demands trial on more than one petition, a trial must be held (or a finding entered) on at least one of the petitions within the statutory time requirements. All remaining petitions must be adjudicated within 160 days from the date on which a finding relative to the first petition is entered. If there is no finding on the first petition, the minor is entitled to trial on all remaining petitions within 160 days of the date on which the first trial ended. If no trial is held or finding entered on any of the remaining petitions, the petition or petitions shall be dismissed with prejudice unless the time has been tolled. **705 ILCS 405/5-601(2)**.

(4) Failure to Comply with Speedy Trial Provisions

When, in the case of a minor who is not in custody, no trial is held within the statutory speedy trial time provisions, the court, upon motion by any party, shall dismiss the petition with prejudice. **705 ILCS 405/5-601(3)**. In ***In re S.G.***, 175 Ill. 2d 471 (1997), the Supreme Court rejected an argument in a child protection case that the Act's mandatory dismissal requirement violates the obligation of the judiciary to act in a child's best interests. Presumably the Court's reasoning applies with equal force in delinquency cases.

C) SPEEDY TRIAL FOR MINORS IN CUSTODY

705 ILCS 405/5-601(4)

(1) General Rule

A trial must be held **within 30 calendar days from the date of the detention order** or the earliest possible date in compliance with notice requirements to the minor's parents, guardian or legal custodian set forth in **705 ILCS 405/5-525**. Unless some other extension applies, the detention hearing must take place **no later than 45 calendar days** from the date of the detention order.

(2) Time Extensions

When the petition alleges that the minor has committed an offense that involves death, great bodily harm, sexual assault, or aggravated criminal sexual assault, the court may, upon the State's motion, continue the trial for **not more than 70 calendar days** after the date of the detention order. When the petition alleges the minor has committed an offense in violation of the Illinois Controlled Substances Act, the court may, on motion of the State, continue the trial for the purpose of receiving a lab report **for up to 45 days**

after the date of the detention order.

If the court determines that the State has used due diligence in seeking the results of DNA testing and that there is reason to believe that the results may be received at a later date, the court may, on the State's motion, continue the case **for not more than 120 additional days**. **705 ILCS 405/5-601(5)**.

If the State makes a written motion for Extended Jurisdiction Juvenile (EJJ) and the minor is in detention, the minor may be held **an additional 30 days** after the court determines whether the proceeding will be designated an EJJ prosecution, or the State withdraws its motions. **705 ILCS 405/5-601(6)**.

If the State files a transfer motion and the minor is in detention, the period the minor can be held in detention shall be extended **an additional 30 days** if the court denies the transfer motion or the State's Attorney withdraws the transfer motion. **705 ILCS 405/5-601(7)**.

(3) Failure to Comply with Speedy Trial Requirements

Failure to hold a trial within the statutory time limits for minors in detention requires the immediate release of the minor. In such a case, the speedy trial time frame for minors not in detention is in effect. **705 ILCS 405/5-601(4)**.

D) TOLLING OF SPEEDY TRIAL REQUIREMENTS

705 ILCS 405/5-601(8)

(1) Reasons for Tolling

The statutory periods in which a trial must be held under Section 601 will be tolled for one of the following reasons:

(a) Delay occasioned by the minor.

In re J.A., 241 Ill. App. 3d 402 (2d Dist. 1993) (minor's motion to dismiss tolled statute);

In re R.D., 212 Ill. App. 3d 691 (1st Dist. 1991) (respondent's request for continuance after receiving discovery on day of trial attributable to minor);

(b) A judicial determination of a minor's incapacity for trial pursuant to Section 114-4 of the Criminal Code, **725 ILCS 5/114-4**;

(c) An interlocutory appeal;

(d) A fitness examination pursuant to Section 104-13 of the Criminal Code, **725 ILCS 5/104-13**;

(e) A fitness hearing;

(f) A finding of unfitness for trial.

In ***In re S.G.***, 175 Ill. 2d 471 (1997), the Illinois Supreme Court held that only those reasons listed in the Act for tolling the speedy trial requirements in child protection cases apply. The Court's reasoning would appear to have equal force in delinquency proceedings.

The State's decision to *nolle prosequi* a case tolls the statute unless there is reason to believe the State acted to cause delay or avoid the Act's speedy trial provision. ***In re A.F.***, 282 Ill. App. 3d 930 (1st Dist. 1996) (charges properly tolled by State's *nolle prosequi* where minor suffered no prejudice). *But see* ***In re A.J.***, 135 Ill. App. 3d 494 (1st Dist. 1985) (700 day delay caused by State's SOL (stricken on leave) of petition constituted prejudice).

(2) Resumption of Speedy Trial Time if Tolled

The Act's speedy trial requirement resumes from the time the clock stopped running under the tolling provisions of the Act. **705 ILCS 405/5-601(8)**.

9.05 GUILTY PLEAS

705 ILCS 405/5-605(2)

SEE GUILTY PLEA CHECKLIST: APPENDIX

A) IN GENERAL

New Article V provides that before or during trial, a plea of guilty may be accepted when the court has informed the minor of the consequences of his or her plea and of the maximum penalty provided by law which may be imposed upon acceptance of the plea. Upon acceptance of the plea, the court must determine a factual basis. **705 ILCS 405/5-605(2)**. However, a trial court's admonishments, prior to a guilty plea, will be insufficient to inform a juvenile, as required, of the possible range of penalties for his plea and the maximum penalty which could be imposed where the court only admonishes the minor that he may be subject to commitment to the Department of Juvenile Justice. ***In re Timothy P.***, 388 Ill. App. 3d 98 (1st Dist. 2009). The court should clearly have stated that the minor was subject to an indeterminate term in DJJ, not to exceed the maximum sentence possible for an adult, and state that maximum. ***Id.*** The case will be remanded so a motion to vacate

the minor's plea can be granted. ***Id.***

NOTE: A trial court's failure to give proper admonishments under **Rule 605** does not divest the court of jurisdiction and therefore the conviction and sentence will not be void. ***In re J.T.***, 221 Ill. 2d 338 (2006).

NOTE: Although Article V now refers to pleas rather than admissions, cases cited under this section are cited using the nomenclature in use at the time they were decided.

NOTE: A juvenile's stipulated bench trial is *not* tantamount to a guilty plea, and thus no admonishments were required in a juvenile delinquency proceeding where the juvenile never stipulated that the evidence was sufficient to sustain a finding of delinquency. ***In re D.R.***, 342 Ill. App. 3d 512 (1st Dist. 2003). The State was held to its burden of proof, and the trial court determined the issue of guilt or innocence. ***Id.***

B) GUILTY PLEAS IN EXTENDED JURISDICTION CASES

For a discussion of guilty pleas in Extended Jurisdiction Juvenile prosecutions, *see* Chapter 10, *infra*.

C) CONSTITUTIONAL REQUIREMENTS

Due process requires that a minor's admission be knowingly and intelligently made. ***In re Beasley***, 66 Ill. 2d 385 (1977). Due process is satisfied if "a plea of guilty involves a waiver of the constitutional rights against compulsory self-incrimination, to trial by jury, and to confront one's accusers." ***In re Beasley****, supra* at 392 (citing ***Boykin v. Alabama***, 395 U.S. 238 (1969)).

D) APPLICABILITY OF SUPREME COURT RULE 402

Supreme Court Rule 402 does not apply in delinquency proceedings. ***In re Beasley***, *supra.* The reasons that the requirements of **Rule 402** do not apply include: 1) delinquency proceedings are not criminal in nature; and 2) the language of **Rule 402** speaks in terms of pleas of guilty, not admissions. Query: Does the holding in ***Beasley*** still apply in view of the fact that new Article V now refers to guilty pleas and findings of guilt? *See* **705 ILCS 405/5-605(2)**. See ***In re A.G.,*** 195 Ill. 2d 313 (2001). Explains how "virtually all of the constitutional requirements of a criminal trial have been introduced into juvenile delinquency proceedings." (in the context of **Rule 660** rather than **Rule 402**).

Although **Supreme Court Rule 402** is applicable only for adult criminal matters, a judge is well advised to comply with the Rule to ensure fundamental fairness, due process rights and to avoid the possibility of reversal on appeal. *See* ***In re C.K.G***., 292 Ill. App. 3d 370 (4th Dist. 1997).

E) KNOWING AND INTELLIGENT WAIVER

To satisfy the requirements of due process, the record must show that the minor knows of his or her rights to self-incrimination, confrontation and trial, and understands the consequences of waiving those rights. *See* ***People v. Brown****,* 235 Ill. App. 3d 479 (1992). "When a juvenile is involved, additional factors come into play, such as the time of day and the presence of a parent or other adult interested in the juvenile's welfare."

To determine whether an admission satisfies the requirements of due process, the entire record may be examined. ***In re B.R.***, 164 Ill. App. 3d 784 (4th Dist. 1987); ***In re D.S.***, 122 Ill. App. 3d 326 (1st Dist. 1984).

Due process does not require a formulaic litany of all the rights a respondent is waiving and all possible consequences of making an admission. ***In re A.D.***, 228 Ill. App. 3d 272 (3d Dist. 1992); ***In re D.L.B.***, 140 Ill. App. 3d 52 (4th Dist. 1986); ***In re Tingle***, 52 Ill. App. 3d 251 (1st Dist. 1977).

Cases in which an admission satisfied due process include *See* ***In re W.C.****,* 261 Ill. App. 3d 508 (1994). Defendant had low IQ, low reading comprehension, and school psychologist said his comprehension of things spoken to him was around 6–7-year-old child. But defendant gave conflicting testimony, and said he understood what police were telling him.

See ***People v. Quezada***, 335 Ill. App. 3d 233 (2nd Dist. 2002). 15-year-old defendant who had been arrested before, was reading at 6th grade level and doing well in school, communicated well with Officers, had experience with police. There was no evidence that he didn't understand rights or waiver.

People v. Richardson, 2015 IL App. (1st) 113075. Given totality of circumstances, including limited mental capacity and previous criminal history, 16-year-old defendant knowingly and intelligently waived Miranda rights.

People v. Lee, 335 Ill. App. 3d 659 (2002). Learning disability and low reading level didn't prevent defendant from understanding and making knowing waiver of Miranda rights.

In re Beasley, 66 Ill. 2d 385 (1977);

In re Haggins, 67 Ill. 2d 102 (1977) (16-year-old who had previously been to DJJ);

In re A.D., *supra*;

In re B.R., *supra*, (16-year-old with prior court involvement);

In re S.W.C., 110 Ill. App. 3d 695 (4th Dist. 1982) (minor said he understood consequences of waiver when asked);

In re R.B., 81 Ill. App. 3d 462 (2d Dist. 1980) (no requirement as to potential or actual length of confinement);

Cases in which an admission did not satisfy due process include: See ***People v. Bernasco,*** 138 Ill. 2d 349 (1990), for a review of knowing and intelligent cases.

See ***People v. Robinson***, 301 Ill. App. 3d 634 (1998). 14-year-old defendant not permitted to meet with parent or juvenile officer, had limited mental capacity.

In re S.W.N, 2016 IL App. (3d) 160080. Explanation provided to defendant was given with very little explanation of what they mean, in the same way they would be presented to an adult of average intelligence, and defendant had a limited intellectual ability.

In re J.M., 2014 IL App (5th) 120196. Defendant 13 years old, but had mental capacity of 7-year-old, unable to explain the meaning of the word silent within the Miranda warning. Only expert who testified found him unable to knowingly and intelligently waive.

See ***In re M.W.***, 314 Ill. App. 3d 64 (1st Dist. 2000). Defendant was 13 ½ years old at time of arrest, had low IQ, ability to make decisions severely limited by intellectual capacity. Couldn't define what the term "right" or "silent" meant.

F) ROLE OF COUNSEL

The fact that a minor is represented by counsel does not satisfy the requirement for a knowing and intelligent waiver. ***In re J.G.***, 182 Ill. App. 3d 234 (1st Dist. 1989); ***In re J.W.***, *supra*; ***In re D.S.***, *supra*.

A court may, however, rely to some degree on the fact that a minor is represented by counsel in finding a valid waiver. ***In re Beasley***, 66 Ill. 2d 385 (1977);

The trial court must personally advise the minor of his or her rights and ascertain if a waiver is knowingly and intelligently made. ***In re D.S.***, *supra*, (fact that minor's counsel advised client of rights and represented to court that minor's waiver was knowingly was insufficient to satisfy due process).

G) FACTUAL BASIS FOR ADMISSION

The Fourth District's decision in ***In re C.K.G.***, 292 Ill. App. 3d 370 (4th Dist. 1997), contains a good discussion of the law and circumstances relevant to showing whether a factual basis for an admission has been adequately shown.

The court in ***C.K.G.*** cites ***People v. Barker***, 83 Ill. 2d 319, 327-28 (1980), regarding the degree of proof necessary for demonstrating a factual basis for a guilty plea: "All that is required . . . is a basis from which the judge could reasonably reach the conclusion that the defendant actually committed the acts . . ."

Rule 402's requirement for a factual basis is satisfied if the trial court asks respondent's counsel: "Do you agree that the prosecutor has witnesses who, if called, would testify substantially as the prosecution has represented?"

H) PLEAS OF GUILTY BUT MENTALLY ILL

705 ILCS 405/5-605(2)(b)

Before or during trial, a plea of guilty but mentally ill may be accepted by the court when:

(1) the minor has undergone an examination by a clinical psychologist or psychiatrist and has waived his or her right to trial; and
(2) the judge has examined the psychiatric or psychological reports; and
(3) the judge has held a hearing, at which either party may present evidence on the issue of the minor's mental health, and, at the conclusion of the hearing, is satisfied that there is a factual basis that the minor was mentally ill at the time of the offense to which the plea is entered.

I) NECESSITY FOR ADJUDICATION OF WARDSHIP

A minor's plea cannot form the basis for entry of a sentencing order in the absence of a finding and adjudication of wardship. ***In re Beasley***, 66 Ill. 2d 385 (1977); ***In re J.S.L.***, 197 Ill. App. 3d 148 (2d Dist. 1990); ***In re R.R.***, 159 Ill. App. 3d 313 (2d Dist. 1987).

J) WITHDRAWAL OF PLEAS

Supreme Court Rules 604(d) and 605(b) governing withdrawal of guilty pleas in adult criminal cases also apply in delinquency adjudications. ***In re W.C.***, 167 Ill. 2d 307 (1995). Under these Rules, a trial judge is required to admonish a defendant of **Rule 605(d)'s** requirement that the defendant must raise any challenge in connection with a guilty plea with the trial court before taking an appeal. *See* ***People v. Foster***, 171 Ill. 2d 469 (1996). *See also* ***People v. Linder,*** 186 Ill.2d 67 (1999).

Normally a minor's appeal will be dismissed if the minor failed to file a motion to withdraw an admission with the trial court. ***In re J.H.***, 293 Ill. App. 3d 323 (4th Dist. 1997).

A minor's appeal rights will not be waived for failure to file a motion with the trial court, however, where the court fails to advise a minor of the requirements of **Rule 605(d)**. ***In re J.H.***, *supra*; *See also* ***In re William M.,*** 206 Ill.2d 595 (2003). "Because failure to comply with the written motion requirement of Rule 604(d) does not deprive a court of jurisdiction in the adult context, it follows that the failure to comply with the written motion requirement does not deprive the appellate court of jurisdiction in the juvenile context."

Rules 604(d) and **605(b)** do not apply to probation revocation hearings in delinquency cases. ***In re J.H.*** *supra*; *See also* ***People v. Allison,*** 356 Ill. App. 3d

248 (2005) (citing ***People v. Tufte,*** 165 Ill. 2d 66 (1995) in explaining that the probation-revocation proceeding is not a step in the criminal prosecution as a probationer has already been convicted of a criminal offense; there is a qualitative difference between a criminal conviction and the revocation of probation.

In ***In re E.V.***, 298 Ill. App. 3d 951 (1st Dist. 1998), the court denied a minor's motion to withdraw his plea. The minor had argued that he should have been informed that police suspected him of using the same gun that resulted in the plea on a weapons possession charge in a shooting. The court held that a minor bears the burden of demonstrating a plea should be withdrawn and that the court has no obligation to admonish a minor of possible collateral consequences of a plea.

9.10 CONTINUANCE UNDER SUPERVISION

705 ILCS 405/5-615

A) WHEN IS A SUPERVISION ORDER AN OPTION?

The Act provides that the court is authorized to grant a continuance under supervision for an offense other than first degree murder, a Class X felony, or a forcible felony if the following conditions are met:

(1) upon an admission or stipulation by the appropriate respondent or minor respondent of the facts supporting the petition and before proceeding to adjudication, or after hearing the evidence at the trial, and

(2) in the absence of objection made in open court by the minor, his parent, guardian, custodian, responsible relative, defense attorney or the State's Attorney.

Cases:

In ***In re Veronica C.***, 239 Ill. 2d 134 (2010), a minor lacked standing to challenge the statute preventing a minor from being placed on supervision without the consent of State. A twelve-year-old student was found guilty of battery upon classmate and, was placed on probation for one year. At the hearing when the probation order was entered, the state objected to court supervision. The court stated that it could not order court supervision because of the state's objection. Minor has no standing to challenge "consent" requirement of §5-615, however, because it was not the state's objection that deprived respondent of the chance to have court supervision. A finding of guilt had already been entered, so the state's objection was irrelevant. The minor was thus not adversely affected by operation of the statutory provision.

B) CONTINUANCE AFTER DELINQUENCY FINDING

P.A. 98-62 § 5 amended **705 ILCS 405/5-615** effective January 15, 2014 granting court power to unilaterally order continuance under supervision upon finding of delinquency—BUT still prevents court from entering order over State's objection BEFORE a finding of delinquency.

C) PURPOSE

This section enables the court to exercise supervisory control over respondents without having to find them delinquent. The supervision order is "merely a continuance of the proceedings under prescribed conditions." ***In re Henry B.,*** 2015 IL App. (1st) 142416. Order of supervision is not a final judgment. See also ***Kirwan v. Welch,*** 133 Ill. 2d 163 (1989) ("a disposition of supervision is not a final judgment," because "supervision does not dispose of the proceedings on the underlying offense but merely defers the proceedings until the conclusion of the period of supervision") (Henry B., citing Kirwan v. Welch at 167).

A continuance under supervision has been called the most lenient disposition available under the Act. *See* ***In re T.W.***, 101 Ill. 2d 438 (1984). *See also* ***In re K.S.Y.***, 93 Ill. App. 3d 6, 8 (4th Dist. 1981) *See also* ***People ex rel. Devine v. Stralka,*** 226 Ill. 2d 445 (2007), which held that a juvenile court couldn't place a minor on probation and later vacate the delinquency finding because that would be equivalent to supervision and circumvents the State's right to reject supervision given that a continuance under supervision is supposed to be the most lenient disposition available under the Act, except dismissal.

("[T]his provision is a humane one which stops short of the full panoply of adjudication of wardship and disposition and affords the minor the opportunity to rehabilitate himself without incurring adjudication of wardship on his record."). *But see* ***In re F.D.***, 89 Ill. App. 3d 223, 227 (2d Dist. 1980) ("viewed realistically, [a continuance under supervision] involves the imposition of a penalty" without a finding of guilty).

D) CONSTITUTIONALITY

In ***In re T.W.***, 101 Ill. 2d 438 (1984), the Supreme Court held that the continuance under supervision provision does not violate the separation of powers doctrine. The judiciary still has the exclusive power to impose sentence since the State's Attorney's objection to such a disposition merely causes the proceedings to go forward within the traditional confines of the juvenile system. The trial court retains the power to reach the same result by imposing conditions of supervision after findings and adjudication. *See e.g.,* ***In re Danielle J.***, 1 N.E.3d 510 (2013)—holding Circuit Court erred in finding 5-615(1) of the JCA unconstitutional on its face and as applied (court had entered order, over State's objection, granting

defendant continuance under supervision for one year—after finding juvenile guilty of misdemeanor battery).

See ***In re Derrico G.***, 15 N.E.3d 457 (2014)—State objected to continuance of supervision, Circuit court found consent provision unconstitutional and ordered supervision over objection of State's Attorney. IL Supreme Court found that State's objection was not arbitrarily exercised so as to result in a due process violation.

E) TIMING

NOTE: Public Act 98-0062 amends the "continuance under supervision" section, **705 ILCS 405/5-615**, to track the procedure followed in adult criminal court. The Act retains current law that a case may be continued under supervision before a finding of delinquency with the approval of the state's attorney, and that this option is not available for any forcible felony, a Class X felony, and first-degree murder, but amends **705 ILCS 405/5-615** so that *after* a court makes a finding of delinquency, the court may continue the case under supervision. It adds the same criteria from the "supervision statute" in the Criminal Code that the judge must consider before ordering supervision (*see* **730 ILCS 5/5-6-1)**.

F) OBJECTION OF A PARTY

In the event the minor, his or her parent, guardian, or legal custodian, the minor's attorney or the State's Attorney objects to a continuance under supervision and insists on proceeding to trial, the court must so proceed. The State's Attorney is thus authorized to withhold permission for a minor to be placed on supervision, effectively forcing the proceedings directly to trial. *See* ***In re R.S.L.***, 221 Ill. App. 3d 808 (4th Dist. 1991). **705 ILCS 405/5-615(2)**.

G) LENGTH OF SUPERVISION

The period of supervision may not exceed 24 months unless the period is tolled by filing a petition for violation of a condition. The Act's 24-month limit on a term of supervision is mandatory, not permissive. ***In re C.T.A.***, 275 Ill. App. 3d 427 (2d Dist. 1995). Orders placing a minor on supervision for an indefinite period of time are void. *See* ***In re R.R.***, 92 Ill. 2d 423 (1982).

H) CONDITIONS OF SUPERVISION

As a condition of continuance under supervision, the court may require any of the following:

1. not violate any criminal statute of any jurisdiction;

2. make a report to, and appear in person before, any person or agency as directed by the court;

3. work or pursue a course of study or vocational training;

4. undergo medical or psychotherapeutic treatment rendered by a therapist licensed under the provisions of the Medical Practice Act of 1987, the Clinical Psychologist Licensing Act, or the Clinical Social Work and Social Work Practice Act, or treatment for drug addiction or alcoholism;

5. attend or reside in a facility established for the instruction or residence of persons on probation;

6. support his or her dependents, if any;

7. pay costs;

8. refrain from possessing a firearm or other dangerous weapons, or an automobile;

9. permit the probation officer to visit him or her at home or elsewhere;

10. reside with his or her parents or in a foster home;

11. attend school;

12. attend a non-residential program for youth;

13. contribute to his or her own support at home or in a foster home;

14. perform some reasonable public or community service;

15. make restitution to the victim, in the same manner and under the same conditions as provided in subsection (4) of section 5-710 of the Act (**705 ILCS 405/5-710** (West 2012)), except that the sentencing hearing referred to therein shall be the trial for purposes of this section;

16. comply with curfew requirements as designed by the court;

17. refrain from entering into a designated geographic area except upon such terms as the court finds appropriate. Such terms may include consideration of the purpose of the entry, the time of day, other persons accompanying the minor, and advance approval by a probation officer;

18. refrain from having any contact, directly or indirectly, with certain specified persons or particular types of persons, including but not limited to members of street gangs and drug users or dealers;

19. refrain from having in his or her body any illicit drug and submit blood or urine samples;

20. comply with any conditions as may be ordered by the court;

21. if the minor is alleged to have violated section 21-1.3 of the Criminal Code (criminal defacement of property), the court must, as a condition of supervision, order the minor to perform not less than 30 nor more than 120 hours of community service which includes cleanup and repair of damage caused by the minor or similar damage in that municipality or county;

22. if the offense with which the minor is charged involves gang related activities or certain firearms violations, the supervision order must require the minor to perform between 30 and 120 hours of community service if the community in which the offense occurred has a community service program. When possible, the service should be performed in the minor's neighborhood;

23. impose a $25 fee for each month the respondent is under active supervision of the probation or court services department unless the court determines that the minor is unable to pay the full amount. A parent may be ordered to pay some or all of the supervision fee. The fee does not apply to minors who are wards of the State so long as the wardship status continues.

The court must give the minor a written statement of the conditions of supervision at the time the supervision order is entered. *See* ***In re Serna***, 67 Ill. App. 3d 406, 408 (1st Dist. 1978) (revocation of supervision reversible error where the trial court failed to provide minor with specific rules of conduct as a condition of his supervisory status, and instead admonished the minor to "stay out of trouble" and "[l]isten to his mother and probation officer").

I) MODIFICATION OF SUPERVISION ORDERS

The conditions imposed as part of a supervision order may, after hearing, be reduced, enlarged, or modified on motion of the probation officer, the State's Attorney, the minor, or the court on its own motion.

J) VIOLATION OF SUPERVISION ORDERS

After hearing, the court may revoke the supervision order and proceed to findings and sentencing on the original petition if it finds the minor has violated one of the conditions of supervision. *See* ***In re A.M.***, 94 Ill. App. 3d 86 (2d Dist. 1981). For example, sufficient evidence of juvenile's failure to participate in sex offender counseling supported revocation of supervision. ***In re Terry H.***, 952 N.E.2d 159 (2d Dist. 2011).

K) APPEAL OF SUPERVISION ORDER

A continuance under supervision order is not final or appealable. ***In re M.W.W.***, 125 Ill. App. 3d 833 (2d Dist. 1984); ***In re A.M.***, 94 Ill. App. 3d 833 (2d Dist. 1981); *but see* ***In re J.N.***, 91 Ill. 2d 122 (1982) *See* ***In re Michael D.***, 2015 IL 119178. ("It is difficult to see how anything referred to as a 'continuance' could be a final judgment."). Affirms that the final judgment in a delinquency case is the dispositional order; if court enters continuance under supervision, even post-guilt, these are still not appealable.

(if the court enters a finding of guilty and then purports to place the minor on "supervision" then the order is final and appealable).

See ***In re Henry B.***, 26 N.E.3d 569 (2015)—where court found juvenile guilty but did not enter finding of guilty when he continued the case under supervision, the order of supervision was not appealable because it wasn't final. 2015 IL App (1st) 142416.

9.15 TRIALS

705 ILCS 405/5-605

A) IN GENERAL

Unless otherwise specified, all delinquency proceedings are heard by a judge rather than a jury. **705 ILCS 405/5-605(1)**. The denial of jury trial to a juvenile charged with first-degree murder does not violate equal protection, due process or the jury trial provisions in view of the decision in ***People v. Cervantes***, 189 Ill. 2d. 80 (1999) which struck down the act that subjected juveniles charged with first-degree murder to mandatory minimum sentencing. ***In re G.O.***, 191 Ill. 2d 37 (2000); In re Destiny P. 2017 IL 120796.

B) MINOR'S RIGHT TO BE PRESENT AND ABSENT MINORS

(1) General Rule

705 ILCS 405/5-605(3)(a)

Unless he or she waives the right, the trial in a delinquency case must be tried in the presence of the minor.

(2) Absent Minor

705 ILCS 405/5-625

(a) Failure to appear at trial

If, in a case where a minor is charged with a felony, he or she fails to appear for trial, the court may begin the trial in the minor's absence if the State demonstrates by substantial evidence that the minor is willfully avoiding trial. If the trial goes forward, the absent minor must be represented by counsel.

(b) Disappearance during trial

If a minor is willfully absent for 2 successive court dates after his or her trial has begun, the court may continue the trial in the minor's absence.

(c) Sentencing

If an absent minor is found guilty, the trial court must conduct a sentencing hearing and impose a sentence in absentia. A social investigation is waived under these circumstances.

(d) Reappearance of the minor

An absent minor who reappears has not forfeited his or her right to be present at all subsequent proceedings in the case.

If an absent minor reappears at any point in the proceedings, he or she must be granted a new trial or hearing if the minor can establish that he or she failed to appear at trial due to circumstances beyond his or her control. The court must hold a hearing with notice to the State's Attorney before granting a new trial or sentencing hearing.

(e) Resentencing

If the court grants a new sentencing hearing, both the minor and the State may offer evidence as to the minor's conduct during the period of his or her absence. After the sentencing hearing, the court may impose any sentence authorized by the Act without reference to any previously ordered sentence.

(f) Appeal

If a minor's request for a new trial or sentencing hearing is denied, the court's denial constitutes an appealable order.

C) EVIDENTIARY ISSUES AT TRIAL

(1) Rules of Evidence

705 ILCS 405/5-605(3)(a)

The rules of evidence in adult criminal cases apply also during the adjudicatory phase of delinquency proceedings. *See* ***In re W.C.***, 167 Ill. 2d 307 (1995); ***In re A.G.***, 746 N.E.2d 732 (2001). "In addition to the above-mentioned purpose and policy of the Act, we note that virtually all of the constitutional requirements of a criminal trial have been introduced into juvenile delinquency proceedings. These due process safeguards include… and the rules of evidence used at criminal proceedings are applicable at the adjudicatory hearing and in consideration of whether the minor is delinquent."

(2) Standard and Burden of Proof

705 ILCS 405/5-605(3)(a)

In delinquency cases, the State bears the burden of proving a minor's delinquency beyond a reasonable doubt. *See* ***In re R.G.***, 283 Ill. App. 3d 183 (2d Dist.1996). *See* ***In re Nasie M.***, 45 N.E. 3d 347 (2015).

(3) Elements of Proof

The State bears the burden of proving each substantive element of the alleged offense by proof beyond a reasonable doubt. For example, *see* ***In re Jerome S.***, 2012 IL App (4th) 100862. There, the minor, while being transported on school bus to a therapeutic day school for children with mental health problems, struck a school bus monitor in the arms. The charge was elevated to aggravated battery based on an allegation that the bus monitor was a public transportation employee. School buses, however, are not available to the general public, and the legislature has made numerous distinctions between "school buses" and "public transportation." In addition, the school bus monitor was not a "public transportation employee" within meaning of the aggravated battery statute. Therefore, the evidence that the juvenile committed battery upon a school bus monitor was insufficient to support adjudication based on aggravated battery.

Cases:

In re Nasie M., 45 N.E. 3d 347 (2015)—Appellate Court held that evidence was insufficient to establish that juvenile possessed a firearm when state presented no eyewitness testimony, no forensics evidence linking juvenile to firearm, no expert testimony to support officer's statement that juvenile's wound seemed self-inflicted. Conviction reversed.

In re Davontay A., 3 N.E.3d 871 (2013)—Court found that although an "'automatic' inference of intent of sexual gratification or arousal would be inappropriate," the judgment could be supported on other reasonable inferences by the trial court. In particular, the trial court was in best position to judge testimony, and appellate court accepts one of multiple reasonable inferences supporting the trial court's judgment.

In re Ricardo A., 356 Ill. App. 3d 980, 827 N.E.2d 894 (1st Dist. 2005) (minor guilty beyond a reasonable doubt of aggravated vehicular hijacking and vehicular highjacking because the victim being within one foot of the car satisfied being in the "immediate presence" of the car as required by statute).

In re Matthew K., 355 Ill. App. 3d 652 (2d Dist. 2005) (evidence was insufficient to support juvenile's adjudication of delinquency for committing criminal sexual assault since touching of alleged victim was not shown to have been done with intent to sexually gratify or arouse, as was required for adjudication of delinquency for two counts of aggravated criminal sexual abuse; while the counts were based on juvenile's acts of fondling alleged victim's vagina and placing his tongue on alleged victim's mouth, alleged victim testified that she noticed nothing unusual when juvenile touched her, no evidence indicated that juvenile removed his clothing, breathed heavily, placed alleged victim's hand on his penis, or had an erection or any other observable signs of arousal, and child psychiatrist opined that juvenile did not act with the intent to sexually gratify himself or alleged victim).

In re Ryan B., 212 Ill. 2d 226 (2004) (fourteen-year-old juvenile did not commit offense of sexual exploitation of a child when he merely asked eight-year-old girl to lift her shirt, as there was no evidence that juvenile knowingly coerced, persuaded, or enticed girl to do so; statute required something more than single request, and there was no showing that victim feared juvenile or that she was intimidated by him).

See also ***In re W.C.***, 167 Ill. 2d 307 (1995); ***In re Vladimir P.***, 283 Ill. App. 3d 1068 (1st Dist. 1996); ***In re M.L.***, 232 Ill. App. 3d 305 (2d Dist. 1992).

NOTE: A trial court's findings with respect to armed robbery based on the taking of the victim's car was vacated because such an act is specifically exempted from the definition of armed robbery in the Criminal Code, and thus respondents were charged with and found to have committed a nonexistent offense. ***In re Ricardo A.***, 356 Ill. App. 3d 980 (1st Dist. 2005).

(4) Admissibility of Evidence

(a) Confessions

Statute: 705 ILCS 405/5-401.5 – when statement by minor may be used:

- The oral, written or sign language statement of a minor is presumed inadmissible if it results from a custodial interrogation prior to specialized Miranda warnings.
- If at a police station or detention center, the statement is presumed inadmissible unless it is electronically recorded and unaltered for a sex offense or any felony.
- If the above is violated, any subsequent custodial statement is inadmissible, even if it is electronically recorded.

Unless:

- Electronic recording is not feasible;
- Minor makes a voluntary statement that bears upon credibility (minor "opens the door"?);
- Minor makes a spontaneous statement not in response to a question;
- Processing questions;
- Minor requests not to have the statement recorded – but the request itself must be recorded;
- The statement is made in custody out-of-state; or
- The interrogators are unaware that a death has occurred.

For a minor's confession to be admissible, there must be proof by a preponderance of the evidence that the minor knowingly and intelligently waived his or her right to remain silent. ***In re W.C.*** *supra*.

In a delinquency case a judge has discretion to not allow evidence on the voluntariness of a minor's confession at the adjudicatory hearing where the judge has determined that the confession is admissible at an earlier stage of the proceeding. ***In re J.P.J.***, 122 Ill. App. 3d 573 (2d Dist. 1984). *See also* ***People v. West***, 263 Ill. App. 3d 1041 (1st Dist. 1994) (citing ***J.P.J.*** with approval).

Even if a minor's confession is admitted into evidence, the minor may present evidence on the credibility and weight it should be given.. *See* ***J.P.J.****, supra;* See ***In re J.P.J,*** 122 Ill.App.3d 573 (1984).

(b) Expert testimony

Expert testimony regarding the structure of defendant's street gang,

and the history of that gang's relationship with the victim's gang, was relevant and admissible where defendant was tried for first degree murder under the accountability statute. ***People v. Williams***, 324 Ill. App. 3d 419 (1st Dist. 2001).

Trial court did not abuse its discretion when it refused to hear testimony from expert witness regarding fallibility of eyewitness identification in delinquency trial for aggravated battery. The identification testimony was clear and competent, and because expert had not talked to State's witness, making proffered testimony regarding transferred identification was speculative. ***In re Keith C.***, 378 Ill. App. 3d 252 (1st Dist. 2007). *But see* ***People v. Williams,*** 2016 IL 118496 (trial court erred in denying defense motion to allow expert testimony regarding eyewitness reliability where no physical evidence tied defendant to crime, defendant did not confess, and only evidence is eyewitness testimony).

(c) Defenses

Delinquency based on guilt of disorderly conduct for fighting on a school bus must be vacated because trial court, after finding that respondent was provoked by imminent threat from another girl, mistakenly refused to allow respondent to assert self-defense. ***In re T.W.***, 381 Ill. App. 3d 603 (4th Dist. 2008).

Evidence was sufficient to prove that minor was delinquent by commission of battery when he struck school security officer as the officer attempted to bring him to the discipline office, even though the minor claimed that he was justified in use of force in resisting unlawful arrest because the security officer was a private citizen without reasonable grounds to believe minor was committing a crime, because minor's defense was contradicted by officer wearing Chicago Public Schools security emblems and with authority to direct respondent to discipline office. ***In re Malcolm H.***, 373 Ill. App. 3d 891 (1st Dist. 2007).

(d) Hearsay

A trial court erred when it allowed a young victim's hearsay statements of a testimonial nature to DCFS case worker and police officer into evidence after her direct testimony was cut short by her becoming upset and refusing to answer additional questions; because defense counsel was unable to cross-examine her, respondent's right to confrontation was violated. Her identification of defendant as perpetrator was also not properly admitted, it being testimonial in nature. However, statements she made to physician, referred by police for examination, describing incident and resulting

injuries, were properly admitted. ***In re T.T.***, 384 Ill. App. 3d 147 (1st Dist. 2008).

Trial court abused discretion when it allowed statement given by 3-year-old purported victim of aggravated criminal sexual abuse to her grandmother because circumstances under which uncorroborated statement was given were in response to question, after statement made by other purported victim, and over a year after alleged incident, and thus do not indicate reliability. ***In re E.H.***, 377 Ill. App. 3d 406 (1st Dist. 2007).

(5) Cross-examination and Right of Confrontation

Although normally a trial judge has discretion as to the scope of a minor respondent's cross-examination, failure to permit questioning can result in reversible error. *See* ***In re T.T.***, 384 Ill. App. 3d 147 (1st Dist. 2008) (admission of hearsay violated right to cross-examination); ***In re W.D.***, 194 Ill. App. 3d 686 (1st Dist. 1990) (limited cross-examination resulted in failure to prove case beyond a reasonable doubt).

Cases:

Trial court erroneously refused to conduct in camera inspection of the school records of three boys who testified against minor conviction of aggravated criminal sexual abuse, because testimony of the three boys was only direct evidence of minor's participation in the crime and their testimony was determinative of minor's guilt or innocence. The privacy interests associated with the Illinois Student Records Act is superseded by minor's right to use potentially material information in the records. There was evidence that one of the witnesses was admitted to psychiatric hospital immediately after incident and school officials questioned witnesses about the incident. Therefore, trial court should have conducted an in-camera hearing to determine whether school records contained information relevant to witness' competency to testify. ***People v. K.S.***, 900 N.E. 2d 1275 (1st Dist. 2008).

Statements by child victim to child advocate during videotaped interview at child advocacy center were testimonial in nature. Child advocate was acting as police representative during the interview, done at the behest of police and witnessed by a detective. Nothing indicated that interview was conducted, to a substantial degree, for treatment rather than investigative purposes. Therefore, trial court's admission of statements violated minor's Sixth Amendment right of confrontation, as minor did not have opportunity to cross-examine the victim. ***In re Rolandis G.***, 232 Ill. 2d 13 (2008).

(6) Sufficiency of the Evidence

(a) Presumptions and inferences

In determining whether the state has met its burden, the trial court may rely on presumptions and inferences that can be fairly drawn from the admitted evidence. An inference may be used to establish a finding in a delinquency case if: 1) there is a connection between proven and inferred facts; 2) ultimate facts are logically derived from basic facts; and 3) the inference is corroborated by other evidence of guilt. *See* ***In re W.C.***, 167 Ill. 2d 307 (1995); ***People v. Hester***, 131 Ill. 2d 91 (1989). For instance, evidence that respondent and friends threw brick at windshield of occupied vehicle was sufficient to infer that it was practically certain that serious injury could result and find him guilty of aggravated battery. ***In re Keith C.***, 378 Ill. App. 3d 252 (1st Dist. 2007).

Conversely, evidence that a respondent was holding a broken bottle was not sufficient evidence to support the inference of guilt for battery, where there was a reasonable probability that another person committed the crime. ***In re Gregory G.***, 396 Ill. App. 3d 923 (2d Dist. 2009).

(b) Circumstantial evidence

The State may meet its burden of proof through circumstantial evidence. ***In re David J.***, 2014 IL App. (1st) 141837-U (evidence sufficient to sustain delinquent adjudication for residential burglary; burglary often requires circumstantial evidence). For Juvenile cases analyzing circumstantial evidence note that state must still prove elements of the substantive offenses alleged in delinquency petition beyond a reasonable doubt, *see* ***In re W.C.,*** 657 N.E.2d 908 (1995).

(c) Case law

See ***In re M.H.,*** 2019 IL App (3d) 180625. Evidence insufficient to infer intent of sexual gratification for criminal sexual abuse where defendant was 11 years old when he allegedly touched 8-year-old victim when no evidence of sexual arousal.

In re D.H., 381 Ill. App. 3d 737 (1st Dist. 2008) (circumstantial evidence that defendant used sexually explicit language as his cohort held victim down by straddling her, defendant tried to unzip his pants, and that he stated, after she got away, that they were "just playing," is sufficient to ascribe motivation of sexual gratification for his taking rock and rubbing it on victim's vagina in order to find

him guilty of criminal sexual abuse; statements that show consciousness of guilt can support the inference that the accused intended to gratify his sexual desires).

In re T.C., 384 Ill. App. 3d 870 (1st Dist. 2008) (evidence that minor, when 14-years-old, touched penis near victim's anus while it was engorged sufficient to find minor guilty of aggravated criminal sexual assault).

In re E.H., 299 Ill. App. 3d 42 (1st Dist. 1998) (uncorroborated accomplice testimony sufficient to satisfy State's burden of proof).

In re J.C., 260 Ill. App. 3d 872 (1st Dist. 1994) (State met burden of showing intent to commit murder where juvenile repeatedly "playfully" pointed loaded gun at friend).

In re Gabriel W., 2017 IL App. (1st) 172120. Evidence insufficient to prove juvenile lacked a firearms ID card (evidence that he didn't present a FOID card to the arresting officers, but no evidence that he didn't have one), but evidence sufficient to support delinquency for AAUW based on age (by stipulating to juvenile jurisdiction, defendant stipulated to the fact that he was under 18 on the day of the offense).

(7) Post-trial motions

A respondent who seeks to challenge the sufficiency of evidence on appeal need not file a written post-trial motion. ***In re W.C.***, 167 Ill. 2d 307 (1995); ***In re Ricardo A.,*** 356 Ill. App. 3d 980 (2005). Respondent required to raise issue in post-adjudication motion to preserve for review. *But see* ***In re Samantha V.,*** 34 Ill. 2d 359 (2009), Minor is not required to file post-adjudication motion, but must object at trial to preserve claimed error for review; failure to object at trial forfeits consideration of the claimed error on appeal, unless respondent can demonstrate plain error (citing ***In re M.W.,*** 232 Ill. 2d 408, 430 (2009).

(8) Use of previous delinquency adjudication for impeachment

In ***People v. Villa***, 2011 IL 110777 (2011) a defendant was convicted, after jury trial, of aggravated battery with a firearm and aggravated discharge of a firearm under an accountability theory. At trial, Defendant recanted a remark he had made to a detective that he had never been in a situation like this before and, had never been in prison. Evidence of Defendant's prior juvenile adjudication for burglary was, therefore, improperly admitted impeaching this recantation. Defendant did not open the door to admission of his adjudication: his remark as to prison was true, and his remark as to

not being in such a situation before spoke to issue of whether the Defendant was experienced with police questioning.

9.20 JURY TRIALS IN DELINQUENCY PROCEEDINGS

705 ILCS 405/5-605(4)

A) RIGHT TO A JURY TRIAL

Due process does not generally require that there be a jury trial in juvenile proceedings. ***McKeiver v. Pennsylvania***, 403 U.S. 528 (1971); ***People ex rel. Carey v. White***, 65 Ill. 2d 193 (1976). The Supreme Court of Illinois has held that denial of jury trials to juveniles in delinquency proceedings does not violate due process and equal protection. ***In re Jonathon C.B.***, 2011 IL 107750 (2011). One reason that the right to trial by jury does not generally exist in juvenile cases is that imposition of such a process could lead to a collapsing of the juvenile and criminal court systems. ***In re R.G.***, 283 Ill. App. 3d 183 (1996).

Article V expressly provides that, as a general matter, a minor does not have a right to trial by jury under the Act. **705 ILCS 405/5-101(3); 5-605(1)**.

The Act provides, however, that a minor has a statutory right to a jury trial in the following types of delinquency proceedings:

Under the Habitual Juvenile Offender provisions of the Act. **705 ILCS 405/5-815**.

Under the Violent Juvenile Offender provisions of the Act. **705 ILCS 405/5-820**.

Under the Extended Jurisdiction Juvenile (EJJ) provisions of the Act. **705 ILCS 405/5-810**.

NOTE: The denial of jury trial to a juvenile charged with first-degree murder does not violate equal protection, due process or jury trial provisions in view of the decision in ***People v. Cervantes***, 189 Ill. 2d. 80 (1999), which struck down the act that subjected juveniles charged with first-degree murder to mandatory minimum sentencing. ***In re G.O.***, 191 Ill. 2d 37 (2000). *See* ***In re Destiny P***., 2017 IL 120796 (decided on October 19, 2017). On appeal by the State, from Cook County circuit court finding 5-101(3) and 5-605(1) of the JCA unconstitutional as applied to respondent. Illinois Supreme Court rejected circuit court's finding of unconstitutionality.

Nor does denial of a jury trial to a minor found delinquent for sexual assault and required to register as a sex offender for the rest of his life violate his rights. The registration requirements do not affect a protected liberty or property interest and, even if it affected a protected liberty interest, minor received all process that was due, as juveniles are not entitled to jury in delinquency proceedings. ***In re T.C.***, 384

Ill. App. 3d 870 (1st Dist. 2008). Registration requirements are not part of the sentence as punishment, but rather are collateral consequences. ***Id.***

See also ***People ex rel. Birkett v. Konetski***, 233 Ill. 2d 185 (2009) (registration information is available only to a very limited group of people, and the minor could petition for termination of registration; in contrast, the adult registry provided for a wide dissemination of registration information to the public, and the right to petition for termination was not available to adults); ***In re Jonathon C.B.***, 386 Ill. App. 3d 735 (4th Dist. 2008), *aff'd.,* ***In re Jonathon C.B.***, (Ill. 107750 (June 30, 2011) (adjudication of delinquency for sex offense does not per se satisfy the requirements of the Sexually Violent Persons Commitment Act, and although respondent argued he was entitled to a jury trial because he was similarly situated to juvenile offenders subject to extended juvenile jurisdiction and adult sex offenders who face the possibility of commitment, he is not similarly situated because commitment can only occur after a separate action by the State, to which respondent was not subjected).

B) PROCEDURES IN JURY TRIALS

705 ILCS 405/5-605(4)

The same procedures used in adult jury trials are used in juvenile court jury trials.

Cases:

(a) Due Process

The shackling of juvenile without an individualized determination of necessity was not plain error in delinquency proceeding involving charges of criminal sexual assault and attempted robbery; juvenile made no objection to shackling, record did not indicate court was even aware juvenile was shackled until he was called to testify, more than sufficient evidence of guilt was presented, juvenile's version of events surrounding sexual assault contained many inconsistencies, court ordered shackles removed and juvenile did not have to continue wearing them after he testified, and record did not show court was prejudiced by shackles, they restricted juvenile's ability to assist counsel, or dignity of judicial process was offended. ***In re Jonathon C.B.***, 386 Ill. App. 3d 735 (4th Dist 2008), *aff'd*, ***In re Jonathon C.B.***, 2011 IL 107750 (June 30, 2011). *But see* ***S.Ct. Rule 943*** (shackling of minor is prohibited unless a hearing as to necessity is held).

9.25 FINDINGS

705 ILCS 405/5-605(3)(b); 5-620

A) STATUTORY REQUIREMENTS

(1) In General

After trial, the court must enter a general finding of guilt or innocence. The court must record the finding in writing.

If the court decides that a minor is not guilty, the court must dismiss the petition and release the minor from any restrictions, including detention. **705 ILCS 405/5-605(4)(k); 5-620**.

If the court finds that a minor is guilty, the court must set a sentencing hearing under the terms of **705 ILCS 405/5-705; 5-620**. At the sentencing hearing the court must determine whether it is in the best interest of the minor and the public that he or she be made a ward of the court. *See* ***In re W.C.***, 167 Ill. 2d 307 (1995). To assist in making this determination, the court may order that an investigation be conducted, and a social investigation report be prepared.

A court must enter a finding of guilt before holding a sentencing hearing. ***In re J.S.L.***, 197 Ill. App. 3d 148, 154 (1990) (court lacks subject-matter jurisdiction to enter dispositional order without first making an explicit finding of delinquency); ***In re J.C.***, 260 Ill. App.3d 872 (1st Dist. 1994). This is true even if the minor has entered a plea. *See* ***In re J.S.L.***, 197 Ill. App. 3d 148 (2d Dist. 1990) (the jurisdictional finding of delinquency may not be presumed or implied from the fact that the minor admitted the offense).

In re Jonathon C.B., 2011 IL 107750. Change in terminology in the statute in 1999: juvenile proceedings now called trials rather than adjudication hearings; findings of guilt result rather than adjudications of delinquency; sentencing hearing follows. Defendant had argued this amendment transformed the juvenile system into a closer analog to the criminal system. Court majority rejected that.

People v Taylor, 221 Ill. 2d 157 (2006). "Although proceedings under the Act are still not criminal in nature even in the aftermath of the 1999 amendments and are to be administered in a spirit of humane concern for the minor and to promote his general welfare, the policy statement in section 5-101 represents a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and holding

juvenile offenders accountable for violations of the law." (Taylor at 166-67).

People ex rel. Devine v. Stralka, 226 Ill. 2d 445 (2007) (upon acceptance of the plea, court shall determine the factual basis, and must make and note in the minutes a finding of whether the minor is guilty).

Unlike in criminal cases, in juvenile cases only a single finding of delinquency results from a petition alleging multiple offenses arising out of the same conduct. ***In re J.C.***, 260 Ill. App. 3d 183 (1st Dist. 1994). For a discussion of this principle, *see* ***In re W.C.***, *supra*. *See also* ***In re Ricardo A.***, 356 Ill. App. 3d 980 (1st Dist. 2005) (even though issue was not raised at trial and was not included in post-trial motion, court found that a trial court is permitted to render multiple findings on separate offenses and juvenile does not suffer any prejudice from such findings since only a single adjudication was made and a single sentence entered). *But see* ***In re Samantha V.,*** 234 Ill.2d 359 (2009) ("one act – one crime" principle applies to minors as well as adults).

(2) A finding that a minor is guilty is not an appealable order.

See also ***In re Henry B.,*** 2015 IL App. (1st) 142416 (order of supervision not a final appealable judgment); ***People ex rel. Devine v. Stralka,*** 226 Ill. 2d 445 (2007) ("A finding of guilt and a finding of delinquency are the same in a juvenile delinquency case; that finding coupled with the disposition is a final and appeal a judgment under the Act. Finding of guilt and a disposition of probation constitute a final and appealable order).

NOTE: Trial court, however, does not have jurisdiction to grant a motion to *vacate* a finding of delinquency more than 11 months after guilty plea and sentence based on motion alleging that the minor was doing well on probation. Final orders may only be vacated pursuant to **CCP § 2-1401** or **SCR 604(d)**. ***People v. Stralka***, 226 Ill. 2d 445 (2007).

(3) Not guilty by reason of insanity

705 ILCS 405/5-605(3)(b)

If the affirmative defense of not guilty by reason of insanity has been presented at trial and acquittal is based solely on a finding of insanity, a hearing must be held pursuant to the Mental Health and Developmental Disabilities Code to determine whether the minor is subject to involuntary admission.

(4) Not guilty but mentally ill

705 ILCS 405/5-605(3)(c)

If the minor has asserted the affirmative defense of guilty by reason of insanity, the court may find the minor not guilty but mentally ill if, after hearing all evidence, the court finds:

(a) the State has proven beyond a reasonable doubt that the minor is guilty of the offense charged; and

(b) the minor has failed to prove his or her insanity as required in the Criminal Code, **720 ILCS 5/3-2** and **5/6-2(a)(b)(e)**; and

(c) the minor has proven by a preponderance of the evidence that he was mentally ill as defined in the Criminal Code, **720 ILCS 5/6-2(c)(d)**.

CHAPTER 10. EXTENDED JURISDICTION JUVENILE

SEE EXTENDED JURISDICTION JUVENILE CHECKLIST: APPENDIX

705 ILCS 405/5-810

10.01 IN GENERAL

New Article V adopts a new concept, Extended Jurisdiction Juvenile (EJJ), to encourage minors found guilty under the Juvenile Court Act to refrain from further criminal activity. In any case where a minor is at least age 13 and is charged with a felony, the State may ask the court to designate the case as an EJJ prosecution. If the State's request is allowed, upon a finding of guilt the juvenile court judge must simultaneously enter a juvenile court and adult court sentence. The adult court sentence is stayed pending successful completion of the juvenile sentence. If, however, the juvenile sentence is violated in any manner, the juvenile court may, and in some cases must, revoke the juvenile sentence and stay of the adult sentence. The minor then must serve the adult sentence under the jurisdiction of the criminal court. The juvenile would be subject to adult sentence, of course, only if he violated the conditions of his sentence or committed a new "offense," meaning a criminal offense as defined in Criminal Code. ***In re Christopher K.***, 217 Ill. 2d 348 (2005).

In anticipation of the possibility that the juvenile court EJJ prosecution may result in an adult sentence, including extended loss of liberty, the Act expressly gives the minor a right to a public jury trial. The Act is silent, however, on the question of whether other rights enjoyed by adult criminal defendants (*e.g.*, guilty plea admonishments, discovery, etc.) must be afforded minors in EJJ proceedings.

In deciding whether to *designate* a proceeding as an EJJ prosecution, however, the court is *not* determining the juvenile's guilt, and thus the juvenile does not have a due process right to have a *jury* make such findings. ***In re Christopher K.***, *supra*; ***In re Matthew M.***, 335 Ill. App. 3d 276 (2d Dist. 2002).

There is, as well, no requirement that any fact other than a prior conviction used to *enhance* punishment be submitted to jury and proven beyond a reasonable doubt. ***In re Christopher K.***, *supra*.

A juvenile defendant does not have standing to challenge the constitutionality of the "revocation of stay" provision of the (EJJ statute that details when the adult sentence would be served where the juvenile did not have an adult sentenced imposed, and may never have such sentence imposed, as sentence was stayed pursuant to EJJ statute. ***In re J.W.***, 346 Ill. App. 3d 1 (1st Dist. 2004).

An EJJ prosecution statute does not violate the U.S. Supreme Court's ***Apprendi*** or ***Blakely*** principles and is not unconstitutionally vague, as the proceedings under the statute were

dispositional, rather than adjudicatory. ***In re Omar M.***, 14 N.E.3d 1077 (2014)—IL Supreme Court ordered trial court to vacate judgment and reconsider in light of ***In Re M.I.***, 989 N.E.3d 1109 (2013). Court affirmed, though, and found respondent didn't have standing to challenge EJJ as unconstitutionally vague.

See ***In re Zachary G.***, 2021 IL App. (5th) 190450. Denial of State petition to designate a case as EJJ is appealable by the state, as it is more akin to dismissal of a criminal charge than to exclusion of evidence (foreclosing the State's interest in seeking an adult sentence).

A) PETITION

At any time prior to trial, the State may file a petition to designate a case involving a minor 13 or older and charged with a felony as an extended jurisdiction juvenile (EJJ) prosecution. Presumably such a petition may be filed before a motion to transfer the case for trial in the adult system or after the trial court has refused the State's petition to transfer the case under Section 5-805 (3) (**705 ILCS 405/5-805(3)** (West 2012)). *See* **705 ILCS 405-5/810(8)** ("Nothing in this Section precludes the State from filing a motion for transfer under Section 5-805."). *See also* ***In re Christopher K.***, 217 Ill. 2d 348 (2005) (**705 ILCS 405/5-810**, and section 5-805(3), which provides for discretionary transfer to adult court, do not prohibit the filing of an EJJ motion after the denial of a discretionary transfer motion is affirmed on appeal). "The minor convicted and sentenced as an adult has no possibility of avoiding the adult sentence, [but by] contrast, section 5-810 subjects a minor to a *potential* adult sentence that the minor may or may not be required to serve, depending on minor's successful completion of a juvenile sentence." ***Id.*** While some of the factors in determining whether a discretionary transfer is in the best interests of the public are the same as the factors a trial court would consider in determining whether an adult sentence is appropriate under the EJJ statute, it is "entirely conceivable" that a judge could determine a blended sentence might be appropriate for a minor for whom a transfer to adult court is not appropriate. ***Id.***

B) NOTICE

Parties are entitled to notice of the State's EJJ petition in compliance with Section 5-530 (**705 ILCS 405/5-530**). Service by publication on a non-custodial parent is appropriate if custodial parent had actual notice or had been served with notice of proceedings. In re J.P.J., 109 Ill 2d 129 (1985) (I know this is an older case but I think the clarification is important).

C) HEARING

(1) Time of Hearing

A hearing on the State's petition must commence within 30 days unless a party can make a showing why it should not be held within this time period. If the court is satisfied that such a showing has been made, it may extend

the period for the hearing up to 60 days. In ***In re M.I.***, 989 N.E.2d 173 (2013), after the State filed a motion to designate the proceedings as an extended jurisdiction juvenile (EJJ) prosecution, a bench trial was held, the minor was found guilty of several charges, and he was sentenced as a juvenile to an indeterminate term in the Juvenile Department of Corrections and to a conditional 23-year adult sentence in the Department of Corrections. ***Id.*** However, the state failed to conduct a hearing on the State's motion to designate the proceeding an EJJ prosecution within the 30- to 60-day time frame set forth in the Juvenile Court Act of 1987. ***Id.*** Nevertheless, the absence of a hearing did not vitiate the subsequent EJJ proceedings or prevent the adult sentence since the 30-60 day time frame for conducting a hearing is *directory*, not *mandatory*. ***Id.***

(2) Public Hearing

Unless the court finds that the hearing should be closed to protect a party, victim or witness, the EJJ hearing is open to the public.

NOTE: This is the only Juvenile Court proceeding open to the public and constitutes an exception to the tradition of confidentiality in delinquency cases.

(3) Evidence at Hearing

All relevant and reliable evidence is admissible at an EJJ hearing regardless of whether it would be admissible. Evidence may be introduced by the State or minor by way of proffer.

(4) Burden and Standard of Proof at EJJ Designation Hearing

If the court determines that there is probable cause to believe that the allegations in the State's petition are true, there is a rebuttable presumption that the court should designate the case as an EJJ proceeding.

If, however, the judge makes a determination that there is clear and convincing evidence that sentencing under the Criminal Code would not be appropriate for the minor, then the case will not be designated an EJJ proceeding, and trial and sentencing will take place under regular Juvenile Court Act rules.

(5) Statutory Criteria

705 ILCS 405/5-810(1)(b)

Effective August 12, 2005, **P.A. 94-574, § 5**, rewrote this statute to read:

The judge shall enter an order designating the proceeding as an extended jurisdiction juvenile proceeding unless the judge makes a finding based on clear and convincing evidence that sentencing under the Chapter V of the Unified Code of Corrections would not be appropriate for the minor based on an evaluation of the following factors:

(i) the age of the minor;

(ii) the history of the minor, including:

(a) any previous delinquent or criminal history of the minor,

(b) any previous abuse or neglect history of the minor, and

(c) any mental health, physical and/or educational history of the minor;

(iii) the circumstances of the offense, including:

(a) the seriousness of the offense,

(b) whether the minor is charged through accountability,

(c) whether there is evidence the offense was committed in an aggressive and premeditated manner,

(d) whether there is evidence the offense caused serious bodily harm,

(e) whether there is evidence the minor possessed a deadly weapon;

(iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:

(a) the minor's history of services, including the available services;

(b) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(c) the adequacy of the punishment or services.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency than to other factors listed in this subsection.

Cases:

In re Dionte J., 2013 IL App (1st) 110700 (2013) (court properly designated case as Extended Jurisdiction Juvenile Prosecution after considering all factors listed in that statute, including seriousness of offense—charged for felony murder, with predicate felony of mob action, in beating death of 16-year-old boy—which is one of the two most important factors, even though felony murder charge and its predicate felony of mob action were based on separate acts).

In re Omar M., Affirmed—*See* ***In re Omar M.***, 14 N.E.3d 1077 (2014)—IL Supreme Court ordered trial court to vacate judgment and reconsider in light of ***In Re M.I.***, 989 N.E.3d 1109 (Ill. 2013) (which held that petitioner cannot challenge a constitutional infirmity unless she has standing). Court affirmed finding that respondent didn't have standing to challenge EJJ as unconstitutionally vague.

10.05 PROCEDURES AFTER DESIGNATION AS AN EJJ PROCEEDING

SEE CHECKLIST FOR ADMISSION AND GUILTY PLEA IN EJJ PROCEEDING: APPENDIX

A) GUILTY PLEAS

New Article V is silent on the issue of guilty pleas in EJJ proceedings. In the absence of an express Supreme Court Rule, the prudent judge may wish to follow **Supreme Court Rules 402 and 605** in accepting guilty pleas and in imposing sentence in EJJ proceedings. Specifically, the judge should consider admonishing

a minor that he or she is waiving the right to trial by jury, should advise the minor of all possible sentences, including mandatory supervised release, and should advise the minor of his or her appeal rights.

A judge may assume that a minor should follow the same steps for withdrawal of a guilty plea in EJJ cases that a criminal defendant is required to follow. Query: Must a minor file a written motion to withdraw a guilty plea within 30 days after the court has imposed the blended juvenile sentence, or may the motion to withdraw a plea be made at the time that the adult sentence is imposed?

B) PUBLIC TRIAL BY JURY

A minor in an EJJ proceeding has a right to trial by jury on the charges alleged in the Juvenile Court petition. If the minor opts for a jury trial, it shall be open to the public. **705 ILCS 405/5-810(3)**.

C) SENTENCING

(1) If a minor is found guilty or enters a plea, the trial court must conduct a sentencing hearing that is open to the public.

(2) After the sentencing hearing, the court must impose the following sentences:

(a) One or more of the sentencing alternatives set out in the Juvenile Court Act under Section 5-710 (**705 ILCS 405/5-710**); *and*

(b) An adult criminal sentence authorized by Chapter V of the Unified Code of Corrections the execution of which shall be stayed on the condition that the offender not violate the provisions of the juvenile sentence." (I know there is a section on the next page that also discusses this but a Judge may not read further) (**730 ILCS 5/5-1-1 *et seq.***).

(c) the period of probation for a minor adjudicated a delinquent based on conduct constituting first-degree murder, a Class X felony, or a forcible felony, shall be at least five years or until the minor has attained the age of 21 years, at which time all proceedings shall automatically terminate. Therefore, the court has no jurisdiction to continue a juvenile's probation beyond the date she turned 21, even though she was adjudicated a delinquent based on her admission of guilt to a Class X felony, where the State never filed a petition to designate the case as an extended jurisdiction juvenile prosecution. ***In re Jaime P.***, 223 Ill. 2d 526 (2006).

(3) If a minor is found guilty of a lesser included offense or an offense that was not part of the EJJ petition, the State may file a written motion within 10 days of the finding of guilty asking that the minor be sentenced under the EJJ provisions of the Act. In making its determination, the court must consider the criteria set forth in Section 5-805 (**705 ILCS 404/5-805**) ((the statutory criteria that guide the trial court's discretionary transfer decision in subparagraph (3)).

Under some circumstances, failure to comply with this notice requirement constitutes reversible error. Where the state failed to follow this mandatory requirement within 10 days of the finding or verdict, requesting that minor be sentenced as adult, with reasonable notice of motion to minor or his counsel, such failure rendered conviction void. ***People v. Jardon***, 393 Ill. App. 3d 725 (1st Dist. 2009). A void conviction can be challenged at any time. ***Id.*** The finding was void because the offense of second-degree murder is not one requiring that a minor be prosecuted as an adult. ***Id.*** Thus, since the defendant should have been tried as juvenile, and adjudicated a juvenile delinquent, his criminal conviction was vacated. ***Id.***

If the court denies the State's motion for EJJ designation, the minor is sentenced under the Juvenile Court Act only.

Cases:

In re Christopher K., 217 Ill. 2d 348 (2005) (The Supreme Court declined to consider under the public interest exception to the mootness doctrine whether EJJ designation by a judge rather than a jury violates ***Apprendi***, stating that the appellate courts that had considered the issue had all agreed that it did not, so consideration of the issue was unnecessary at the time).

In re Phillip C., 364 Ill. App. 3d 822 (1st Dist. 2006) (neither party raised the issue of whether defendant juvenile had standing to challenge the stayed 20-year adult sentence, but the court assumed "for the sake of argument" that he did and affirmed the sentence).

10.10 SUCCESSFUL COMPLETION OF JUVENILE SENTENCE

If the minor completes his or her juvenile sentence without incident, the juvenile court must vacate the parallel adult sentence. The court may wish to set the case for a date certain to determine whether the minor has successfully completed his or her juvenile sentence and whether to vacate the adult sentence. This ensures that a minor who has completed a juvenile sentence in an EJJ proceeding does not have a criminal conviction on his or her record.

10.15 VIOLATION OF JUVENILE SENTENCE

705 ILCS 405/5-810(6)

A) ARREST WARRANT

If a minor convicted in an EJJ prosecution violates the conditions of his or her sentence or is alleged to have committed a new offense, "upon the filing of a petition to revoke the stay, the court may, without notice, issue a warrant for the arrest of the minor."

B) HEARING AND MANDATORY ADULT SENTENCE

After hearing, if the court finds by a preponderance of the evidence that the minor has committed a new offense, the court **must** order execution of the previously imposed adult criminal sentence. However, as for the criminal sentence, under the Eighth Amendment it is cruel and unusual punishment to impose a mandatory life sentence without the possibility of parole on juveniles. ***Miller v. Alabama***, 132 S. Ct. 2455, 2470 (2012). This rule is applicable in Illinois and will be applied retroactively. ***People v. Williams***, 982 N.E. 2d 181 (1st Dist. 2012).

NOTE: Under this provision, the nature, circumstances or seriousness of the new offense does not appear to matter.

After hearing, if the court finds by a preponderance of the evidence that the minor has violated his or her juvenile sentence, the court may continue the existing juvenile sentence with or without modification of conditions. Alternatively, the court may order execution of the previously imposed adult sentence.

Cases:

People v. King, 241 Ill. 2d 3741035 (2011). The state need not request hearing to determine whether defendant should be sentenced as an adult for attempted first degree murder since that charge, to which defendant plead guilty, arose from same incident as first degree murder charges originally filed against him, and defendant could be sentenced as an adult; the attempted murder charge was "covered by" sections of Juvenile Court Act of 1987 requiring criminal prosecution, rather than juvenile proceedings, on specified charges and other crimes arising from same incident.

C) TRANSFER OF JURISDICTION

If the court revokes the minor's juvenile sentence and imposes the adult sentence, the juvenile court's jurisdiction over the case ends and the adult court assumes jurisdiction. A report of the imposition of the adult sentence is to be sent to the Department of State Police.

10.20 APPEALS IN EJJ DESIGNATED CASES

Although the Act does not address the issue of appeals, it would appear that the rules governing appeals from juvenile transfer decisions would apply with equal force in EJJ proceedings. Thus, the State would be allowed to take an interlocutory appeal from a decision denying its petition to designate a case an EJJ proceeding. A court's decision to allow the State's petition, however, would not be a final order and a minor would not have a right of immediate appeal. *See* Section 4.25, *supra*.

A minor does not need to make a post-trial motion for the court to reconsider designation as EJJ case to preserve the issue for appeal. ***In re Dontrale E.***, 358 Ill. App. 3d 136 (2d Dist. 2005).

10.25 POST-CONVICTION COLLATERAL ATTACKS

In re E.W., 28 N.E.3d 814 (2015)—Conditional adult sentence in EJJ case brought proceeding within scope of Post-Conviction Hearing Act, allowing juvenile to collaterally attack sentence on constitutional grounds (once the stay was lifted). Court remanded for second-stage post-conviction proceedings (summary dismissal of petition reversed).

CHAPTER 11. HABITUAL AND VIOLENT OFFENDERS

705 ILCS 405/5- 815; 820

11.01 IN GENERAL

New Article V contains a legislative declaration that a small number of juvenile offenders are responsible for a disproportionate of serious crime. **705 ILCS 405/5-801**. The Act responds to this concern by creating special provisions for minors who fall in this category, including transfer and extended jurisdiction juvenile provisions. In addition, the Act provides for certain procedures and sanctions upon a finding that a minor has engaged in habitual or violent conduct.

11.05 HABITUAL OFFENDERS

705 ILCS 405/5-815

NOTE: In both sections **705 ILCS 405/5-815 and 795 ILCS 405/5-820, P.A. 94-696** in subsec. (f) (eff. June 1, 2006) changed "Department of Corrections, Juvenile Division," to "Department of Juvenile Justice." See ***In re A.P.,*** 2014 IL App. (1st) 140327. Habitual Juvenile Offender (HJO) provision did not violate 8th Amendment or proportionate penalties clause of the IL constitution. See also ***In re Shermaine S.,*** 2015 IL App. (1st) 142421.

See ***In re Deshawn G.,*** 2015 IL App. (1st) 143316. Court says they're bound by ***People v. Chrastka,*** 83 Ill. 2d 67 (1980) which found the HJO constitutional finding that there need not be absolute symmetry in sentencing; purpose of the Act is rehabilitation of the minor as well as promoting a juvenile justice system capable of dealing with the problem of juvenile delinquency… Supreme U.S. Court has instructed that the ***Roper, Graham,*** and ***Miller*** decisions are closely limited to the most severe of all criminal penalties such as life without parole.

See ***In re Isaiah D.*** **2015** IL App. (1st) 143507. Mandatory sentencing provisions did not violate constitutional prohibitions on cruel and unusual punishment.

A) DEFINITION OF A HABITUAL OFFENDER

A habitual minor is one who has been twice adjudicated delinquent for offenses which are felonies and, is charged with a third felony listed in Section **705 ILCS 405/5-815(4)** (*e.g.*, murder, criminal sexual assault, home invasion).

In determining if a minor satisfies the definition of a habitual offender, a court may consider all prior delinquency adjudications including those when the minor was under 13 years old. ***People v. J.A.***, 127 Ill. App. 3d 811 (1st Dist. 1984).

For purposes of determining the applicability of the habitual offender statute, the two prior adjudications of delinquency need not have resulted in adjudications of wardship. *See* ***In re S.P.***, 297 Ill. App. 3d 234 (1st Dist. 1998); ***In re Stokes***, 108 Ill. App. 3d 637 (1st Dist. 1982).

A voluntary admission cannot be used to adjudge a minor a habitual juvenile offender if the minor has not first been fully advised of the consequences of his or her admission. ***In re J.W.***, 164 Ill. App. 3d 826 (1st Dist. 1987).

B) PETITION

The contents and service of the petition for adjudication as a habitual offender are governed by the provisions of the Juvenile Court Act for all other delinquency petitions. **705 ILCS 405/5-815(c)**.

C) NOTICE

The State must serve upon the minor written notice of the State's intention to prosecute the minor as a habitual offender within 5 judicial days of filing any delinquency petition the adjudication upon which would mandate the minor's sentencing as an habitual juvenile offender. **705 ILCS 405/5-815(b)**.

D) TRIAL PROCEDURES

The minor is entitled to a jury trial on the third charge unless the minor demands, in open court and with advice of counsel, a trial without a jury. All other procedures are governed by the terms of the Juvenile Court Act. **705 ILCS 405/5-815**. See ***In re M.P.,*** 2020 IL App. (4th) 190814. *See also* ***In re G.O.,*** 191 Ill. 2d 37 (2000) – jury trial right for HJO and VJO comes from the statute; no similar right to juveniles charged with first degree murder. *See also* ***In re T.C.,*** juveniles charged with aggravated criminal sexual assault and required to register as a sex offender are not entitled to jury trial as EJJ/HJO/VJO offenders are.

E) EVIDENCE

No evidence of prior adjudications shall be presented at this hearing except where a minor testifies on his or her own behalf, it shall be competent to introduce evidence, for purposes of impeachment, that he has previously been adjudicated a delinquent minor upon facts which, had he been tried as an adult, would have resulted in his conviction for a felony, or any offense that involves dishonesty or false statement. Introduction of such evidence is to be according to the rules and procedures applicable to the impeachment of an adult defendant by prior conviction. **705 ILCS 405/5-815(e)**.

Thus, an appeal from an adjudication of delinquency based on aggravated battery raising the issue of whether a single stab to the victim's shoulder constituted

misdemeanor battery rather than felony aggravated battery was not frivolous because a felony adjudication would subject the juvenile to punishment as an habitual offender for future offenses, whereas adjudication of misdemeanor battery would not, and could in the future subject juvenile to mandatory transfer to criminal court for prosecution as adult. ***In re J.A.***, 336 Ill. App. 3d 814 (1st Dist. 2003).

If a minor has admitted to the facts in the delinquency petition, the State may file a verified written statement signed by the State's Attorney concerning any prior conviction for a relevant charge. Upon such a filing, the court must inform the minor of the allegations in the statement and of his or her right to a hearing and representation by counsel on the allegations. If the court holds such a hearing, its findings must be in writing. **705 ILCS 405/5-815(e)**.

F) WAIVER

A minor who does not challenge the State's assertion that a prior adjudication satisfies the requirements for a habitual offender proceeding waives such an argument. **705 ILCS 405/5-815(e)**.

G) SENTENCING

A minor adjudicated a habitual juvenile offender must be committed to DJJ until his or her 21st birthday without the possibility of parole, furlough, or a non-emergency absence. However, such minor can earn good conduct credit to reduce his or her period of confinement. **705 ILCS 405/5-815(f)**. In addition, a habitual juvenile offender is entitled to receive credit for time spent in custody prior to sentencing. ***In re B.L.S.***, 202 Ill. 2d 510, 519 (2002).

The credit requirement of section 5-8-7 of the Unified Code of Corrections is meant to allow offenders to receive credit against their terms of imprisonment when they are "in custody as a result of the offense for which the sentence was imposed." *See* ***People v. Robinson***, 172 Ill. 2d 452, 462 (1996).

Accordingly, since the habitual juvenile offender provisions mandate a determinate sentence in the DJJ, and the Corrections Code requires full credit against determinate sentences for all time served in confinement, the legislature had no need to include any predisposition credit provision in the habitual juvenile offender statute. Consequently, the rules for calculating the term of imprisonment for an offender sentenced to a determinate sentence are applicable to a habitual juvenile offender. ***In re. B.L.S.***, *supra***.**

11.10 VIOLENT JUVENILE OFFENDER

705 ILCS 405/5-820

A violent juvenile offender is a minor who has been adjudicated a delinquent for a Class 2 or greater felony involving violence or use of a firearm and who is adjudicated for a similar offense a second time. *See* ***In re Dave L.***, 80 N.E.3d 694 (Ill. App. 1 Dist. 2017), addressing requirements for VJO classification when the subsequent offense is a Class 2 felony by virtue of the AAUW statute,

The procedures and sentence for a Violent Juvenile Offender are identical to those used in habitual offender cases. *See* **705 ILCS 405/5-815**. Upon a finding that a delinquent is a Violent Juvenile Offender, he or she must be sentenced to the Department of Corrections without possibility of parole until the age of 21.

When the state seeks to adjudicate a minor as a violent juvenile offender, trial on the petition will be by jury unless minor demands a trial by the court without jury. ***In re R.A.B.***, 197 Ill. 2d 358 (2001).

CHAPTER 12. SENTENCING

SEE SENTENCING CHECKLIST: APPENDIX

12.01 SOCIAL INVESTIGATION REPORT

705 ILCS 405/5-701

In any case in which the court has made of a finding of guilt, it may order the probation department to prepare a social investigation report. The written report must include information on the minor's physical and mental history and condition, family situation and background, economic status, education, occupation, personal habits, the minor's criminal or delinquency history, any special resources that may be available to assist the minor's rehabilitation or any other information which may be helpful or which the court directs to be included. Alternative dispositions should be included in the report or presented in some way. *See* ***In re K.A.S.***, 90 Ill. App. 3d 211 (3d Dist. 1980). *See also* ***In re D.B.,*** 303 Ill. App. 3d 412 (1999). Psychological report from three years prior did not fulfill the statutory mandate for a social investigation report. Social Investigation Report involves more than a psych eval; cannot be waived; Judge in the juvenile proceeding is in greater need of social information (citing ***In re Starks,*** 60 Ill. App. 3d 934 (1978)).

The court may also order psychological and psychiatric evaluations or other testing if it will aid the court in arriving at a suitable sentence.

Statutory Amendments:

P.A. 93-616, added a second paragraph:

"Any minor found to be guilty of a sex offense as defined by the Sex Offender Management Board Act shall be required as part of the social investigation to submit to a sex offender evaluation. The evaluation shall be performed in conformance with the standards developed under the Sex Offender Management Board Act and by an evaluator approved by the Board."

Cases:

While preparation of a social investigation report before sentencing any juvenile to DJJ is required, and no exceptions exist for situations in which the judge lacks sentencing discretion, trial court's failure to order a social investigation report prior to committing respondent in this case to DJJ was harmless error. ***In re. B.L.S.***, 202 Ill. 2d 510 (2002).

12.05 SENTENCING HEARING

705 ILCS 405/5-705

A) IN GENERAL

The trial court must make two separate determinations in a sentencing proceeding. First, the court must decide whether it is in the best interest of the minor and the public to make the minor a ward of the court. Second, if the court determines that wardship is appropriate, it must select among the Act's sentencing alternatives the "proper disposition best serving the interests of the minor and the public." **705 ILCS 405/5-101(13); 5-705(1)**.

In ***In re J.C.***, 260 Ill. App. 3d 872 (1st Dist. 1994), the court suggested that a trial judge should postpone making an adjudication of wardship decision until after the sentencing hearing so that evidence adduced at the hearing can be used in making the wardship determination. See also ***People ex rel. Devine v. Stralka,*** 226 Ill. 2d 445 (2007). If the court has found (in the adjudication stage) that the minor is guilty, it shall set a time for a sentencing hearing to be conducted under section 5-705 of the Act. Section 5-705 requires the court to conduct a sentencing hearing to determine whether it is in the best interests of the minor and the public that the minor be made a ward of the court. (at 452-53).

B) SENTENCING HEARING PROCEDURE

(1) Notice

Once a party has been served in compliance with section 5/525 (**705 ILCS 405/5-525**), no further notice or service must be given to that party prior to sentencing. **705 ILCS 405/5-705(2)**.

NOTE: Under the prior Article V of the Act, party respondents were required to be served again prior to the dispositional hearing. Under some circumstances, failure to comply with this notice requirement constituted reversible error. *See, e.g.*, ***In re J.B.***, 256 Ill. App. 3d 325 (1st Dist. 1993).

(2) Joint Sentencing Hearing

Co-respondent minors may be sentenced in a joint hearing. ***In re J.C.***, 163 Ill. App. 3d 877 (2d Dist. 1987).

(3) Continuance

(a) Timing

Subsection (3) of section 5/705 (**705 ILCS 405/5-705(3)**), provides that:

"On its own motion or that of the State's Attorney, a parent, guardian, legal custodian, or counsel, the court may adjourn the hearing for a reasonable period to receive reports or other evidence."

If the minor is in detention, the Act provides that the sentencing hearing may be continued for not more than 30 court days unless the State serves a written notice at least 3 days prior to the continued hearing date that it is seeking an extension of the continuance and detention order and explains its reason for the request. Upon the filing of such notice, the court may continue the hearing for up to 15 additional court days.

If the hearing is continued beyond 45 court days, the minor must be released from detention pending resumption of the sentencing hearing. **705 ILCS 405/5-705(3)**.

(b) Judicial discretion

The decision to continue a sentencing hearing rests within the discretion of the court. *See, e.g.*, ***In re Seibert***, 29 Ill. App. 3d 129 (5th Dist. 1975) (no error for trial court to deny minor's motion for continuance to obtain psychological testing even where State did not object); ***In re Self***, 72 Ill. App. 3d 855 (1st Dist. 1979) (nearly 6 month delay between finding of probation violation and resentencing was not unreasonable or prejudicial); ***People v. Cato***, 4 Ill. App. 3d 1093 (1st Dist. 1972) (no error for 4½ month delay between finding and sentencing hearing where postponement was for the purpose of collecting information helpful to the sentencing determination).

A court, however, may not exercise its discretion by postponing a sentencing hearing indefinitely to keep a minor "under the judicial thumb." *See* ***In re C.O.***, 73 Ill. App. 3d 369 (2d Dist. 1979).

(4) Evidence

All helpful evidence may be used to determine the sentence of a minor even if it would not have been admissible at trial. **705 ILCS 405/5-705(1)**. Probative evidence that is helpful includes:

(a) Record of a prior continuance under supervision, whether or not successfully concluded. **705 ILCS 405/5-705(1)**;

(b) Psychological reports. **705 ILCS 405/5-705 (5)**. (in addition to social investigative reports, the court may order and consider a mental health evaluation).

(c) Station adjustments. ***People v. M.D.***, 101 Ill. 2d 73 (1984); *but see* ***People v. D.B.***, 202 Ill. App. 3d 194 (1st Dist. 1990) (station adjustment considered nothing more than a "verbal warning" by police).

(d) Evidence of conduct after finding. ***In re T.M.***, 125 Ill. App. 3d 859 (3d Dist. 1984); ***In re Stead***, 59 Ill. App. 3d 1012 (1st Dist. 1978).

(e) Probation reports. ***In re L.H.***, 102 Ill. App. 3d 169 (4th Dist. 1981).

(f) Social investigation reports. ***In re T.E.***, 81 Ill. App. 3d 630 (4th Dist. 1980); ***In re M.H.***, 85 Ill. App. 3d 385 (5th Dist. 1980).

Note: a trial judge does not abuse his discretion when he fails to order and consider a new social investigation report prior to denying juvenile's motion to withdraw his plea and to reconsider his sentence; the statute only requires the preparation and consideration of a social investigation report before a commitment hearing, and a motion to reconsider does not constitute a new commitment hearing. ***In re Jermaine J.***, 336 Ill. App. 3d 900 (3d Dist. 2003). *See also* ***In re B.L.S.***, 202 Ill. 2d. 510 (2002). Failure to order a new social investigation report was harmless error (prior to commitment to the DOC).

See also ***In re Jermaine J.***, 336 Ill. App. 3d 900 (2003). As a matter of first impression, the trial judge did not abuse his discretion when he failed to order and consider a new social investigation report prior to denying juvenile's motion to withdraw his plea and to reconsider his sentence (motion to reconsider not equivalent to commitment hearing).

(g) History and potential for rehabilitation. ***People v. Clark***, 119 Ill. 2d 1 (1987). *But see* ***In re M.W.***, 246 Ill. App. 3d 654 (5th Dist. 1993) (error to rely on history of other family members in making sentencing decision).

Evidence the child is beyond parental control. *See also* ***In re J.C.***, 260 Ill. App. 3d 872 (1st Dist. 1994). Commitment was the only

alternative because respondent was "utterly beyond the control of his parents".

(i) Evidence demonstrating the need to "insure the protection of the public." ***In re A.J.D.***, 162 Ill. App. 3d 661, 666 (4th Dist. 1987). *But see* ***In re Seth S.***, 396 Ill. App. 3d 260 (4th Dist. 2009) (juvenile was entitled to a new dispositional hearing because the judge improperly applied the factors in the Juvenile Sex Offender Assessment Protocol-II to assess juvenile's risk of offending).

(j) Prior arrests. Prior arrests, whether they resulted in a station adjustment or other action, are admissible at sentencing. ***In re G.S.***, 194 Ill. App. 3d 740 (1st Dist. 1990).

(k) Curfew violations. *See* ***In re A.J.D.***, *supra*.

(l) Polygraph results. These are *not* admissible at a sentencing hearing. *See* ***People v. Perry***, 132 Ill. App. 2d 326 (1st Dist. 1971). *See also* ***People v. Rosemond,*** 339 Ill. App. 3d 51 (2003). "The general rule in Illinois is that evidence regarding polygraph examinations as well as the results of those examinations is inadmissible as proof of a defendant's guilt or innocence." (citing ***People v. Baynes,*** 88 Ill. 2d 225 (1981); ***People v. Taylor,*** 101 Ill. 2d 377 (1984); ***People v. Melock,*** 149 Ill. 2d 423 (1992); ***People v. Gard,*** 158 Ill. 2d 191 (1994). (not sufficiently reliable, and quasi-scientific nature may lead jurors to give undue weight (citing Taylor)).

(m) Family behavior. While one court declared that it was improper to consider the conduct of an older brother in making a sentencing decision (*see* ***In re M.W.***, *supra*, the criminal behavior of siblings has been found probative in assessing whether a minor is beyond the control of his or her parents. *See* ***In re M.D.B.***, *supra*.

(n) Testimony of other crimes. *See* ***People v. Perry***, *supra* (proper to allow alleged victim of an unrelated shooting to testify at hearing).

(o) Decision to go to trial as a Sentencing Factor. ***People v. Ward,*** 113 Ill. 2d 516 (1986): "when it is evident from the judge's remarks that the punishment was, at least in part, imposed because the defendant had refused to plead guilty but had instead availed himself of his constitutional right to trial, the sentence will be set aside." Appellate court found, citing ***Ward,*** that this sentence was not improper considering the whole trial record.

(5) Disclosure of Reports

705 ILCS 405/5-705(2)

Prior to entering a sentencing order, the court must advise the State and parties who are present, or their counsel of the factual contents and conclusions of reports prepared for and considered by the court. If requested, the court must give a party a fair opportunity to controvert the contents of a report. A party may not disclose the contents of a report to another person without express approval of the court. *See* ***In re S.B.***, 128 Ill. App. 3d 75 (1st Dist. 1984) (no due process error where the respondent's attorney failed to request a social investigation report).

12.10 ADJUDICATION OF WARDSHIP

A) IN GENERAL

New Article V retains the requirement that the court, at the sentencing hearing, "shall determine whether it is in the best interests of the minor and the public that he or she be made a ward of the court." **705 ILCS 405/5-620**.

B) TIMING

The determination of wardship is to be entered at the conclusion of the sentencing hearing and before the dispositional order. ***In re J.C.***, 260 Ill. App. 3d 872 (1st Dist. 1994).

Failure to adjudge a minor a ward of the court before imposing sentence is a jurisdictional finding which may be raised at any time, including on appeal from revocation of probation imposed without an adjudication of wardship. *See* ***In re Starks***, 60 Ill. App. 3d 934 (4th Dist. 1978); ***In re Davis***, 44 Ill. App. 3d 970 (1st Dist. 1976).

It is error to enter an order of wardship at the time of trial. ***In re G.L.***, 133 Ill. App. 3d 1048 (3d Dist. 1985); ***In re A.L.J.***, 129 Ill. App. 3d 715 (4th Dist. 1985).

NOTE: Older cases holding that the determination should be held at the time of the adjudicatory hearing (*e.g.,* ***In re Driver***, 46 Ill. App. 3d 574 (4th Dist. 1977)) were decided prior to amendment of the statute requiring that it be made at the dispositional hearing).

Where the court erroneously adjudged the minor a ward of the court prior to a dispositional hearing but later conducted a proper hearing, the error was held to be harmless. *See* ***In re P.E.K.***, 200 Ill. App. 3d 249 (4th Dist. 1990); ***In re L.W.***, 171 Ill. App. 3d 1056 (2d Dist. 1988); ***In re E.S.***, 145 Ill. App. 3d 9061324 (5th Dist. 1986).

C) SUFFICIENCY OF EVIDENCE TO SUPPORT ADJUDICATION OF WARDSHIP

(1) Standard of proof

The Juvenile Court Act does not specify a standard of proof for the determination of wardship. Wardship will be upheld if it is supported by the record. ***In re Driver***, 46 Ill. App. 3d 574 (4th Dist. 1977).

(2) The nature and frequency of criminal conduct on the part of the minor may alone establish the need for wardship. *See* ***In re J.R.***, 82 Ill. App. 3d 714 (5th Dist. 1980); ***In re Miller***, 49 Ill. App. 3d 772 (4th Dist. 1977).

(3) In the following case, the reviewing court found sufficient evidence to support an adjudication of wardship determination: See also ***People v. Hugo G.,*** 322 Ill. App. 3d 727 (2001). Petition for adjudication of wardship not defective for failure to specify where offense occurred. But The JCA (5-520) does not require location in the petition, and the Criminal Code (which does) is not applicable to delinquency petitions.

See also ***In re Brandon P.,*** in petition for adjudication of wardship for aggravated criminal sexual abuse, child victim's out of court statements to police were reliable and admissible under exception to hearsay rule.

See also ***In re D.L.J., Jr.,*** 2016 IL App. (5th) 130341. 9-year-old defendant, petition for adjudication of wardship alleged he had committed first degree murder of 14-month-old. Found unfit to stand trial and "not not guilty" of murder and remanded to DHS for up to five years. Involuntary confession and "underwhelming" add'l evidence, so case bounced up and down.

See also ***In re Raheem M.,*** 2013 IL App. (4th) 130585. Sufficiency of charging instrument wasn't challenged at trial, so reviewing standard was more liberal on appeal, and lack of specificity didn't prejudice his preparation of a defense.

In re J.R., *supra* (adjudication upheld despite good home environment and family relationship).

(4) In the following case the reviewing court did not find sufficient evidence to support an adjudication of wardship:

In re T.H., 70 Ill. App. 3d 522 (5th Dist. 1979) (despite fact minor caused serious injury in school yard fight, trial court's adjudication of wardship was reversed where reviewing court believed minor's behavior was an isolated incident).

D) ADEQUACY OF FINDING OF ADJUDICATION OF WARDSHIP

Although an express statement that the court is making a determination that it is in the minor's and public's best interest that the minor be made a ward of the court is preferable, failure to make an express finding is not essential.

See, e.g., ***In re J.N.***, 91 Ill. 2d 122 (1982) (necessary finding and adjudication of wardship implied from the fact that the trial court found the minor guilty and entered a probation order); ***In re K.M.***, 70 Ill. App. 3d 915 (4th Dist. 1979).

E) SUPPLEMENTAL PROCEEDINGS

A finding and adjudication of wardship are unnecessary in proceedings conducted on a supplemental petition as long as such finding and adjudication were entered on the original petition. ***In re Fields***, 46 Ill. App. 3d 1028 (1st Dist. 1977). Similarly, a new adjudication of wardship is not required when probation is revoked. ***In re F.S.***, 70 Ill. App. 3d 526 (5th Dist. 1979). See also ***In re Steven E.,*** 341 Ill. App. 3d 294 (2003). Wardship extended to age 21 for continued monitoring and treatment to prevent relapse/reoffending; Wardship is a status, not a punishment; "maximum possible sentence" not increased under *Apprendi*.

F) MOTION TO VACATE DELINQUENCY FINDING

A motion to vacate a delinquency finding over the State's objection is not appropriate where motion is based only on trial court's view that minor was doing well on probation. ***People v. Stralka***, 226 Ill. 2d 445 (2007).

12.15 SENTENCING ALTERNATIVES

705 ILCS 405/5-710

A) IN GENERAL

Section 5-710 (**705 ILCS 405/5-710**) sets forth the sentencing orders which are available to the Juvenile Court. In general, a trial court has broad discretion to determine the appropriate sentence under the Act and, need not consider less restrictive alternatives nor accept a particular recommendation. *See* ***In re J.C.***, 260 Ill. App. 3d 872 (1st Dist. 1994); ***In re F.N.***, 253 Ill. App. 3d 483 (2d Dist. 1993). The Act, however, favors placing children, even those adjudged delinquent, in a home setting rather than in detention. ***People ex rel. Davis v. Vasquez***, 92 Ill. 2d 132 (1982). On the other hand, a trial court does not err in removing a minor from a mother's custody when the mother was unable to care for and protect minor from his own delinquent behavior. ***In re U.O.***, 337 Ill. App. 3d 964 (1st Dist. 2007). *See also* ***In re J.M.A.,*** 2019 IL App. (3d) 190346, affirmed by ***In re J.M.A.,*** 2021 IL 125680.

Commitment to IDOJJ was based on implicit finding that it was least restrictive available alternative; rejected less restrictive, previously unsuccessful options, including probation (twice unsuccessful), ankle bracelet home detention (removed), mother's inability to control him, and inability of detention home to address needed issues. Act doesn't require court to explicitly find that commitment is least restrictive.

A court may not enter a sentencing alternative that is not *anticipated* by the language of the Act.

It should also be noted that the "one act, one crime" rule has no relevance where there is only a *single* finding of delinquency by reason of a finding of multiple offenses, so long as there is *only one dispositional order* that does not subject minor to a greater punishment by reason of the multiple offenses. ***In re Jessica M.***, 384 Ill. App. 3d 894 (1st Dist. 2008). *See also* ***In re Samantha V.***, 234 Ill. 2d 359 (2009) (since the one-act, one-crime rule does apply to juvenile proceedings in Illinois, *only one finding of delinquency may be entered,* even if a minor is found to have committed several delinquent acts, because juveniles are faced with the same potential for prejudice as adults in the context of future criminal proceedings and thus deserve the same protections); *See also* ***In re Gabriel W***., 2017 IL App. (1st) 172120. Vacated one of the counts under one-act, one-crime rule. ***People v. Artis***, 232 Ill. 2d 156 (2009) (a violation of the one-act, one-crime rule rises to the level of plain error because the error affects the substantial rights of an accused; case discusses proper trial court evaluation of relative severity of multiple offenses so as to determine proper dispositional order). *See also* ***In re Justin F***., 55 N.E. 3d 705, 709 (2016), and ***In re T.B.,*** 2020 IL App (1st) 191041.

B) SUMMARY OF SENTENCING OPTIONS

After entering a finding of guilt and after a sentencing hearing, the court may impose one or more of the following sentences (discussed in further detail in later paragraphs):

(1) Probation or conditional discharge;

(2) Placement with a legal custodian or guardian;

(3) Substance abuse assessment, counseling, or treatment;

(4) Placement with DCFS if the minor is under age 15;

(5) Emancipation;

(6) Restitution;

(7) Suspension of the minor's driver's license until age 18;

(8) Community service;

(9) Testing for sexually transmitted diseases;

(10) Detention in a juvenile detention facility for up to 30 days if the minor is at least 10 years of age;

(11) Commitment of a minor at least 13 years of age and under 20 years of age to the Department of Juvenile Justice if a term of incarceration is permitted in the case of an adult found guilty of the same offense;

(12) Payment of costs and fees;

(13) Protective supervision or order of protection;

(14) Restrict or deny driving privileges.

Statutory amendments: P.A. 101-159 changed Article V to Chapter 5.

P.A. 101-79 changed 5-710(1)(a)(iv) – changed "a minor for whom an independent basis…" to "a minor under the age of 18 for whom an independent basis…"

P.A. 101-2 removed subsection (12) related to the Prevention of Tobacco Use by Minors Act, which was moved to another article.

P.A. 100-759 changed "substance abuse program" to "substance use disorder treatment program)

P.A. 100-431 nothing substantive

P.A. 100-201 nothing substantive

P.A. 99-879 added 7.75, in no event shall a guilty minor be committed to the (DOJJ) for an offense that is a class 3 or Class 4 felony violation of the (controlled substances act) unless commitment occurs upon a third or subsequent judicial finding of a violation of probation for substantial noncompliance w/ court ordered treatment.

Public Act 99-628, sec. 10, effective _____, amended **705 ILCS 405/5-710** to add **7.6:** "In no event shall a guilty minor be committed to the Department of Juvenile Justice for an offense which is a Class 4 felony under Section 19-4 (criminal trespass to a residence), 21-1 (criminal damage to property), 21-1.01 (criminal damage to government supported property), 21-1.3 (Criminal defacement of property), 26-1 (disorderly conduct), or 31-4 (obstructing justice), of the Criminal Code of 2012Public Act. 92-454, effective August 21, 2008, added **705 ILCS 405/5-710 (8.5)**:

A minor found to be guilty for reasons that include a violation of Section 3.02 or Section 3.03 of the Humane Care for Animals Act or paragraph (d) of subsection (1) of Section 21-1 of the Criminal Code of 1961 shall be

ordered to undergo medical or psychiatric treatment rendered by a psychiatrist or psychological treatment rendered by a clinical psychologist. The order may be in addition to any other order authorized by this Section.

Also, **Public Act 95-337** (2007), effective June 1, 2008, added **705 ILCS 405/5-710 (11)**:

(11) If the court determines that the offense was committed in furtherance of the criminal activities of an organized gang, as provided in subsection (10), and that the offense involved the operation or use of a motor vehicle or the use of a driver's license or permit, the court shall notify the Secretary of State of that determination and of the period for which the minor shall be denied driving privileges. If, at the time of the determination, the minor does not hold a driver's license or permit, the court shall provide that the minor shall not be issued a driver's license or permit until his or her 18th birthday. If the minor holds a driver's license or permit at the time of the determination, the court shall provide that the minor's driver's license or permit shall be revoked until his or her 21st birthday, or until a later date or occurrence determined by the court. If the minor holds a driver's license at the time of the determination, the court may direct the Secretary of State to issue the minor a judicial driving permit, also known as a JDP. The JDP shall be subject to the same terms as a JDP issued under Section 6-206.1 of the Illinois Vehicle Code, except that the court may direct that the JDP be effective immediately.

12.20 PROBATION OR CONDITIONAL DISCHARGE

705 ILCS 405/5-715

A) TERM OF PROBATION

New Article V authorizes the court to place a delinquent on probation for up to 5 years or until he or she reaches the age of 21, whichever occurs sooner. A minor who is found to be a delinquent for first degree murder, but who is not committed to DJJ, must be placed on probation for at least 5 years. Mandatory probation for a minimum period is also required for several enumerated offenses.

However, it is error to impose a minimum probation term of five years for "aggravated battery on a public way" on the theory that aggravated battery is a forcible felony, because only aggravated battery that involves great bodily harm or disfigurement is a forcible felony, and thus the trial court would be sentencing under a mistaken belief of the applicable law. ***In re Angelique E.***, 389 Ill. App. 3d 430 (2d Dist. 2009). *See also* ***In re Rodney S.***, 402 Ill. App. 3d 272 (4th Dist. 2010) (an aggravated battery against a bus monitor that did not result in great bodily harm or permanent disability or disfigurement could not be defined as a "forcible felony" under the forcible-felony statute, and therefore the Juvenile Court Act did not

permit the imposition of an almost 11-year period of probation on a minor adjudicated as delinquent).

Further, the term of probation cannot extend past the minor's 21st birthday, even if minor's offense was a Class X felony, first degree murder, or a forcible felony, at least where the state has not filed for an EJJ proceeding. ***In re Jaime P.***, 223 Ill. 2d 526 (2006).

A probation order is void if it does not specify a definite term. ***In re T.E.***, 85 Ill. 2d 326 (1981). But a case should be remanded to specify time rather than dismissed. ***People v. Alexander***, 136 Ill. App. 3d 1047 (4th Dist. 1985).

B) CONDITIONS OF PROBATION

(1) In General

A court may impose conditions of probation or conditional discharge, but only if they are expressly provided for in the Act or are reasonable. *See* ***In re C.T.***, 137 Ill. App. 3d 42 (5th Dist. 1985); See ***In re T.B.,*** 2020 IL App (1st) 191041, "The court is thus given 'wide discretion to impose conditions of probation (whether expressly authorized by the juvenile-probation statute or not), as long as they are consistent' with the Act's 'protective and rehabilitative aims.'" (citing ***Jawan S.,*** 2018 IL App (1st) 172955). In ***T.B.***, Appellate court upheld condition restricting social media and gang contact, Lengthy point about restricting contact with gangs regardless of prior involvement. "The mission of the juvenile court, as *parens patriae,* is to take whatever reasonable steps can be taken to place and keep that minor on the right path to rehabilitation. Prohibiting activity with street gangs easily falls within those preventative measures." (at paragraph 78). Similar point regarding social media.

Conditions authorized in Section 5-715 (**705 ILCS 405/5-715(2)(a)-(u)**) *See* ***Interest of J.P.,*** 2019 IL App (1st) 181087, which cites ***In re Omar F.,*** 2017 IL App (1st) 171073 and ***In re J.W.,*** 204 Ill. 2d 50 (2003). "Where a condition of probation requires a waiver or precious constitutional rights, the condition must be narrowly drawn; to the extent it is overbroad it is not reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights." (citing ***J.W.***). In ***J.P.,*** the court upheld gang-related restrictions as valid because of her association with a gang, arrests, chronic truancy, and not overbroad because the court explained the meaning of the prohibition.

(a) not violate any criminal statute of any jurisdiction;

(b) make a report to and appear in person before any person or agency as directed by the court;

(c) work or pursue a course of study or vocational training;

(d) undergo medical or psychiatric treatment, rendered by a psychiatrist or psychological treatment rendered by a clinical psychologist or social work services rendered by a clinical social worker, or treatment for drug addiction or alcoholism;

"(3.10) The court shall order that a minor placed on probation or conditional discharge for a sex offense as defined in the Sex Offender Management Board Act undergo and successfully complete sex offender treatment. The treatment shall be in conformance with the standards developed under the Sex Offender Management Board Act and conducted by a treatment provider approved by the Board. The treatment shall be at the expense of the person evaluated based upon that person's ability to pay for the treatment."

P.A. 95-0658 Amended the Sex Offender Registration Act. It eliminates the provision that a person who has been adjudicated a juvenile delinquent for an act which, if committed by an adult, would be a sex offense shall register as an adult sex offender within 10 days after attaining 18 years of age. The Act provides that in all cases involving an adjudicated juvenile delinquent who meets the definition of sex offender under the Act., the court shall determine at the sentencing hearing whether to order registration. **730 ILCS 150/7** provides the duration of registration—either life for some offenders or 10 years for others. The Court no longer has to determine the length of time the minor must register.

Although the Registration Act does not refer to juvenile sex offenders, it does provide that sex offenders and sexual predators must register, and because juvenile sex offenders are included within the larger category of sex offenders, they are required to register. ***In re J.W.***, 204 Ill. 2d 50 (2003) (minor required to register as a sex offender for the rest of his life; rejecting ***In re Nicholas K.***, 326 Ill. App. 3d 497 (2001), which determined that juvenile sex offenders are not required to register under the Registration Act).

Registration does not violate substantive due process because there is a rational relationship between the registration of juvenile sex offenders and the protection of the public from such offenders.

Moreover, requiring the registration of juvenile sex offenders, even where the offender is only 12 years old and the duration of registration is for life, is reasonable in light of the strict limits placed upon access to that information. ***Id.*** Nor does violates the eighth amendment and the proscription against double jeopardy because, consistent with ***People v. Malchow***, 193 Ill. 2d 414 (2000), the Registration Act and the Notification Law are not punitive and therefore do not amount to cruel and unusual punishment or double jeopardy. ***Id.***

Cases:

In re S.B., 364 Ill. Dec. 655 (2012) (a minor who was charged as a juvenile with aggravated criminal sexual abuse could be required to register as a sex offender but, if after extensive evaluation, he is found not to pose a threat to the safety of public he may be discharged from this duty; discharge hearings under Section 104-25 of Code of Criminal Procedure are held incorporated into the Juvenile Court Act, and a juvenile for whom a finding of "not guilty" has been entered following a discharge hearing may petition for removal from sex offender registry pursuant to terms of Section 3-5 of Sex Offender Registration Act. ***Id.***

See also ***People v. Phillip C.***, 364 Ill. App. 3d 822 (4th Dist. 2006), in which the Defendant claimed that, as there was no evidence he had a sexual motive for the kidnapping, requiring him to register as a sex offender violated his rights under the state and U.S. Constitutions. The court held, however that the Registration Act did not implicate the right to privacy, and as to substantive due process, the legislature could have rationally concluded that kidnappers of children posed such a threat to sexually assault those children as to warrant their inclusion in the sex offender registry. Nor were his procedural due process rights violated, since he was able to contest the kidnapping charges at trial. ***Id.***

In re Rufus T., 409 Ill. App. 3d 969 (2d Dist. 2011) (respondent, then age 15, was adjudicated a juvenile delinquent based on admission of attempted aggravated criminal sexual assault, and was required to register as a sex offender; in ruling on petition for removal from sex offender registry court's duty to consider factors in Section 3-5(e) of Sex Offender Registration Act is directory rather than mandatory; thus, court is not mandated to consider a risk assessment, and determination of whether a respondent has proven necessity for risk assessment is within court's discretion).

(e) attend or reside in a facility established for the instruction or residence of persons on probation;

> **NOTE: Public Act 95-844**, effective August 15, 2008, amended **705 ILCS 405/5-710 (6)** as follows:
>
> "(6) Whenever the sentencing order requires the minor to attend school or participate in a program of training, the truant officer or designated school official shall regularly report to the court if the minor is a chronic or habitual truant under Section 26-2a of the School Code. Notwithstanding any other provision of this Act, in instances in which educational services are to be provided to a minor in a residential facility where the minor has been placed by the court, costs incurred in the provision of those educational services must be allocated based on the requirements of the School Code."

(f) support his or her dependents, if any;

(g) refrain from possessing a firearm or other dangerous weapon, or an automobile; *See* ***In re Jawan S***., 2018 IL App. (1st) 172955. Court did not abuse discretion by imposing probation condition requiring juvenile to refrain from all illegal gang, guns and drug activity and stating that none shall be displayed on social media. Note that social media restrictions did not violate First Amendment rights. (5-715(2)(s)).

(h) permit the probation officer to visit him or her at home or elsewhere;

(i) reside with his or her parents or in a foster home;

(j) attend school; j-5 "with the consent of the superintendent of the facility, attend an educational program at a facility other than the school in which the offense was committed if he or she committed a crime of violence as defined in Section 2 of the Crime Victims Compensation Act in a school, on the real property comprising a school, or within 1,000 feet of the real property comprising a school;"

(k) attend a non-residential program for youth;

(l) make restitution under the terms of subsection 4 of Section 5-710;

(m) contribute to his or her own support at home or in a foster home;

(n) perform some reasonable public or community service;

(o) participate with community corrections programs including unified delinquency intervention services administered by the Department of Human Services; "subject to Section 5 of the Children and Family Services Act"

(p) pay costs;

(q) serve a term of home confinement. In addition to any other applicable condition of probation or conditional discharge, the conditions of home confinement shall be that the minor;

(i) remain within the interior premises of the place designed for his confinement during the hours designated by the court;

(ii) admit any person or agent designated by the court into the minor's place of confinement at any time for purposes of verifying the minor's compliance with the conditions of his confinement;

(iii) use an approved monitoring device *if ordered by the court* "subject to Article 8A of the Unified Code of Corrections"—"Approved monitoring device" means an electronic device approved by the administering authority which is primarily intended to record or transmit information as to the minor's presence or non-presence in the home. Such devices must be minimally intrusive: no monitoring device capable of recording or transmitting (a) visual images; (b) oral or wire communications or any auditory sound; or (c) information as to the minor's activities while inside the home shall be approved for use with any minor unless such a minor and all other persons in residence with him consent in writing to its use at the time of approval;

(r) refrain from entering a designated geographic area except upon such terms as the court finds appropriate. Such terms may include consideration of the purpose of the entry, the time of day, other persons accompanying the minor, and advance approval by the probation officer, if the minor has been placed on probation, or advance approval by the court, if the minor has been placed on conditional discharge. *But see* ***In re J.W.***, 204 Ill. 2d 50 (2003) (a restriction on a probationer's travel into a specified geographic area is reasonable and not unconstitutionally overbroad only if (1) there is a valid purpose for the restriction, and (2) there is a means by which the probationer may obtain exemption from the restriction for legitimate purposes or the court includes terms whereby the

probationer can enter the restricted area for legitimate purposes); ***In re J.G.***, 295 Ill. App. 3d 840 (1st Dist. 1998) (holding trial court erred in ordering minor to stay out of village where there was no connection between the village and the crime, but the minor's girlfriend lived in the village and her parents did not want any contact with the minor). *Compare* ***In re Dustyn W***., (81 N.E.3d 88) (4th Dist. 2017) (geographic restriction of limiting access to the University of Illinois property was reasonable, because it contained exemptions for legitimate access and did not categorically ban the minor from the university's property.

(s) refrain from having any contact, directly or indirectly, with certain specified persons or particular types of persons, including but not limited to members of street gangs and drug users or dealers; *See* ***In re Omar F.,*** 2017 IL App. (1st) 171073, 89 N.E.3d 1023 (in packet), held blanket restriction on contact with gang members failed to differentiate between lawful and unlawful contact with gang members, and unreasonably burdened minor's constitutionally protected liberty interests. Court's handwritten order read "no gangs, guns, or drugs," and "clear social media of gangs[,] drugs." Conditions in ***Jawan S***. were revised following the decision in Omar F., to prohibit illegal gang activity, as opposed to contact. *See* ***In re Dustyn W***., (noting that geographic restriction (limiting access to the University of Illinois property) was reasonable, because it contained exemptions for legitimate access and did not categorically ban). Add s-5 "undergo a medical or other procedure to have a tattoo symbolizing allegiance to a street gang removed from his or her body"

(t) Refrain from having in his or her body the presence of any illicit drug prohibited by the Cannabis Control Act, the Illinois Controlled Substances Act, or the Methamphetamine Control and Community Protection Act, unless prescribed by a physician, and shall submit samples of his or her blood or urine or both for tests to determine the presence of any illicit drug; with social media restrictions. *See also* ***In re J'Lavon T***., 2018 IL App. (1st) 180228 – conditions that minor have no gang contact and not post anything related to a gang on social media were overbroad and unreasonable. *See also* ***In re K.M.,*** 2018 IL App. (1st) 172349. Probation condition that he have no contact with gangs was overbroad and unconstitutional, but requirement of removal of references to gangs, guns, or drugs on social media is content based and does not violate first amendment right to freedom of expression. *See also* ***In re R.H.,*** 2017 IL App. (1st) 171332, order requiring removal of references to gangs, guns, or drugs on social media was content-based restriction on speech that passed strict scrutiny; order affirmed. See ***In re J.R.,*** 2019 IL App. (1st) 190661. Court explained that he "could not participate in

any activities that furthered or promoted a function of a street gang and must delete from social media any images or messages that promoted street gang activities, including the display of any street gang signs or insignias, and remove any tags from his social media account." (appellate court's description). Same conditions as court reviewed in ***In re J.P.,*** 2019 IL App (1st) 181087.

(u) Comply with other conditions as may be ordered by the court. from having in his or her body the presence of any illicit drug prohibited by the Cannabis Control Act or the Illinois Controlled Substances Act, unless prescribed by a physician, and shall submit samples of his or her blood or urine or both for tests to determine the presence of any illicit drug; with other conditions as may be ordered by the court. Some examples include:

- *See, e.g.*, ***In re M.L.K.***, 136 Ill. App. 3d 376 (4th Dist. 1985) (upholding a condition of probation requiring the minor to make reasonable efforts to maintain a "C" average in school);
- (minors adjudicated delinquent on alcohol, cannabis or controlled substance violations can be required to refrain from obtaining a driver's license or refrain from driving for the period of probation, except in the course of the minor's lawful employment;
- impose a mandatory $50 fee for each month of active probation or conditional discharge, unless the court assesses a lesser amount upon a finding that the minor is unable to pay the statutory fee. The court may not impose a fee on a minor who is in placement. A minor's parent, guardian or legal custodian may be ordered to pay some or all of the fee on the minor's behalf;

NOTE: ***In re Clifton R.***, 368 Ill. App. 3d 438 (1st Dist. 2006), the Court held that Section **730 ILCS 5/5-4-3**, which provides for requiring juveniles to submit saliva specimens for genetic analysis for perpetual storing of DNA profiles, is constitutional, and therefore trial court did not err in ordering juvenile to submit saliva specimens because "respondent's status as a minor does not provide him with a greater constitutional right to privacy than offenders who have already attained the age of majority."

C) CERTIFICATE OF PROBATION

A minor on probation or conditional discharge should be given a certificate setting forth the conditions upon which he or she will be released. **705 ILCS 405/5-715(4)**.

Failure to provide a certificate, however, was harmless error where minor was present when conditions were imposed, they were made part of the record and the conditions were explained to the minor. ***In re R.E.M.***, 161 Ill. App. 3d 369 (4th Dist. 1987).

D) VIOLATION OF PROBATION

See Section 13.01, *infra.*

12.25 PLACEMENT WITH LEGAL CUSTODIAN OR GUARDIAN

705 ILCS 405/5-740

If the court finds that the parents, guardians or legal custodians of the minor are unfit, unable, or unwilling to care for, protect, train or discipline the minor, and that appropriate services aimed at family preservation or reunification have been unsuccessful, and if it further finds that it is in the minor's best interest, the court may place him or her with a suitable relative or person, or under the guardianship of a probation officer, an agency other than one under the authority of DCFS or DJJ, a licensed school, or other appropriate institution.

NOTE: a school district was not required to pay for educational component of a delinquent's special education out-of-state placement because (1) the student's placement was made under Juvenile Court Act, rather than under School Code, (2) the placement was not ordered for an educational purpose, and (3) the district was neither afforded opportunity to be involved in the educational component of the placement decision nor given an opportunity to assess whether it could itself provide sufficient educational services. ***In re D.D.***, 212 Ill. 2d 410 (2004).

Whenever possible and appropriate, the court shall select a person holding the same religious beliefs and shall consider the views of the minor.

A person or agency appointed legal custodian or guardian under this section continues in this role until the minor reaches age 21 unless the role is terminated earlier by court order.

12.30 ALCOHOLISM AND SUBSTANCE ABUSE EVALUATION AND TREATMENT

The Act permits the juvenile court judge to order a substance abuse assessment conducted by a licensed provider and to require a minor to participate in treatment. The court may require such treatment as a condition of probation. New Article V, however, no longer authorizes the court to order the minor admitted by the Illinois Department of Alcoholism and Substance Abuse for drug and/or alcohol treatment.

12.35 PLACEMENT WITH DCFS

705 ILCS 405/5-710

The juvenile court judge may order the minor placed in the guardianship of the Department of Children and Family Services, but only if the delinquent minor is:

(i) under the age of 16 and committed to the Department of Children and Family Services under Section 5-710 of this Act.

(ii) under the age of 18 if there is an independent basis for abuse, neglect, or dependency. An independent basis exists when the allegations or adjudication of abuse, neglect, or dependency do not arise from the same facts, incident, or circumstances which give rise to a charge or adjudication of delinquency.

(iii) for whom the court has granted a supplemental petition to reinstate wardship pursuant to subsection (2) of Section 2-33 of the Act.

NOTE: Where a minor had originally been placed in the custody of DCFS and was later adjudicated delinquent but was over the maximum age allowable by statute for transfer of custody to DCFS, the trial court lacked authority to again place him in the custody of DCFS. ***In re U.O.***, 337 Ill. App. 3d 964 (1st Dist. 2007).

12.40 EMANCIPATION

705 ILCS 405/5-710(1)(a)(vi)

A minor may be partially or completely emancipated in accordance with the provisions of the Emancipation of Mature Minors Act, **750 ILCS 30/10**.

12.45 RESTITUTION

705 ILCS 405/5-710(4)

A) RESTITUTION AUTHORITY

In addition to any other sentence, the court may order a minor to make restitution, in monetary or non-monetary form, under conditions of section 5-5-6 of the Unified Code of Corrections (**730 ILCS 5/5-5-6**). A trial court's order calling for damages is proper where there is sufficient evidence that the juvenile was responsible for the damage to the property. ***In re Shatavia S.***, 403 Ill. App. 3d 414 (5th Dist. 2010) (requiring juvenile to pay $659.38 in restitution for damage to vehicle was proper since minor's testimony that she did not throw rocks at car conflicted with her earlier admission that she threw a rock at vehicle, and where State presented affidavit of victim and car repair estimates).

The restitution order should be entered as part of the sentencing order. *See* ***In re M.Z.***, 296 Ill. App. 3d 669 (4th Dist. 1998). The court may order a parent, guardian, or legal custodian to pay some or all the restitution under the provisions of the Parental Responsibility Law (**740 ILCS 115/1 *et seq.***).

B) AMOUNT OF RESTITUTION

When imposing restitution on a delinquent, the scope of permissible restitution is defined by **730 ILCS 5/5-5-6(a)**. Thus, only "out of pocket" expenses, damages, losses, or injuries sustained by victims of crime may be imposed as part of a restitution order. *See* ***In re T.W.***, 268 Ill. App. 3d 744 (2d Dist. 1994) (holding that the expense associated with installing security lights after a delinquent broke into victims' home was not an "out of pocket" expense and therefore could not be imposed as part of a restitution order). *Compare* ***In re J.R.***, 82 Ill. App. 3d 714 (5th Dist. 1980) (restitution as a condition of probation appropriate to cover damage to car and garage where minor drove car without permission and caused damage).

Where relevant the court should use the fair market value of the property at the time of loss in calculating the amount of restitution to be paid**.** *See* ***In re F.D.***, 89 Ill. App. 3d 223 (2d Dist. 1980) (error to have used depreciated replacement cost in setting amount of restitution).

The court need not reduce the amount of restitution by the amount received by the victim from insurance for the loss. ***In re F.D.***, *supra*. Nor is it required to apportion responsibility for payment of restitution among co-respondents. ***In re P.E.K.***, 200 Ill. App. 3d 249 (4th Dist. 1990).

Section 5-5-6(a), **730 ILCS 5/5-5-6(a)**, defines for delinquency purposes whether a person is a "victim" eligible to receive restitution. *See* ***In re D.R.***, 219 Ill. App. 3d 13 (2d Dist. 1991) (mother of an assault victim was not eligible to receive restitution for lost wages when she had to take her son to the hospital). *But see* ***In re V.L.F.***, 174 Ill. App. 3d 930 (4th Dist. 1988) (owner of car damaged by juvenile while fleeing police was an eligible recipient of restitution). *See also* ***In re M.Z.,*** 296 Ill. App. 3d 669 (1998). Order that exceeded amount of criminal damage to property was proper, can include all damage proximately caused by actions (damage to car that M.Z. drove) Also, underlying charge of misdemeanor for criminal damage to property under $300 doesn't limit restitution total.

C) ENFORCEMENT OF RESTITUTION ORDER AND OTHER LEGAL ACTIONS

See also ***In re Jaime P.,*** 223 Ill. 2d 526 (2006). Payment of restitution can't extend beyond 7 years from the date of the order under 5/5-5-6(f), but any remaining due after 7 years can be enforced by civil proceeding.

See also ***In re J.M.A.,*** 2019 IL App. (3d) 190346. As part of a plea agreement, juvenile may be required to pay restitution to victims of offenses where the charges were dropped, and defendant understood that. Court notes that Fourth and Third Districts have both said reservation of restitution is not available under 5-5-6, but here reserving monetary restitution so that respondent could return the stolen iPad was a judgment to his benefit. Even if error, it's not plain error, as benefit was to respondent.

(1) Detention

Prior to punishing a minor for failure to make restitution, a court must make a finding that the minor was able to pay and willfully refused to do so.

See ***In re C.A.H.***, 218 Ill. App. 3d 577 (2d Dist. 1991) (error for trial court to order minor to make restitution and serve 14 days detention with 7 of the 14 days to be served only if minor did not have employment).

(2) Enforcement in Civil Proceedings

Section 5-5-6(k) of the Uniform Code of Corrections (**730 ILCS 5/5-5-6(k)**), makes a restitution order a judgment lien in the victim's favor which attaches to the offender's property, which may be perfected under the Uniform Commercial Code, which may be enforced to satisfy any payment that is delinquent under the restitution order by the victim or his assignee and expires like a civil judgment lien. Section 5-5-6(*l*) provides that the restitution order does not bar a civil action for damages that the court did not require the offender to pay the victim in the restitution order but arise from injury or property damages that is the basis of the court's restitution order, and for other damages suffered by the victim.

The Juvenile Court Act provides that the State's Attorney is authorized to act on behalf of any victim seeking restitution under this provision up to the maximum recovery allowed under Section 5 of the Parental Responsibility Law.

12.50 SUSPENSION OF DRIVER'S LICENSE

705 ILCS 405/5-710(1)(a)(vii)

New Article V gives juvenile court judges a new sentencing alternative. Upon a finding of guilt, a minor may have his or her driving privileges revoked for a time to be determined by the judge up until the minor's 18th birthday.

12.55 COMMUNITY SERVICE

705 ILCS 405/5-710(8)(10)

A) CRIMINAL DAMAGE TO PROPERTY

If the minor is found guilty of a crime that includes violation of criminal defacement of property (**720 ILCS 5/21-1.3**), the minor must be ordered to perform community service for not less than 30 nor more than 120 hours of community service is available in the jurisdiction. Part of the court's community service order must include cleanup and repair of damage caused by the minor or similar violators. **705 ILCS 405/5-710(8)**.

B) GANG RELATED OFFENSE

Statute 5-710(10) When a court finds a minor to be guilty the court shall, before entering a sentencing order under this Section, make a finding whether the offense committed either: (a) was related to or in furtherance of the criminal activities of an organized gang or was motivated by the minor's membership in or allegiance to an organized gang, or (b) involved a violation of subsection (a) of Section 12-7.1 of the Criminal Code of 1961 or the Criminal Code of 2012, a violation of any Section of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012, or a violation of any statute that involved the wrongful use of a firearm. If the court determines the question in the affirmative, and the court does not commit the minor to the Department of Juvenile Justice, the court shall order the minor to perform community service for not less than 30 hours nor more than 120 hours, provided that community service is available in the jurisdiction and is funded and approved by the county board of the county where the offense was committed. The community service shall include, but need not be limited to, the cleanup and repair of any damage caused by a violation of Section 21-1.3 of the Criminal Code of 1961 or the Criminal Code of 2012 and similar damage to property located in the municipality or county in which the violation occurred. When possible and reasonable, the community service shall be performed in the minor's neighborhood. This order shall be in addition to any other order authorized by this Section except for an order to place the minor in the custody of the Department of Juvenile Justice. For the purposes of this Section, "organized gang" has the meaning ascribed to it in Section 10 of the Illinois Street gang Terrorism Omnibus Prevention Act.

12.60 TESTING FOR SEXUALLY TRANSMITTED DISEASES

705 ILCS 405/5-710(9)

If a minor is found guilty of predatory criminal sexual assault of a child, criminal sexual assault, aggravated criminal sexual assault or criminal sexual abuse, the court must order the minor to undergo medical testing to determine whether he or she has any sexually transmissible disease, including an HIV or AIDS test. The results of any such tests are to be confidentially delivered to the judge who entered the sentencing, who has discretion to determine to whom the results will be revealed. In the case of a test for HIV infection, the court must notify the minor and the victim, or in the case of a victim under the age of 15, his or her parents, if test results are requested. Cost of tests shall be paid by the county and may be taxed against the minor.

12.65 DETENTION

705 ILCS 405/5-710(1)(a)(v)

The Act permits judges to place a juvenile who is at least 10 years old in detention for a period of up to 30 days either as the exclusive order or in conjunction with another authorized sentence. A minor under the age of 10 at the time of the sentencing hearing, however, may not have detention imposed as a sentence or condition of probation. ***In re C.D.***, 198 Ill. App. 3d 144 (4th Dist. 1990).

This Act does not prohibit the imposition of multiple periods of detention if the sum total does not exceed 30 days. ***In re M.D.***, 220 Ill. App. 3d 998 (4th Dist. 1991). If this is done, the court's order should specify the dates of each period of detention. If the court imposes a delayed period of detention to be served during or near the end of probation, the court must designate a "reasonable time frame" in which a hearing as to remission will be held. ***In re V.L.F.***, 174 Ill. App. 3d 930 (4th Dist. 1988).

The 30-day detention limit may be extended by the court for a minor under age 13 who is committed to DCFS if the court finds that the minor is a danger to himself, herself or others.

A minor is entitled to credit on the sentencing order of detention for time previously spent in detention pending trial, sentencing or on a probation violation charge. *See* ***In re Jesus R.,*** 326 Ill. App. 3d 1070 (2002). Under the Act, juveniles are entitled to sentencing credit when their dispositions involve a sentencing order of detention.

Cases:

See ***In re Shelby R.***, 2013 IL 113994. Case of first impression; Trial court not authorized to commit juvenile to department for unlawful consumption of alcohol. Because an adult as defined in the Act cannot be guilty of the offense of underage drinking, incarceration is not available. – next section

See ***In re Austin S.***, 2015 IL App. (4th) 140802. Treatment program ordered as condition of probation after delinquency finding was detention, subject to the 30-day limit under the Juvenile Court Act.

See ***In re B.P.D.***, 2014 IL App. (3d) 120781. Juvenile could not be sentenced to term in county jail for probation violation. Resentencing limited to available sentences during initial sentencing: Act authorizes 30-day term in juvenile detention, not in county jail.

In re Montrell S. 38 N.E. 3d 576 (2015), juvenile was entitled to pre-sentence credit for time spent on electronic home monitoring.

In re Christopher P., 976 N.E.2d 1095 (4th Dist. 2012) (where a court sentenced a minor to a year's probation with conditions including successful completion of County Detention Center treatment program, since he was housed inside County Detention Center, where he was under state's physical control, time that juvenile spent in the treatment program was time in "custody" for which juvenile was entitled to sentencing credit.

In re Darius L., 364 Ill. Dec. 546 (4th Dist. 2012) (time that juvenile spent in court-ordered treatment program was time in "custody" for which juvenile was entitled to sentencing credit).

In re Jabari C., 2011 IL App. (4th) 100295. N.E.2d 8 (4th Dist. 2011) (holding that, on the date that minor was arrested, even though he was not admitted to Juvenile Detention Center and was later placed on formal station adjustment, he had legal duty to submit to control of arresting officers and was thus in custody at time of his arrest and entitled to one day of sentence credit for date of his original arrest. ***Id.*** *But see* ***People v. Ward***, 2013 IL App. (4th) 120425-U, Unlike ***Christopher P.*** and ***Darius L.***, this defendant was in a substance abuse treatment center, and so the court had discretion and it was within reason not to award credit based on defendant's criminal history and failure to take advantage of the substance abuse treatment he received).

12.70 COMMITMENT TO DEPARTMENT OF JUVENILE JUSTICE

705 ILCS 405/5/710(1)(b)

NOTE: P.A. 94-696, effective June 1, 2006, changed "Department of Corrections, Juvenile Division" to "Department of Juvenile Justice" throughout **705 ILCS 405/5-710**.

A) PREREQUISITES TO COMMITMENT

(1) Age

A minor must be 13 years of age or older before he or she may be committed to the Department of Juvenile Justice. **705 ILCS 405/5-710(1)(b)**. The minor need be 13 only at the time of the sentencing order, not the offense. ***In re Griffin***, 92 Ill. 2d 48 (1982). Further, the minor must have reached 13 by the original sentencing hearing rather than at the probation revocation

hearing. ***In re Tucker***, 45 Ill. App. 3d 728 (3d Dist. 1977). **705 ILCS 405/5-710(b)** amended to add an upper age limit of 20, and to provide for credit in the sentencing order.

(2) Punishable by Incarceration for Adults

The offense must be punishable by incarceration if committed by an adult. **705 ILCS 405/5-710(1)(b)**. Statute states: "In no event shall a guilty minor be committed to the Department of Juvenile Justice or placed in detention when the act for which the minor was adjudicated delinquent would not be illegal if committed by an adult." For example, as a matter of first impression, a trial court was held unauthorized to sentence a minor to the Department of Juvenile Justice for unlawful consumption of alcohol, an offense for which an adult, as defined by the Juvenile Court Act of 1987, cannot legally be incarcerated. ***In re Shelby R.***, 2012 IL App (4th) 110191, *aff'd*, 2013 IL 114994 (Sept. 19, 2013).

See ***In re Jarquan B.***, 2017 IL 121483 (Juvenile argued on appeal that newly enacted amendment to 5-710(1)(b) precluded trial court from sentencing minor to DJJ for a misdemeanor. Appellate Court and Supreme Court affirmed).

(3) Social Investigation Report

A written social investigative report, which has been completed within the previous 60 days, must be presented and considered by the court.**705 ILCS 405/5-701**; **705(1)**. It is reversible error to commit a minor without first having received and considered a social investigation report. ***In re F.S.***, 70 Ill. App. 3d 526 (5th Dist. 1979). A minor may not waive this requirement. ***In re Starks***, 60 Ill. App. 3d 934 (4th Dist. 1978). The report must have been completed within 60 days of the commitment order. *See* ***In re M.H.***, 85 Ill. App. 3d 385 (5th Dist. 1980). *But see* ***In re B.L.S.,*** 202 Ill. 2d 510 (2002). Error to have sentenced defendant without Social Investigation Report (but sentence upheld on basis that once BLS was adjudicated HJO, Act mandated commitment to DOC); held harmless error.

A psychological report prepared in connection with a prior delinquency proceeding does not satisfy the "written social investigation" requirement. ***In re D.B.***, 303 Ill. App. 3d 412 (1st Dist. 1999).

The social investigation report must be delivered to the parties at least three days before the sentencing hearing. **705 ILCS 405/5-701**.

The contents of the report are prescribed by the Act. *See* **705 ILCS 405/5-701**. *See also* ***In re Seibert***, 29 Ill. App. 3d 129 (5th Dist. 1975) (criticizing report). *But see* ***In re R.D.***, 84 Ill. App. 3d 203, 405 N.E.2d 460 (3d Dist.

1980) (not reversible error for court to rely on an incomplete report); ***In re K.A.S.***, 90 Ill. App. 3d 211 (3d Dist. 1980) (although report did not discuss sentencing alternatives, alternatives were discussed at the hearing); *See also* ***In re Jermaine J.,*** 336 Ill. App. 3d 900 (2003). New Social Investigation Report not required prior to consideration of motion to withdraw plea and reconsider sentence; only before commitment hearing (motion to reconsider is not a new commitment hearing).

(4) Unfitness or Unwillingness of Parents

(a) Statutory findings

705 ILCS 405/5-750(1)

Prior to committing a minor to the Department of Juvenile Justice, a court must find:

(i) that the minor's parents, guardian or legal custodian are "unfit or are unable, for some reason other than financial circumstances alone, to care for, protect, train or discipline the minor, or are unwilling to do so, and that the best interests of the minor and the public will not be served by placement under Section 5-740"; *or*

(ii) incarceration is necessary to protect the public from the consequences of criminal activity of the delinquent.

(b) Cases Addressing Sufficiency of Findings

See ***In re Henry P.,*** 2014 IL App. (1st) 130241. Court failed to make finding on less restrictive alternatives.

In re J.M.A., 2019 IL App. (3d) 190346. Implicit finding that commitment was least restrictive available alternative. (*See also* ***In re H.L.,*** 2016 IL App. (2d) 140486-B, court was required to make express finding that commitment was least restrictive available alternative).

In re Justin F., 2016 IL App. (1st) 153257. No evidence in record on availability of services in DOJJ.

In re Raheem M., 2013 IL App. (4th) 130585. Court failed to hear evidence on alternative means of confinement / less restrictive means of confinement.

In re Nathan A.C., 385 Ill. App. 3d 1063 (2008). Commitment to DJJ upheld, evidence sufficient it was in his best interests, but

remanded so that trial court could amend the commitment order to reflect that best interests would not be service by placement under 5-740. Minor had previously been given community-based sentence but failed to take advantage of opportunities, court concluded he wouldn't participate in services w/o confined setting.

See ***In re Hayes****,* 321 Ill. App. 3d 178 (2001). Mere predisposition to sexual violence is insufficient to justify civil commitment; jury must consider all factors that increase or decrease the risk of reoffending. Trial court may impose reasonable conditions requiring specific treatment; "substantially probable" standard for assessing risk of future sexual violence allowed as part of the definition of a sexually violent person.

(c) Cases Addressing Sufficiency of Evidence of Need for Commitment:

In re M.D.B., 121 Ill. App. 3d 77 (2d Dist. 1984) (evidence supported commitment even where minor had not previously appeared in court);

In re Roman, 64 Ill. App. 3d 59 (1st Dist. 1978) (seriousness of delinquency behavior outweighed evidence of good relationship with family and others);

In re Wealer, 42 Ill. App. 3d 479 (3d Dist. 1976) (insufficient evidence to demonstrate lack of parental control);

In re Seibert, 29 Ill. App. 3d 129 (5th Dist. 1975) (evidence that minor admitted criminal activity and was suspended from school for smoking was sufficient to demonstrate minor was beyond parental control).

B) THE COMMITMENT DECISION

(1) Consideration of Alternatives to Commitment

The trial court must consider possible alternatives to commitment. ***In re B.S.***, 192 Ill. App. 3d 886 (1st Dist. 1989). *See* ***In re Raheem M.***, 1 N.E.3d 86 (2013)—remand for resentencing required where trial court failed to conduct hearing to determine whether there was an attempt to find a less restrictive means of confining juvenile than sending him to DJJ for an indeterminate sentence.

(2) Less Restrictive Alternatives *See also* ***In re J.M.A.,*** 2019 IL App. (3d) 190346. Where alternatives were considered and rejected, court implicitly found commitment to IDOJJ was least restrictive alternative available.

The commitment to DJJ is only to be used when less severe alternatives would not be in the best interests of the minor and the public. This is because the purpose of the Juvenile Court Act is to protect and rehabilitate rather than to punish. ***In re W.C.***, 261 Ill. App. 3d 508 (1st Dist. 1994); ***In re B.S.***, 192 Ill. App. 3d 886 (1st Dist. 1989).

See ***In re Justin*** F., 55 N.E. 3d 705 (1st Dist. 2016), appellate court held that the Act (5-750) requires court to hear and consider evidence concerning services available to minors committed to DJJ and the minor's particular needs, before committing to DJJ (at 706).

NOTE: 705 ILCS 405/5-750 has been amended by **P.A. 097-0362**, eff. January 1, 2012, to add section (1) (b) and 1.5:

(1) (b) commitment to the Department of Juvenile Justice is [to be] the least restrictive alternative based on evidence that efforts were made to locate less restrictive alternatives to secure confinement and the reasons why efforts were unsuccessful in locating a less restrictive alternative to secure confinement. Before the court commits a minor to the Department of Juvenile Justice, it shall make a finding that secure confinement is necessary and that there are no less restrictive alternatives. *See* ***In re H.L***., 54 N.E. 3d 264 (2016). *See* ***In re Ronald*** J., 74 N.E. 3d 1178 (4th Dist. 2017) (vacating and remanding for failure to examine evidence of minor's educational background under factor D). Trial court's findings that parents were unable to care for, protect, train, or discipline juvenile and that best interest of juvenile and public would be best served by a custodial placement was insufficient to satisfy statutory requirement. The court's determination that no less restrictive alternatives exist must be made following a review of the following individualized factors: *See* ***In re J.M.A.,*** 2019 IL App. (3d) 190346. Commitment to IDOJJ was based on implicit finding that it was least restrictive available alternative, where court contemplated other less restrictive options but ruled them out based on previous failures (such as probation twice, home detention with ankle bracelet monitoring twice); considered detention home but dismissed because it wouldn't be sufficient time. While the trial court never explicitly stated that they find IDOJJ to be the least restrictive alternative, the court provided detailed explanations for why the less restrictive alternatives were inappropriate. "Not only is this course acceptable under the Act, but we submit that it is actually *preferable* to a bare recitation of the 'magic words' without any further explanation."

(A) Age of the minor.

(B) Criminal background of the minor.

(C) Review of results of any assessments of the minor, including child centered assessments such as the CANS.

(D) Educational background of the minor, indicating whether the minor has ever been assessed for a learning disability, and if so, what services were provided as well as any disciplinary incidents at school.

(E) Physical, mental and emotional health of the minor, indicating whether the minor has ever been diagnosed with a health issue and, if so, what services were provided and whether the minor was compliant with services.

(F) Community based services that have been provided to the minor, and whether the minor was compliant with the services, and the reason the services were unsuccessful.

(G) Services within the Department of Juvenile Justice that will meet the individualized needs of the minor.

(3) Role of Recommendations

The ultimate decision regarding commitment rests with the trial judge, and he or she is not required to accept a recommendation that a minor not be committed to DJJ. *See, e.g.,* ***In re W.C.***, *supra* (despite recommendations for probation, court did not abuse discretion in committing minor to DJJ considering violent nature of the murder; ***In re A.D.***, 228 Ill. App. 3d 272 (3d Dist. 1992) (commitment order upheld despite unanimous recommendations for probation and this was the minor's first involvement with the court).

(4) Prior Judicial Warnings

The fact that a judge has previously warned the minor that he or she is facing commitment if there is further misconduct does not disqualify the judge from entering a commitment order. *See* ***In re T.A.C.***, 138 Ill. App. 3d 794 (4th Dist. 1985); ***In re B.R.J.***, 133 Ill. App. 3d 542 (4th Dist. 1985).

(5) Correctness of the Commitment Decision

The following cases represent a sample of opinions in which Illinois reviewing courts have affirmed a trial court's decision to commit a minor to the Department of Juvenile Justice:
In re V.O., 287 Ill. App. 3d 1055 (3d Dist. 1997);

In re W.C., 261 Ill. App. 3d 508 (1st Dist. 1994); (commitment decision rests in the court's sound exercise of discretion);

In re A.D., 228 Ill. App. 3d 272 (3d Dist. 1992); (no abuse of discretion to commit 14-year-old with no prior history of delinquency, where evidence showed respondent posed clear danger to society as a result of his violent behavior);

In re G.S., 194 Ill. App. 3d 740 (1st Dist. 1990) (where minor continued shooting after victim fell to the ground and where a psychologist stated minor would likely commit additional violent crimes, commitment to DJJ was not an abuse of discretion);

In re V.B., 178 Ill. App. 3d 842 (3d Dist. 1989) (inadequate parental or guardian supervision and the policy of public protection are appropriate considerations where determining commitment to DJJ);

In re M.S.S., 154 Ill. App. 3d 677 (2d Dist. 1987) (a minor found to be delinquent may be committed to DJJ despite a second finding that he was an addicted minor);

The following cases represent opinions in which Illinois reviewing courts have reversed a trial court's decision to commit a minor to the Department of Juvenile Justice:

In re S.M., 229 Ill. App. 3d 764 (2d Dist. 1992) (judge's statement that he had no other alternative inadequate basis for commitment);

In re B.S., 192 Ill. App. 3d 886 (1st Dist. 1989) (it was error to commit minor to DJJ where minor had been enrolled in a counseling program and had shown progress, where mother was willing to also seek counseling, and where defense counsel had failed to present sufficient available alternatives to the trial judge).

(6) Mandatory Commitment to DJJ

If the trial court finds that a minor 13 years or older is guilty of first-degree murder, the juvenile court must commit the minor to the Department of Juvenile Justice, until the minor's 21st birthday,

without the possibility of parole or non-emergency furlough for a period of 5 years from the date of the commitment, except that the time the minor spent in detention may be credited towards the 5 year period. *See* **P.A. 99-268, Sec. 5, amending 705 ILCS 405/5-750(2)**.

C) LENGTH OF COMMITMENT

705 ILCS 405/5-750(3)

Except in cases of mandatory commitment, the commitment of a minor to the Department of Juvenile Justice is for an indeterminate term that terminates when the minor turns 21 unless the minor has been discharged from parole before that time or unless custodianship has otherwise been terminated under the Act. ***In re Christopher K.***, 217 Ill. 2d 348 (2005) (the minor is subject only to the sanctions prescribed under the Juvenile Court Act, of which the most serious is the minor's commitment to the juvenile division of the Department of Corrections until the minor's twenty-first birthday).

A minor may not be committed to the Department of Juvenile Justice for a period of time in excess of that period for which an adult could be committed. **705 ILCS 405/5-710(7)**. *See* ***In re Shelby R.***, 995 N.E.2d 990 (2013)—Illinois Supreme Court held Juvenile Court Act does not authorize trial court to commit minor to DJJ for unlawful consumption of alcohol. Minor was adjudicated delinquent for unlawful consumption of alcohol; sentenced to 18 months' probation, conditioned on refraining from consuming any alcohol or illicit drugs, with random drug testing. Minor tested positive for marijuana and cocaine, admitted she violated her probation, Court sentenced her to DJJ for 364 days with credit for 55 days spent in pretrial detention. Court of Appeals (4th Dist.) ruled that commitment to DJJ wasn't permitted for alcohol consumption. Illinois Supreme Court agreed; commitment to DJJ only permitted if incarceration is permitted for adults found guilty of the offense for which the minor was adjudicated delinquent, **705 ILCS 405/5-710(1)(b)**. Since adult could not be incarcerated for unlawful consumption, incarceration was not available to trial court as part of initial adjudication or later as part of the probation revocation. *See* ***In re Jesus R.,*** 326 Ill. App. 3d 1070 (2002). Commitment until age 21 (nearly 6 years) was excessive where adult who had committed similar crime would have served maximum 5 years imprisonment.

See ***In re C.L.P.,*** 332 Ill. App. 3d 640 (2002). Indeterminate term of commitment after probation violation violates Juvenile Act; 5-710(7) prohibits commitment for greater period than maximum adult sentence for the same offense.

The constitutionality of indeterminate sentencing has been upheld against due process and equal protection challenges. ***In re T.L.B.***, 184 Ill. App. 3d 213 (4th Dist. 1989) (indeterminate or determinate sentence to DJJ until juvenile is 21 years of age does not violate equal protection). A juvenile sentenced to an indeterminate

term is entitled to credit for predisposition time served. ***In re J.T.***, 221 Ill. 2d 338 (2006).

D) APPEAL BOND

A delinquent minor who has been committed to DJJ may be released on bond pending appeal. *See* ***People ex rel. Davis v. Vazquez,*** 92 Ill. 2d 132 (1982). Minors detained on a charge of delinquency have the right to bail when the State appeals an order of the juvenile court denying a motion to prosecute them as adults.

E) COMMITMENT PROCEDURES

705 ILCS 40/5-750(4)-(5)

The procedures to be followed by the court and the clerk when a minor is committed to the Department of Juvenile Justice are set forth in these sections of the Act.

F) GOOD TIME CREDIT

A juvenile is entitled to credit towards the time she is required to serve in the DJJ for the time she spent in detention). *See* ***In re J.T.***, 221 Ill. 2d 338 (2006) (juvenile sentenced to an indeterminate term was entitled to credit for predisposition time served);

See ***In re Gabriel W.,*** 2017 IL App. (1st) 172120. Credit against respondent's 30-day stayed commitment.

In re E.C., juvenile sentenced to an indeterminate term is entitled to predisposition credit. But 2nd District declined to follow, in ***In re J.J. M,*** 299 Ill. App. 3d at 330 (1998).

Third District agreed w/ the Fourth. ***In re Jermaine J.,*** 336 Ill App. 3d 900 (2003). Juvenile entitled to credit for time spent in predisposition custody against an indeterminate commitment. In ***In re B.L.,*** 325 Ill. App. 3d 96 (2001), Third District agreed, because without credit, could go against the limit on commitment compared to the maximum period for an adult committing the same act.

Fifth District followed, in ***In re K.S.***, 354 Ill. App. 3d 862, 867 (2004).

12.80 PAYMENT OF COSTS AND FEES

A) PROBATION OR CONDITIONAL DISCHARGE COSTS

705 ILCS 405/5-715(5)

The court must impose a $50 fee for each month the minor is subject to a probation or conditional discharge order unless the court finds the minor is unable to pay that amount. The court may assess some or all of the fee against the minors parents, but only if the minor is being actively supervised by the probation and court services department. Circuit clerk may not impose fees or fines without authority. *See* ***In re Dustyn W***. (81 N.E.3d 88) (4th Dist. 2017) (vacating $50 court finance fee and $5 drug court program assessments as fines imposed by circuit clerk without authority when minor was not in drug court).

B) COMMITMENT OR PLACEMENT COSTS

705 ILCS 405/5-710(5)

Any sentencing order that results in a minor being placed or committed under Section 5-740 (**705 ILCS 405/5-740**) must contain a provision ordering the minor's parents or guardian of the estate of the minor to pay to the legal custodian or guardian of the person of the minor an amount that is determined by the custodian or guardian as necessary for the minor's needs. That payment may not exceed the maximum amounts established in Section 9.1 of the Children and Family Services Act. A judge may enter an order requiring more than one county to share in the cost of detention or placement, if the minor has significant ties to more than one county.

C) ENFORCEMENT OF LIABILITY OF PARENTS AND OTHERS

705 ILCS 405/6-9

This provision provides further details on enforcement of costs, and, among other details, additionally provides that:

"Upon failure to pay, the court may enforce obedience to the order by a proceeding as for contempt of court. Further, if it appears that the person liable for the support of the minor can contribute to legal fees for representation of the minor, the court shall enter an order requiring that person to pay a reasonable sum for the representation, to the attorney providing the representation or to the clerk of the court for deposit in the appropriate account or fund. The sum may be paid as the court directs, and the payment thereof secured and enforced as provided in this Section for support.

If it appears at the detention or shelter care hearing of a minor before the court under section 5-501 that a parent or any other person liable for support of the minor is able to contribute to his or her support, that parent or other person shall be required to pay a fee for room and board at a rate not to exceed $10 per day established, with the concurrence of the chief judge of the judicial circuit, by the county board of the county in which the minor is detained unless the court determines that it is in the best interest and welfare of the minor to waive the fee.

Upon application, the court shall waive liability for support or legal fees under this Section if the parent or other person establishes that he or she is indigent and unable to pay the incurred liability, and the court may reduce or waive liability if the parent or other person establishes circumstances showing that full payment of support or legal fees would result in financial hardship to the person or his or her family.

When a person so ordered to pay for the care and support of a minor is employed for wages, salary or commission, the court may order him to make the support payments for which he is liable under this Act out of his wages, salary or commission and to assign so much thereof as will pay the support. The court may also order him to make discovery to the court as to his place of employment and the amounts earned by him. Upon his failure to obey the orders of court he may be punished as for contempt of court.

12.90 PROTECTIVE SUPERVISION AND ORDER OF PROTECTION

705 ILCS 405/5-725; 5/730

A) IN GENERAL

As part of any sentence ordered under Section 5-710 other than commitment to the Department of Corrections, the court may provide for protective supervision and/or an order of protection.

B) PROTECTIVE SUPERVISION

705 ILCS 405/5-725

This section applies if, as a part of the court's sentencing order, a minor is released to the custody of his or her parents, guardian, or legal custodian. In such a situation, the court may place the person who has custody of the minor under the supervision of the probation department. If a court exercises this option, the court's order must contain the terms and conditions of protective supervision. These terms and conditions may be modified or ended if the court finds that modification or termination is in the best interests of the minor or public. This provision does not authorize the court to order protective supervision against representatives of private or public agencies or government departments.

C) ORDERS OF PROTECTION

705 ILCS 405/5-730

(1) Conditions

The sentencing court may make an order of protection a condition of any other order authorized by the Act and may set forth reasonable conditions of behavior that must be observed for a period of time specified in the order. Reasonable conditions include orders that require any person:

(a) To stay away from the home of the minor;

(b) To permit a parent to visit the minor at stated periods;

(c) To abstain from offensive conduct against the minor, his or her parent or any person to whom custody of the minor is awarded;

(d) To give proper attention to the care of the home;

(e) To cooperate in good faith with an agency to which custody of a minor is entrusted by the court or with an agency or association to which the minor is referred by the court;

(f) To prohibit and prevent contact with the respondent minor by a specified individual or individuals who are alleged in either a criminal or juvenile proceeding to have caused injury to a respondent minor or a sibling of a respondent minor;

(g) To refrain from acts or commission or omission that tend to make the home an improper place for the minor.

(2) Mandatory Order of Protection

The Act contains a provision requiring entry of an order of protection barring contact between a minor respondent or sibling and any person convicted of certain sexual and violent crimes against children. **705 ILCS 405/5-730(2)**.

(3) Timing of Request for Order of Protection

An order of protection may be sought at any time during the course of any proceeding under the Juvenile Court Act. **705 ILCS 405/5-730(5)**.

(4) Notice and Service of Petition for Order of Protection

A petitioner must make diligent efforts to serve the petition for order of protection on any person against whom an order of protection is sought. The written notice should include the contents of the petition and the date, place and time at which the hearing on the petition is to be held. Notice of a hearing on the petition should be made by personal service at least 3 days before the hearing or by written notice by first class mail to the person's last known address at least 5 days before the hearing.

If the order of protection is sought at a detention hearing and the court finds that the person against whom the order is being sought has been notified of the hearing or that diligent efforts have been made to notify the person, the court may conduct the hearing even if the person is not present. At any other hearing, however, the court may not hold a hearing on a petition for order of protection unless the court finds that the person who is the subject of the order has received timely notice in person or by first class mail. **705 ILCS 405/5-730(6)**.

(5) Hearing on Petition for Order of Protection

(a) Rights of Persons Against Whom an Order is Sought

(i) Parties

If a person against whom an order of protection is sought is a party to the proceeding (*e.g.*, a parent), that person is entitled to all the protections of a party set out in **705 ILCS 405/1-5**.

(ii) Non-Parties

A person who is not a party to the delinquency proceeding has a right to be informed in writing prior to the hearing of the contents and time of the petition, the right to be present at the hearing, the right to retain counsel, and the right to cross-examine and the right to call witnesses. **705 ILCS 405/5-730(5)**. The fact that the person is the subject of a protection order does not render him or her a party to the case. He or she is not entitled to appointed counselor to be present at any hearing other than the hearing in which the order of protection is being sought or a hearing directly pertaining to that order. Unless the court orders otherwise, the person does not have a right to inspect the court file. **705 ILCS 405/5-730(7)**.

(6) Standard

The Act does not specify a legal standard for the court to use in determining whether to enter an order of protection. Presumably the court has discretion to enter an order if it finds that the order is in the minor's or public's best interest.

(7) Service of the Order

Unless the person against whom the order was obtained was present when the order was issued, the sheriff or other appropriate person must promptly serve the order on the person and file proof of service in the manner provided for in civil proceedings. **705 ILCS 405/5-730(8)**.

When the court issues an order of protection, it must also direct a copy to the county sheriff who in turn is required to furnish a copy to the Department of State Police within 24 hours. **705 ILCS 405/5-730(3)**.

(8) Modification of Order

The person against whom the protective order was entered may seek a modification of the order by filing a written motion within 7 days after actual receipt of a copy of the order. **705 ILCS 405/5-730(8)**.

In addition, after notice and opportunity for hearing, the order may be modified or extended for a further specified period or may be terminated if the court finds that the best interests of the minor and public will be served by the modification, extension, or termination. **705 ILCS 405/5-730(4)**.

(9) Enforcement of Order

Orders of protective supervision and protection may be enforced by citation to show cause for contempt. Where the minor's welfare is at stake, the court may also issue a warrant to take the alleged violator into custody to be brought before the court. In addition, a person who is subject to the order's protections is entitled to a certificate authenticating the existence of the order and conditions. Such a certificate, if presented to a law enforcement officer, authorizes him or her to take a person alleged to have violated the order into custody and bring him or her before the court. **705 ILCS 405/5-735**.

CHAPTER 13. POST-SENTENCING ISSUES

13.01 PROBATION REVOCATION

705 ILCS 405/5-720

A) PETITION

Where a minor who has been placed on probation or conditional discharge is alleged to have violated a condition of probation, the State may initiate proceedings to revoke probation by filing a formal petition. Only the State may file a petition to revoke. ***In re J.K.***, 229 Ill. App. 3d 569 (2d Dist. 1992) (court may not order State to file without violating principles of separation of powers and impartiality).

A petition to revoke must be filed before the end of the term of a minor's probation. ***In re D.P.***, 165 Ill. App. 3d 346 (4th Dist. 1988); ***In re Turner***, 64 Ill. App. 3d 106 (1st Dist. 1978). If a petition is filed in a timely fashion, the hearing may be held after the expiration of the probation order. *See* ***In re C.T.A.,*** 275 Ill. App. 3d 427 (1995). Trial court did not have authority to extend continuance under supervision beyond 24 months; subsequent petition to revoke probation was untimely.

B) NOTICE

Persons named in the original delinquency petition are entitled to notice of the revocation proceeding. The methods for giving notice are contained in **705 ILCS 405/5-530** and include personal service on a party or a party's attorney, abode service, service by mail or service by facsimile. Failure to use due diligence in notifying a party entitled to notice deprives a court of jurisdiction over the petition and any order entered in violation of this requirement is void**.**

Thus, in ***In re Marcus W.***, 330 Ill. Dec. 136 (4th Dist. 2009), the state's failure to provide notice, to a juvenile's parents or to his former guardian of proceedings to revoke the juvenile's probation, to which lack of notice the juvenile did not object at the time of the proceedings, nevertheless affected the fundamental fairness of the revocation proceeding, violated the juvenile's due process rights, and constituted plain error. ***Id.*** The State possessed addresses for the juvenile's mother and the former guardian, both of whom were parties to the proceedings, but made no attempt to provide either of them with proper notice and, they did not attend the hearing. ***Id.*** Moreover, the presence of an adult willing to supervise the juvenile might have changed the outcome of the juvenile's sentencing hearing, since the lack of such supervision was one factor relied on by the trial court in sentencing the juvenile to the Department of Juvenile Justice. ***Id.***

See also ***In re Keyonne D.***, 376 Ill. App. 3d 1023 (1st Dist. 2007) (order entered by trial court finding that respondent violated terms of her probation and committing

her to the Department of Juvenile Justice was void because although State knew address of respondent's non-custodial father, who was served with process and appeared at proceedings on *original* delinquency petition, State failed to provide him with any notice of *supplemental* petitions, and thus the court was *deprived* of subject matter jurisdiction). *Cf.* ***In re J.E.***, 228 Ill. App. 3d 315 (2d Dist. 1992) (probation order void, voiding subsequent revocation order).

However, even where neither parent was served with a summons or copy of petition to revoke probation and commit minor to DJJ, the trial court still had subject matter jurisdiction over the petition, because failure to serve parents was *waived by father appearing in court and participating in proceedings and by failure of respondent to object* (parents were married and living together during proceedings). ***In re Nathan A.C.***, 385 Ill. App. 3d 1063 (4th Dist. 2008).

C) DETENTION

Upon the filing of a petition to revoke, a court may order the detention of a minor 10 years old or older pending a hearing if the court finds that detention is a matter of immediate and urgent necessity or that the minor is likely to flee the jurisdiction. Under this provision a minor is to be detained in a "juvenile detention home."

In deciding on whether to detain a minor on a revocation petition the court may "consider a proffer of reliable information offered by the State, probation officer or minor."

D) TIME FOR HEARING

(1) Minor not in detention

The Act does not contain a time frame within which a revocation hearing must be held. There is no constitutional right to a speedy hearing. ***People v. Dowery***, 62 Ill. 2d 200 (1975).

(2) Minor in detention

In the case of a minor in detention, the revocation hearing must be held within 15 days of placement in detention. Failure to hold a hearing within this time requires release of the minor but not dismissal of the petition. ***In re L.W.***, 171 Ill. App. 3d 1056 (2d Dist. 1988).

E) HEARING

(1) Due process

A minor is entitled to counsel, confrontation and cross-examination in a revocation hearing. Minors are not, however, entitled to substitution of judges or application of the exclusionary rule. ***People v. Dowery***, *supra*.

(2) Burden and Standard of Proof

The State must prove the allegations of a petition to revoke by a preponderance of the evidence.

(3) Evidence *See also* ***In re A.Y.***, 314 Ill. App. 3d 1023 (2000). Fitness statute, including hearing, applies to probation revocation hearings, but juvenile was not unfit solely by virtue of his taking antidepressant medication.

The rules of evidence apply in revocation hearings and hearsay is not admissible. ***In re N.W.***, 293 Ill. App. 3d 794 (1st Dist. 1997) (error to admit residential facility report under business records exception). *See also* ***People v. Smith***, 141 Ill. 2d 40 (1990) (prison incident reports not admissible as an exception to hearsay rule). *But see* ***In re V.T. III***, 306 Ill. App. 3d 817 (2d Dist. 1999) (incident report prepared by rehabilitation facility staff was admissible as a business record). A minor may not relitigate the propriety of the original probation order in a revocation hearing. ***In re J.E.***, 228 Ill. App. 3d 315 (2d Dist. 1992); ***In re V.B.***, 178 Ill. App. 3d 842 (3d Dist. 1989).

A minor should be given wide latitude on cross-examination, including the right to question a State witness on matters where there is a reasonable basis for believing the witness may be motivated by bias or self-interest. *See* ***In the Interest of T.S.***, 287 Ill. App. 3d 949 (1st Dist. 1997) (error not to allow cross-examination of witness with serious charges that could be reinstated).

F) RESENTENCING

If a judge finds that a minor has violated his or her probation or conditional discharge, the judge may

1. continue the probation or conditional discharge;

2. enlarge or modify the original order;

3. revoke the minor's probation/conditional discharge and enter any order that was available at the time of the original dispositional order.

A judge has broad discretion in imposing a new order upon a finding of violation. ***In re F.N.***, 253 Ill. App. 3d 483 (2d Dist. 1993) (commitment to DJJ not an abuse of discretion). If, however, a judge could not have imposed a disposition originally, that disposition is not available at the time of redisposition. *See* ***In re Shelby R.,*** 2012 IL App. (4th) 110191. Committed after probation revocation, for unlawful consumption of alcohol, which cannot be committed by an adult. Upon revocation, trial court limited to resentencing for any sentence available at the time of the initial sentence. Affirmed on appeal, 2013 IL 114994.

See also ***In re Jarquan B.,*** 2017 IL 121483. Option to enter any sentencing order "that was available at the time of the initial sentence" means amendments to statute that change sentencing options do not apply on resentencing. Respondent sentenced to commitment to DJJ for misdemeanor offense, despite amended statute removing that option.

See also ***In re Dexter L.,*** 334 Ill. App. 3d 557 (2002). Sentencing to county jail not authorized by 5-710 as one of the sentences available at the time of the initial sentence.

A court may, in its discretion, grant credit for time served in detention prior to the filing of a revocation petition. A minor, however, may not be deprived of credit for detention for an act that forms the basis for a petition to revoke and a petition for adjudication of wardship arising out of the same set of facts. ***In re J.T.***, 221 Ill. 2d 338 (2006) (juvenile sentenced to an indeterminate term is entitled to credit for predisposition time served).

Trial court, however, does not have jurisdiction to grant a motion to *vacate* a finding of delinquency more than 11 months after guilty plea and sentence, based on motion alleging that the minor was doing well on probation. Final orders may only be vacated pursuant to CCP § 2-1401 or **SCR 604(d)**. ***People v. Stralka***, 226 Ill. 2d 445 (2007). On the State's Attorney's Motion, writ of prohibition was issued. Trial court is ordered to reinstate finding of delinquency entered after guilty pleas by minor for unlawful possession of a firearm. ***Id.***

G) NOTICE OF INTERMEDIATE SANCTIONS

705 ILCS 405/5-720(7)

In 1995, the General Assembly modified the Act to provide an administrative alternative to petitions to revoke probation or conditional discharge. In cases that do not involve new allegations of felonious acts, a probation officer, with the consent of a supervisor, may elect to impose an administrative sanction for violations.

(1) Notice

If a probation officer elects this option, the probation department sends a Notice of Intermediate Sanctions to a minor, other parties, the State's Attorney and the court. The notice must contain the nature of the violation, the date on which it occurred, and the sanction to be imposed.

(2) Minor's options

If the minor accepts the sanction, it is immediately effective. If, however, the minor rejects the proposed sanction or does not respond, the probation officer must immediately file a petition to revoke on the alleged violation.

(3) Successful completion

If a minor successfully completes the requirements set forth in a notice of intermediate sanctions, no petition to revoke may be filed on the alleged violation.

13.05 COURT REVIEW

705 ILCS 405/5-745

A) ONGOING JUVENILE COURT JURISDICTION

After entering a sentencing order, the court retains jurisdiction over the case until wardship is terminated or ends automatically. *See* **705 ILCS 405/5-710(3)**; ***In re Thompson***, 79 Ill. 2d 262 (1980). At any time after entering a sentencing order the court may require a minor's guardian or legal custodian to report periodically to the court either in writing or by personal appearance. If a judge cites a custodian or guardian into court, within 10 days of such citation that person or agency must file a verified written report or may testify orally under oath.

B) POST-DISPOSITIONAL REVIEW HEARING

In any case, a guardian or custodian appointed by the court as part of a dispositional order must file an updated case plan with the court every 6 months. Every agency must file a supplemental petition for court review within 18 months of the dispositional order and every 18 months thereafter. After giving notice by certified mail to all parties, a hearing is held to consider the content of the petition, including information as to the minor's physical, emotional, and mental health and other relevant information.

C) MODIFICATION OF SENTENCE

The court on its own motion, the minor, or any other person interested in the minor may move for a change in the court's dispositional order, including a change of custody, appointment of a new custodian or guardian, or return of the minor to the custody of his or her family. No legal custodian or guardian, however, may be removed without consent in the absence of notice and an opportunity to be heard. *See* ***In re W.C.***, 167 Ill. 2d 307 (1995) (court's sentencing order is subject to modification until statutory discharge of proceedings; ***In re J.C.***, 163 Ill. App. 3d 877 (2d Dist. 1987) (commitment of minor to DJJ did not bar juvenile from filing a notice for change of custody). *See also* ***In re Jennings***, 68 Ill. 2d 125 (1977).

13.10 DURATION OF WARDSHIP

705 ILCS 405/5-755

A) AUTOMATIC TERMINATION OF WARDSHIP

As a general matter, all proceedings under the Act, as well as the wardship, custodianship and guardianship of the minor, terminate automatically on the date of a minor's 21st birthday if the petition for adjudication of wardship was filed after the effective date of new Article V (January 1, 1999). For petitions filed prior to this date, wardship terminates automatically on the minor's 19th birthday. **705 ILCS 405/5-755 (1)**. *See* ***In re S.I.***, 234 Ill. App. 3d 707 (4th Dist. 1992).

B) DISCRETIONARY TERMINATION OF WARDSHIP

At any time prior to automatic termination of wardship, a court may order the wardship terminated and the case closed if the court finds that continued wardship is not in the minor's and public's best interest. *See* ***In re Bardwell***, 138 Ill. App. 3d 418 (5th Dist. 1985). Presumably this discretion does not extend to circumstances where the Act requires imposition of a mandatory sentence, such as a commitment to DJJ without possibility of parole until age 21 in the case of a minor found to be a Violent or Habitual Juvenile Offender. *See also* ***In re J.C.,*** 163 Ill. App. 3d 877 (1987). Commitment to (DOCC) is not a bar to pursuing relief; continuous opportunity to seek early release is available.

If a court elects to terminate wardship, it must follow the procedures for court review set forth in Section 5-745 (**705 ILCS 405/5-745**).

13.15 AFTERCARE RELEASE

P.A. 98-558 amended **705 ILCS 405/5-105** definitions to add "(1) Aftercare release" to mean the conditional and revocable release of an adjudicated delinquent juvenile committed to the Department of Juvenile Justice under the supervision of the Department of Juvenile Justice. It moved the definition of Court to 1.5. It added 3.5 "Every delinquent minor committed to the Department of Juvenile Justice under this Act shall be eligible for aftercare release without regard to the length of time the minor has been confined or whether the minor has served any minimum term imposed. Aftercare release shall be administered by the Department of Juvenile Justice, under the direction of the Director."

13.16 APPEALS

SEE APPEAL ADMONISHMENT/DELINQUENT CHECKLIST: APPENDIX

A) SUPREME COURT RULE 660

Supreme Court Rule 660 provides that appeals by minors from delinquency matters shall be governed by rules applicable to appeals in criminal cases. The appellate districts are, however, split on whether **Supreme Court Rule 660(a)** speaks only to the standard to be used in connection with other Supreme Court Rules or applies more broadly to rules governing criminal practices in general. *Compare* ***In re W.C.***, 261 Ill. App. 3d 508 (1st Dist. 1994) (general waiver principles apply to appeals from delinquency proceedings); ***In re T.L.B.***, 184 Ill. App. 3d 213 (4th Dist. 1989) *with* ***In re C.L.***, 180 Ill. App. 3d 173 (1st Dist. 1989) (waiver does not apply to appeals from delinquency proceedings under Rule 660(a)). **Supreme Court Rule 605** provides for admonishments regarding a defendant's right to appeal. See ***In re R.C.K.,*** 285 Ill. App. 3d 310 (1996). Juvenile delinquency appeals are subject to all provisions of Supreme Court Rule 604(d).

See also ***In re B.C.P.,*** 2013 IL 113908. Modifies Rule 660(a) to allow the State to appeal an interlocutory order suppressing evidence in a delinquency proceeding; appellate court has jurisdiction to hear the appeal.

But see ***In re Henry B.,*** 2015 IL App. (1st) 142416. Rule 604(b) only applies to adult criminal cases. Rule 660(a) provides that appeals from final judgments shall be governed by rules applicable to criminal cases; this doesn't incorporate Rule 604(b), which covers appeals from orders of supervision which are interlocutory in nature. *See also* ***In re Michael D.,*** 2015 IL 119178. Adult supervision orders are appealable not because they are final judgments, but because Supreme Court Rule 604(b) governs appeals when defendant is placed under supervision.

Trial court's failure to admonish minor defendant of his right to appeal sentence, in violation of rule, and defense counsel's failure to certify filing of motion to

withdraw guilty plea as condition precedent to appealing sentence, in violation of rule, required remand for compliance with both rules, rather than dismissal of appeal, so as to allow alleged minor sex offender to appeal sentence. ***In re Omar A.***, 335 Ill. App. 3d 732 (2d Dist. 2002).

B) POST-SENTENCING MOTIONS

An adjudicated delinquent minor is not required to include a claim of error in a written post-adjudication motion in order to preserve an error for review. ***In re W.C.***, 167 Ill. 2d 307 (1995).

"Fact that juvenile's notice of appeal from delinquency adjudication was filed prior to a trial court ruling on juvenile's posttrial motion to reconsider sentence did not deprive Appellate Court of jurisdiction." ***In Re Angel P.***, 14 N.E. 3d 702 (2014).

C) INDIGENT MINORS

Supreme Court Rule 661 provides for appointment of counsel and a free transcript in appeals by indigent delinquent minors. The State Appellate Defender Act now provides for the appointment of the State Appellate Defender to represent indigent persons on appeal in delinquent minor proceedings.

D) APPEAL BOND

The minor has a right to request the trial court to set bond pending appeal of an order committing the minor to a correctional facility. ***In re Pulido***, 69 Ill. 2d 393 (1978).

E) PETITIONS FOR POST-CONVICTION RELIEF

A petition for post-conviction relief is not available in a juvenile delinquency proceeding. ***In re R.R.***, 75 Ill. App. 3d 494 (2d Dist. 1979).

F) APPEALABLE ORDERS

A restitution order entered as a condition of a minor's supervision is a final and appealable order. ***In re T.W.***, 268 Ill. App. 3d 744 (2d Dist. 1994). *See also* ***In re D.R.***, 219 Ill. App. 3d 13 (2d Dist. 1991) (minor's failure to object to imposition of restitution at time of entry of order did not waive her right to appeal amount of restitution imposed).

Cases:

In re T.R., 2019 IL App. (4th) 190051 (2019). Appellate court found error in trial court's failure to conduct a hearing under ***People v. Krankel***, 102 Ill. 2d 181 (1984) to determine whether the court should appoint new counsel to represent defendant on his claims (raised by his mother in a letter to the court) of ineffective assistance of counsel. Appellate court holds that ***Krankel*** requirements apply to juvenile delinquency proceedings. There's discussion in the case about ***Krankel*** generally applying to posttrial motions, but that it applies here because "the adjudication hearing had concluded and all that remained was for the trial court to issue its ruling." See also ***In re Johnathan T.,*** 2022 IL 127222.

In re Michael D., 29 N.E.3d 1140 (2015)—order imposing supervision after finding of delinquency (under amended **705 ILCS 405/5-615(1)** is interlocutory, and not a final appealable judgment. Trial court may terminate the supervision at any time if warranted, or vacate the finding of delinquency, or both, under statute. ***Michael D.*** also contains long discussion about the changes to 5-615(1).

In re Maurice D., 2015 IL App. 4th Dist. 130323 (2015)—appeal after respondent has served conditional-discharge sentence does not moot because respondent's challenge was to prosecution and conviction, which mandates sex-offender registration.

In re J.R., 952 N.E. 2d 128 (3d Dist. 2011). Minor's mother appealed commitment of minor to Department of Juvenile Justice where he was incarcerated in a mental health facility pursuant to a dispositional order. Parent *lacked standing* to appeal the dispositional order as the order was sufficiently based on findings that did not concern her rights.

In re T.W., 402 Ill. App. 3d 981 (1st Dist. 2010) (trial court's erroneous denial of funds to hire DNA expert was appealable, however it was harmless error given overwhelming nature of State's DNA evidence).

In re Shatavia S., 403 Ill. App. 3d 414 (5th Dist. 2010) (the appellate has authority to consider appeal of conditions of minor's court supervision per **Supreme Court Rule 604(b)**).

In re Veronica C., 239 Ill.2d 134 (2010) (minor lacks standing to challenge the constitutionality of a statutory provision requiring the state's consent to a court order of supervision where, though the state refused consent, the minor was not adversely affected by operation of the statutory provision; the supervision was no longer an option under the procedural framework of the Act so the State's objection thereto was irrelevant).

In re K.E.F., 235 Ill. 2d 530 (2009) (trial court's decision to not admit a recording into evidence based on the state's failure to lay a proper foundation does not have

the substantive effect of suppressing evidence, thus the appellate court did not have jurisdiction under **Supreme Court Rule 604(a)(1)**).

In re Randell M., 231 Ill. 2d 122 (2008) (court will not consider appeal from order requiring hearing before detained 17-year-old could be transferred to adult facility and requiring that he be segregated from adult population, because minor has already been found delinquent and sentenced, and the appeal was based on construction of § 5-410 of Juvenile Court Act, which applies only to minors held in police custody prior to detention hearing).

In re Marie M., 374 Ill. App. 3d 913 (4th Dist. 2007) (an appellate court will consider an appeal from a habeas corpus order directing director of youth center, where delinquent minor was housed, to transport her to specific locations for purposes of academic testing, even though it has already occurred, because of the public interest exception to mootness doctrine; the subject orders, and issues surrounding them, are likely to reoccur, and there is no published opinion in this state to guide courts; however, because the trial court was held to have exceeded its authority pursuant to the Habeas Corpus Act, the appellate court would not consider whether trial court had authority to enter transport order under the Juvenile Court Act).

In re Justin L.V., 377 Ill. App. 3d 1073 (4th Dist. 2007) (although order denying oral motion to return delinquent minor from custody of JJD at review hearing conducted 60 days after respondent pled guilty to, and was sentenced for, several counts of burglary, is final and appealable, the appellate court lacks jurisdiction to review the original sentencing order or the issue of credit for pretrial detention).

CONFIDENTIALITY AND JUVENILE COURT RECORDS

CHAPTER 1. INTRODUCTION

Confidentiality has long been regarded as an essential attribute of juvenile court proceedings. Statutory provisions that protect the identity of minors and limit access to court and law enforcement records are rooted in a desire to protect children from the potential harmful effects of public exposure of their involvement in juvenile court proceedings. *See* ***In re St. Louis***, 67 Ill. 2d 43 (1977). Publication and use of a minor's name and other identifying information can interfere with family privacy interests, frustrate the rehabilitative goals of the juvenile justice system, and adversely affect a minor's educational, military and employment opportunities. *See generally* Geraghty and Raphael, *Reporter's Privilege and Juvenile Anonymity: Two Confidentiality Policies on a Collision Course,* 16 LOY.U.CHI. L.J. 43, 75-77 (1984).

In recent years, however, the juvenile court's traditional commitment to confidentiality in delinquency cases has been eroded through legislation. This trend is reflected in provisions in the Juvenile Justice Reform Act of 1998 which permit, or in some cases require, information and records to be shared with public and private agencies and persons. Note however that the Juvenile Court Act was amended to protect records until a minor's 18th birthday. **P.A. 98-61 § 5**.

For example, the confidentiality provided by the Juvenile Court Act is not violated when a judge orders a juvenile adjudicated delinquent of sexual abuse to register as a sex offender. ***In re J.R.***, 341 Ill. App. 3d 784 (1st Dist 2003). Since the juvenile court system is purely statutory, the legislature has authority to define its limits. Therefore any privacy interest accorded by the Juvenile Court Act are not of a constitutional dimension; juvenile offenders have no greater privacy interests than an adult offenders. ***In re Robert K.***, 336 Ill. App. 3d 867 (2d Dist. 2003).

Also, the confidentiality provided by the Juvenile Court Act is not violated when a judge orders a juvenile adjudicated delinquent for a felony and made a ward of the court to provide a DNA sample. The minor's interest in confidentiality promulgated by the Juvenile Court Act does not increase juvenile's expectation of privacy, because DNA information is only given to law enforcement officials and related entities, not the general public; the minimally intrusive nature of saliva swab, coupled with minor's diminished expectation of privacy, makes invasion reasonable. ***In re Lakisha M.***, 227 Ill.2d 259 (2008).

The Juvenile Court Act gives judges discretion to grant public access to juvenile court proceedings and records under certain circumstances. Before granting such a request, a judge should inquire carefully as to the identity of the individual seeking access and the reasons given for the request. Any decision to permit disclosure of a minor's records should be consistent with express statutory provisions on access and with the general purposes of the Juvenile Court Act.

CHAPTER 2. ACCESS TO COURT HEARINGS

705 ILCS 405/1-5(6)

2.01 EXCLUSION OF GENERAL PUBLIC

The general public is excluded from any hearing in Juvenile Court. Only persons, including representatives of agencies and associations, who in the opinion of the court have a direct interest in the case or in the work of the court may be admitted with the permission of the presiding judge. Exclusion under the Illinois Supreme Court Policy for extended media coverage – Circuit Courts (cameras in courtroom) § 1.2(c).

2.05 ACCESS BY MEDIA AND VICTIM

A) IN GENERAL

News media and the victim have a statutory right to be present during juvenile court proceedings. **705 ILCS 405/1-5(6)**. In the case of the media, this exception guarantees minors in delinquency cases a limited right to a public trial and also promotes the public's right to information about operation of the juvenile court system. *See* ***In re Jones***, 46 Ill. 2d 506 (1970) (Court refused minor respondent's request to exclude media from a delinquency hearing).

B) ORDERS BARRING DISCLOSURE OF INFORMATION AND DISCUSSION

(1) Statutory Authority

The Act authorizes a judge to prohibit any person or agency present in court from disclosing the minor's identity. **705 ILCS 405/1-5(6)**. Such an order may be issued only upon a showing of good cause that it is necessary for the minor's safety and protection.

The Act also grants confidentiality protection to minor victims in juvenile court proceedings. **705 ILCS 405/1-8(B)**.

(2) Case Law

(a) Out-of-court information

The U.S. Supreme Court has ruled that the media has a First Amendment right to publish truthful, lawfully obtained information even if publication is prohibited by state law. ***Smith v. Daily Mail Publishing Co.***, 443 U.S. 97 (1979). Illinois courts have ruled

similarly in cases where the information at issue was obtained through normal reporting sources and not as a result of court attendance. *See* ***In re a Minor***, 127 Ill. 2d 247 (1989) (media publication of juvenile's name not subject to restraint where identity not learned in closed hearing and where there was no showing of "serious and imminent" threat to minor's well-being). *See also* ***In re M.B.***, 137 Ill. App. 3d 992 (4th Dist. 1985) (judicial ban on media's dissemination of information about case constituted a prior restraint).

(b) In-court information

In ***In re a Minor***, 127 Ill. 2d 247 (1989), the Illinois Supreme Court upheld a trial court order conditioning a reporter's right to attend a child protection hearing on an agreement not to disclose the minor's identity. The court distinguished delinquency cases from child abuse cases.

(c) Gag orders

A court order prohibiting public discussion of a case was an illegal prior restraint in the absence of clear and present danger created by the parties or their attorneys. ***In re Summerville***, 190 Ill. App. 3d 1072 (1st Dist. 1989).

CHAPTER 3. ACCESS TO JUVENILE COURT RECORDS

705 ILCS 405/1-8, 5-901

The Juvenile Court Act now contains two sections governing who may inspect and copy juvenile court files and records. Article I applies to all proceedings under the Act, including delinquency cases; Article V applies exclusively in delinquency proceedings. If there is a conflict between Article V and Article I, presumably Article V controls.

3.01 PERSONS AND AGENCIES ENTITLED TO EXAMINE COURT FILES AND RECORDS UNDER ARTICLE I

P.A. 98-637 amended **705 ILCS 405/5-915** to add automatic expungement of certain juvenile records.

The following persons, agencies and organizations are authorized to inspect and copy records relating to a minor in a juvenile court proceeding:

- The minor who is subject to the proceedings and his or her parents, guardian and attorney **705 ILCS 405/1-8(C)**;

- The State's Attorney **705 ILCS 405/1-8(C)**;

- Law enforcement personnel when access is necessary to execute an arrest, search warrant or other compulsory process, or to carry out an investigation in the case of a minor who previously has been found guilty of an offense involving gang activity;

- Judges, hearing officers, prosecutors, probation officers, social workers or other persons assigned to the court to conduct a social investigation and individuals responsible for supervising or providing temporary or permanent care for minors if access is essential to that function;

- Judges, prosecutors, and probation officers in:

  (a) criminal trials after transfer,
  (b) in bail proceedings,
  (c) after a minor is 17 and is the subject of criminal proceedings;

- Adult and Juvenile Prisoner Review Boards;

- Authorized military personnel;

- Victims, their subrogees and legal representatives (but only the name and address of the minor and information about the minor's court disposition);

- Persons engaged in bonafide research with the permission of the presiding judge and the head of the agency that prepared the records. A researcher who gains access to such records must protect the identity and confidentiality of the records.

3.05 PUBLIC AND MEDIA ACCESS

A) IN GENERAL

Unless otherwise provided by statute or court order, the general public, including the media, do not have access to juvenile court records. **705 ILCS 405/1-8(C)**.

B) DISCRETIONARY ACCESS

By general or special order, a court may permit representatives of agencies, associations, the media, and properly interested persons to inspect juvenile court records. **705 ILCS 405/1-8(C)**. In ***In re J.R.***, 307 Ill. App. 3d 175 (1st Dist. 1999), the court ruled that a trial judge erred in releasing copies of a juvenile's records to a property manager involved in a civil suit to which the minor was not a party. The court further noted that the Act only permits the inspection, but not copying of records by an interested party.

C) MANDATORY ACCESS

705 ILCS 405/1-8(C)(1)

A court must authorize general release of the name, address and offense of any minor who is adjudicated a delinquent under the following circumstances:

(1) The minor was found guilty of first-degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault; or

(2) The court has made a finding that the minor was at least 13 years old at the time the act was committed and was found guilty of a felony involving gang activity, use of a firearm, and certain drug offense; or

(3) The minor was at least 13 years old at the time of the offense and has been convicted in criminal court of certain serious felonies, including first-degree murder.

D) ACCESS IN UNRELATED LITIGATION

For an informative and interesting example of the application and interpretation of the Juvenile Court Act confidentiality provisions outside the Juvenile Court context, *see*: ***Camco Inc. v. Carol Lowery,*** 362 Ill. App. 3d 421 (1st Dist. 2005).

In that case, a mother rented an apartment in a federally subsidized housing project for herself and her two sons. Her 12-year-old son (A.L.) was arrested for alleged cannabis possession during a raid at the apartment. The management, Camco, served Lowery with a notice of termination of tenancy, saying that she violated the terms of her lease because her son had been arrested for a drug offense on the premises. The landlord obtained the minor's law enforcement records by subpoena, and relied on those records in its motion for summary judgment.

The mother contented that law enforcement testimony and records related to her son should have been excluded under the confidentiality provisions of the Juvenile Court Act because they disclosed A.L.'s identity in violation of the Act, and because Camco was not entitled to the records because only law enforcement agencies are allowed to have access to them.

The Court acknowledged that the Act provides that law enforcement records relating to a minor who has been taken into custody will be restricted to certain law enforcement officers and kept confidential and provides that those records cannot be disclosed to the public except by court order. However, the Court held that the Act does not prevent a non-law enforcement agency, such as Camco, from obtaining a juvenile's law enforcement records by subpoena. Because a subpoena is a court order that must be complied with, police did not violate the act, the appellate court found, citing ***People ex rel. Arthur Fisher v. Carey***, 77 Ill. 2d 259, 265 (1979). Nor does it prescribe sanctions if that entity discloses the contents of those records to the public, violating the confidentiality provisions of the act. ***People v. Zepeda***, 47 Ill. 2d 23 (1970); ***People v. Lewis***, 95 Ill. App. 3d 82, 85 (1981). The law enforcement records were placed in the court file, so the public had a right to look at them, and because Camco obtained the records and the officer's testimony pursuant to a subpoena, and no protective order was issued preventing disclosure, Camco did not violate the act by putting the documents in the court file.

E) JUDICIAL ROLE IN RELEASE OF LAW ENFORCEMENT RECORDS

705 ILCS 405/5-905, as amended by **P.A. 096-1414** (effective 1/1/2011), adds a new sub-section 2.5:

(2.5) If the minor is a victim of aggravated battery, battery, attempted first degree murder, or other non-sexual violent offense, the identity of the victim may be disclosed to appropriate school officials, for the purpose of preventing foreseeable

future violence involving minors, by a local law enforcement agency pursuant to an agreement established between the school district and a local law enforcement agency subject to the approval by the presiding judge of the juvenile court.

3.10 VICTIM RIGHTS

705 ILCS 405/1-8(D)

In cases where a minor is convicted of crimes contained in Sections 12-13 through 12-16 of the Criminal Code (**720 ILCS 5/12-13** through **12-16**), the victim is entitled to all rights contained in the Victims and Witnesses of Violent Crime Act (**725 ILCS 405/120/4** and **120/6**).

3.15 SCHOOLS

705 ILCS 405/1-8(F)

In any case where a minor is adjudicated delinquent for commission of a felony or for violation of Section 24-1, 24-3, 24-3, or 24-5 of the Criminal Code (**720 ILCS 5/24-1, 24-3, 24-3.1, 24-5**), the State's Attorney is obligated to provide a copy of a dispositional order to the principal or chief administrative officer of any school in which the minor respondent is enrolled. Access to "such juvenile court records" shall be limited to the principal, chief administrative officer and any designated guidance counselor. [**NOTE**: The Act is ambiguous on the question of what juvenile court records may be examined.]

NOTE: P.A. 97-1104 amends **705 ILCS 405/1-7** and **705 ILCS 405/5-905** the Juvenile Court Act, eff. January 1, 2013, to allow law enforcement to *orally* share information that would otherwise be confidential to certain school officials if law enforcement believes that there is an imminent threat of physical harm to students, school personnel, or others who are present in the school or on school grounds.

For a related case on unauthorized release of police records to a school which resulted in disciplinary action by the school against a minor, see ***Jordan ex rel Edwards v. O'Fallon Twp. High School No. 203***, 302 Ill. App. 3d 1070 (5th Dist. 1999) (school not barred from acting on information contained in records not subject to release under the Juvenile Court Act).

3.20 SHOCAP

705 ILCS 405/5-145

The act authorizes each county to establish a Serious Habitual Offender Comprehensive Action Program (SHOCAP). SHOCAP is a "multi-disciplinary Interagency case management and information sharing system that enables the juvenile justice system, schools, and social services agencies to make more informed decisions" about minors who repeatedly commit serious delinquent acts. The Chief Circuit Court or Chief Juvenile Judge

is authorized to issue a comprehensive information sharing order to permit release of confidential information if the information is used in the early identification and treatment of habitual juvenile offenders. See statute for further details regarding administration, operations, and confidentiality.

3.25 INTERCOUNTY ACCESS

705 ILCS 405/1-8(H)

If a judge hearing a delinquency petition learns of another delinquency case involving the same minor in a different county, the judge is entitled to receive an authenticated copy of the other county's records, including all documents, petitions, and order, a transcript and docket entries.

3.30 STATE POLICE

705 ILCS 405/1-8(I)

The Clerk of the Circuit Court is required to report the final disposition in a delinquency case involving offenses required to be reported under the Criminal Identification Act (**20 ILCS 2630/5**). Reports are made to the Department of State Police.

3.35 ACCESS TO JUVENILE COURT FILES UNDER ARTICLE V

705 ILCS 405/5-901

NOTE: 625 ILCS 5/6-205.1, which is referred to in **705 ILCS 405/5-901**, was repealed by **P.A. 92-458, § 15**, eff. Aug. 22, 2001.

A) COURT FILE

(1) Contents

For purposes of access to court files under Article V, a court file consists of the petitions, pleadings, victim impact statements, process, service of process, orders, writs, and docket entries reflecting hearings held and judgments and decrees entered by the court. The court file is to be kept separate from other court records.

(2) Access to Court file

The court file, including information identifying the victim of a sex offense, may be disclosed only to the following parties when necessary for the discharge of their official duties:

- A judge and designated members of his or her staff;
- Parties and their attorneys;
- Victims and their attorneys, except in cases of multiple victims of sex offenses in which case information identifying other victims must be redacted;
- Probation officers, law enforcement officers or prosecutors and their staff;
- Adult and Juvenile Prisoner Review Boards.

The court file, with the names of sex victims redacted, may be disclosed to the following parties when necessary for discharge of their official duties:

- Authorized military personnel;
- Persons engaged in bona fide research, with the permission of the juvenile court and the chief executive of the agency that prepared the particular recording, providing that publication of such research protects the confidentiality of the minor and the confidentiality of the record;
- The Secretary of State, courts and police officers in connection with whom dispositional information is required to be shared under the Illinois Vehicle Code, **625 ILCS 5/6-204, 5/5-205.1**.
- The administrator of a bona fide substance abuse student assistance program with the permission of the presiding judge of the juvenile court;
- Any individual, public or private agency or institution having custody of the juvenile under court order or providing educational, medical or mental health services to the juvenile or a court-approved advocate for the juvenile or any placement provider or potential providers as determined by the court.

3.40 VICTIMS IN DELINQUENCY CASES

705 ILCS 405/5-901(3)

No information about victims of sexual offenses may be disclosed. In other circumstances, victims have the same rights to confidentiality as minor respondents. A victim may self-disclose.

3.45 DEPARTMENT OF CORRECTIONS

705 ILCS 405/5-901(4)

Relevant information, reports and records are to be made available to the Department of Corrections when a minor has been remanded to its custody.

3.50 ACCESS BY GENERAL PUBLIC IN DELINQUENCY CASES

705 ILCS 405/901(5)

3.55 ACCESS TO SOCIAL, PSYCHOLOGICAL AND MEDICAL RECORDS IN DELINQUENCY CASES

705 ILCS 405/5-910

Article I and Article V contain identical provisions on general public access to juvenile court records. See Section 3.05, *supra.*

A) IN GENERAL

In general, the social investigation, psychological and medical records of any juvenile offender are privileged and not subject to disclosure.

B) EXCEPTIONS TO NONDISCLOSURE REQUIREMENT

Such records may be disclosed under the following circumstances:

- upon the written consent of the former juvenile, or the written consent of the juvenile's parent if the juvenile is under age 18;
- upon a determination by the director of a treatment facility who has such records that disclosure is necessary for further treatment of the juvenile;
- when a court having jurisdiction orders disclosure;

- when requested by the minor's attorney, but the records may not be further disclosed unless permitted by court order or entered into the record as admissible evidence;

- upon written request of a juvenile probation officer when the information is needed for screening and assessment purposes, for preparing a social investigation or presentence report, or for recommending placement, but the records may not be further disclosed unless permitted by court order;

- when the State's Attorney requests a copy of the social investigation for use at a sentencing hearing or upon written request of the State's Attorney when the minor contests fitness for trial or advances an affirmative defense of intoxication or insanity.

Statutory Amendments:

705 ILCS Section 405/1-8 now allows:

(A) Inspection and copying of juvenile court records relating to a minor who is the subject of a proceeding under this Act shall be restricted to the following:

(4) Judges, prosecutors, and probation officers:

(a) in the course of a trial when institution of criminal proceedings has been permitted or required under Section 5-805; or

(b) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a proceeding to determine the amount of bail; or

(c) when criminal proceedings have been permitted or required under Section 5-805 and a minor is the subject of a pre-trial investigation, pre-sentence investigation or fitness hearing, or proceedings on an application for probation; or

(d) when a minor becomes 18 years of age or older, and is the subject of criminal proceedings, including a hearing to determine the amount of bail, a pre-trial investigation, a pre-sentence investigation, a fitness hearing, or proceedings on an application for probation.

***

(11) Mental health professionals on behalf of the Illinois Department of Corrections or the Department of Human Services or prosecutors who are evaluating, prosecuting, or investigating a potential or actual petition brought under the Sexually Violent Persons Commitment Act relating to a person who is the subject of juvenile court records or the respondent to a petition brought under the Sexually Violent Persons Commitment Act, who is the subject of juvenile court records sought. Any records and any information obtained

from those records under this paragraph (11) may be used only in sexually violent persons commitment proceedings.

***

(E) Nothing in this Section shall affect the right of a Civil Service Commission or appointing authority of any state, county or municipality examining the character and fitness of an applicant for employment with a law enforcement agency, correctional institution, or fire department to ascertain whether that applicant was ever adjudicated to be a delinquent minor and, if so, to examine the records of disposition or evidence which were made in proceedings under this Act.

CHAPTER 4. EXPUNGEMENT OF JUVENILE RECORDS

4.01 EXPUNGEMENT OF ARREST RECORDS AND SUPERVISION ORDERS

Upon verified petition of the minor and notice to the State's Attorney and arresting authority, the Chief Judge (or other designated judge) of the circuit in which a juvenile arrest was made, or a supervision order entered and completed, may order expungement of law enforcement and/or court records. **705 ILCS 405/1-9**. **P.A. 98-637** amended **705 ILCS 405/5-915** to add automatic expungement of certain juvenile records.

NOTE: In an apparent oversight, as a result of recent amendments, the Illinois General Assembly has eliminated statutory authority for expungements in non-delinquency cases unless orders of supervision were entered in those cases. Presumably a court has inherent authority to expunge records in appropriate cases and upon the filing of a verified petition.

4.05 EXPUNGEMENT OF DELINQUENCY RECORDS

705 ILCS 405/5-915

NOTE: P.A. 93-912, § 5, eff. Aug. 12, 2004, rewrote the section heading, which had previously been "Expungement of law enforcement and juvenile court records," and portions of this section which are noted below.

A) EXPUNGEMENT OF ARRESTS, NONCONVICTIONS AND MINOR OFFENSES

If a minor is at least age 18 and all juvenile court proceedings relating to the minor have been concluded, the minor may petition the court for expungement of law enforcement and court records relating to incidents prior to the minor's 18th birthday in the following circumstances:

- the minor was arrested but no petition was filed;

NOTE: Under such circumstances, the minor or the minor's parents must be notified verbally and in writing of the minor's right to petition to have the arrest record expunged. **705 ILCS 405/5-915(2.5)**.

- the minor was charged but not convicted;
- the minor was placed on supervision and supervision was successfully completed;
- the minor was adjudicated for a Class B misdemeanor, a Class C misdemeanor, or a petty business offense.

The judge must inform the delinquent minor of the right to petition for expungement, and the clerk of the circuit court must provide an expungement information packet that includes a petition for expungement, a sample of a completed petition, and expungement instructions. **705 ILCS 405/5-915(2.6)**.

NOTE: The failure of the judge to inform the delinquent minor of the right to petition for expungement does not create a substantive right, nor is it grounds for reversal of an adjudication of delinquency, a new trial, or an appeal. **705 ILCS 405/5-915(2.6)**.

B) EXPUNGEMENT OF JUVENILE RECORDS FOR ADJUDICATION OF OFFENSES OTHER THAN FIRST DEGREE MURDER AND FELONY SEX OFFENSES

If a minor adjudicated delinquent for an offense not involving first degree murder or a felony sex crime has had no conviction for any crime after his or her 18th birthday, the minor may petition the court to expunge all law enforcement and juvenile court records if the minor:

- is at least 21 years of age;
- 5 years have elapsed since the end of all juvenile court proceedings or the end of his or her commitment to the Department of Corrections, Juvenile Division.

C) EXPUNGEMENT PROCEEDINGS

705 ILCS 405/5-915(3)

An expungement is commenced by the filing of a verified petition. Notice of the petition must be served on the State's Attorney or prosecutor, the Department of State Police, and arresting authority. If an objection is filed within 90 days of the notice of the petition, the clerk of the court must set a date for a court hearing as to whether the expungement should or should not be granted. A court may order the expungement of the official records of the arresting authority, the clerk of the court, and the Department of State Police.

NOTE: PUBLIC ACT 95-861, effective January 1, 2009, amended **705 ILCS 405/5-915** as follows:

If an objection is filed within 45 days of the notice of the petition, the clerk of the circuit court shall set a date for hearing after the 45-day objection period. At the hearing the court shall hear evidence on whether the expungement should or should not be granted. Unless the State's Attorney or prosecutor, the Department of State

Police, or an arresting agency objects to the expungement within 45 days of the notice, the court may enter an order granting expungement.

D) EFFECT OF EXPUNGEMENT ORDER

705 ILCS 405/5-915(4)

Upon entry of an order expunging records or files, the offense is treated as if it never occurred. Law enforcement agencies and other public offices and agencies "shall properly reply on inquiry that no record or file exists with respect to the person."

APPENDIX A

Checklists and Forms Relating to Abuse and Neglect

NOTICE OF RIGHTS

(Abuse, Neglect, or Dependency)

FOR RESPONDENTS IN JUVENILE COURT PROCEEDINGS

A respondent is normally a parent, guardian, legal custodian or responsible relative. A respondent is also a person who has done something with respect to the child which has caused the petition to be filed.

If you are a respondent in a juvenile court proceeding, you have the following rights:

1. A respondent is entitled to notice of the court proceedings in conformity with the Juvenile Court Act **(705 ILCS 405/1.1 et seq.)**.

2. A respondent has the right to be present.

3. A respondent has the right to be represented by counsel. If the respondent is financially unable to hire an attorney, an attorney may be appointed to represent the respondent at no cost. If the respondent is financially able to contribute toward the cost of appointed counsel, the Court may order the respondent to reimburse the county for all or part of the expense for appointed counsel.

4. A respondent has the right to be heard and to present evidence material to the proceedings.

5. A respondent has the right to cross-examine witnesses.

6. A respondent has the right to examine pertinent court files and records.

7. The parental rights of a respondent whose child is a ward of the Court and in guardianship may be terminated if the respondent fails to cooperate with the agency or fails to comply with the service plan and correct the conditions which cause the child to be in foster care.

INITIAL COURT APPEARANCE CHECKLIST

☐ **1. Necessary Parties**

- ☐ A. Have all parties been identified?
- ☐ B. Has paternity of all involved minors been confirmed?
- ☐ C. Have current addresses been confirmed?
- ☐ D. Have all necessary parties been served?
- ☐ E. Have all current and any former foster parents been given notice?

☐ **2. Counsel**

- ☐ A. Have all parties been advised of their right to counsel?
- ☐ B. Do any indigent parties wish counsel?
- ☐ C. Can the same attorney represent more than one parent without creating the possibility of a conflict of interest?

☐ **3. Guardian *Ad Litem***

- ☐ A. Has a guardian *ad litem* been appointed?
- ☐ B. Is the GAL a lawyer?
- ☐ C. If not, has counsel been appointed for the GAL?

☐ **4. Admonitions**

- ☐ A. Have the parties been advised of:
  - ☐ (1) the nature of the proceedings
  - ☐ (2) the right to counsel
  - ☐ (3) the right to be present
  - ☐ (4) the right to be heard
  - ☐ (5) the right to present evidence
  - ☐ (6) the right to cross-examine witnesses
  - ☐ (7) the right to examine pertinent court files and records
  - ☐ (8) the parental duty to cooperate with DCFS if the court makes the child or children a ward(s) of the court and awards custody or guardianship to DCFS
- ☐ B. Have the parties been given a written notice of rights?

☐ **5. Summons**

- ☐ A. Have the parties present waived service of summons?
- ☐ B. Has summons been directed to any party who has not waived service of summons?

☐ **6. Notice by Publication**

- ☐ A. If a parent's address is unknown, has a diligent inquiry been made?
- ☐ B. Has an affidavit for publication been filed?
- ☐ C. Has publication been made?
- ☐ D. Has publication been ordered?

☐ **7. Case Management Conference and Motion Dates**

- ☐ A. Has a case management conference been scheduled?
- ☐ B. Has a deadline for pre-trial motions been established?
- ☐ C. Has a date for hearing pre-trial motions been set?

☐ **8. Adjudicatory Hearing Date within 90 days**

ADMISSION CHECKLIST

☐ **1. Appearances**

☐ **2. Findings as to Service of Process and Notice**

☐ **3. Right to a Hearing – Waiver**

- ☐ A. Right to a hearing
- ☐ B. State must prove abuse, neglect or dependency by a preponderance of the evidence
- ☐ C. Parent has the right to see and hear the witnesses testify
- ☐ D. Parent has the right to cross-examine the witnesses
- ☐ E. Parent has the right to see and challenge all pertinent documents
- ☐ F. Parent has the right to present witnesses and evidence
- ☐ G. Parent has the right to testify
- ☐ H. Parent waives all of the above by admission

☐ **4. Possible Dispositions Authorized by Admission**

- ☐ A. Minor(s) may be made wards of court
- ☐ B. Custody may be removed from parents
- ☐ C. Guardianship may be removed from parents
- ☐ D. Parents will be ordered to cooperate with DCFS and service plan
- ☐ E. Failure to make reasonable efforts and progress may result in termination of parental rights

☐ **5. Factual Basis**

- ☐ A. Has the State recited a factual basis?
- ☐ B. Has Court found and enunciated a factual basis on the record?

☐ **6. Admission**

☐ A. Each parent expressly admits each allegation of the petition and each basis for each allegation.

☐ **7. Findings**

☐ A. Knowing and voluntary nature of admission

☐ B. Factual basis

☐ C. Facts of neglect, abuse or dependency

☐ D. Conclusion of neglect, abuse or dependency

☐ **8. Dispositional Hearing**

☐ A. Date established within 30 days

☐ B. DCFS or other agency ordered to conduct a home and background investigation and prepare a written report

☐ C. DCFS or other agency ordered to provide a copy of the report to all parties or their counsel and to the court at least three (3) days before the dispositional hearing

☐ D. All parties ordered to cooperate fully with the home and backgroud investigation including signing any requested authorizations for release of information

☐ **9. Statutory Admonition as to Necessity of Cooperation with DCFS**

TEMPORARY CUSTODY HEARING CHECKLIST

☐ **1. Written Notices:**

- ☐ A. Mother(s)
- ☐ B. Father(s)
- ☐ C. Minor(s)
- ☐ D. Foster Parents (current & former)
- ☐ E. Legal Custodian
- ☐ F. Guardian
- ☐ G. Nearest Relative

☐ **2. Counsel Appointed for Minor(s)**

☐ **3. Rights and Admonitions:**

- ☐ A. Right to be present
- ☐ B. Right to be heard
- ☐ C. Right to present evidence
- ☐ D. Right to cross-examine witnesses
- ☐ E. Right to examine pertinent court files and records
- ☐ F. Right to be represented by an attorney
- ☐ G. Supply written notice of rights
- ☐ H. Termination admonishment:

If the Court finds a child to be abused, neglected or dependent, custody and guardianship may be removed from a parent. If custody is not removed, but the child is made a ward of the Court, the parent must cooperate with a service plan proposed by the Illinois Department of Children and Family Services or the child will be removed from the custody of the parent. If custody is removed from a parent, the parent must cooperate with the Illinois Department of Children and Family Services to correct the conditions which require the child to be in care or risk termination of parental rights.

☐ **4. Findings and Written Order**

- ☐ A. Factual basis for probable cause
- ☐ B. Finding of immediate and urgent necessity
- ☐ C. A determination concerning reasonable efforts or finding

that no efforts reasonably could be made.

☐ D. Finding that shelter care is in the best interest

☐ E. Determine whether power to consent to medical treatment should be granted

☐ F. Determine whether visitation is to supervised

☐ **5. Date for Renewal Hearing**

If no written or approved oral notice was given to parent who does not appear.

☐ **6. Admonition Date Set for Any Parent Who Did Not Appear**

☐ **7. Service of Process Ordered to Issue**

☐ A. Summons ordered

☐ (1) Personal or abode service

☐ (2) Registered mail outside state delivery to addressee only

☐ B. Notice by publication

☐ C. Waiver

☐ D. Individuals to be considered for service

☐ (1) Mother(s) ☐ (4) Legal Custodian

☐ (2) Father(s) ☐ (5) Guardian

☐ (3) Minor(s) ☐ (6) All other parties

☐ **8. Order Necessary Process to Issue For Admonition**

☐ **9. Set Adjudicatory Hearing Within 90 Days**

☐ **10. Order Face-to-Face Meeting of GAL and Minor(s)**

ADJUDICATORY HEARING
CHECKLIST

☐ **1. Note Appearances**

- ☐ A. Minor(s)
- ☐ B. Mother(s)
- ☐ C. Father(s)
- ☐ D. Legal Custodian
- ☐ E. Guardian
- ☐ F. Nearest Relative

☐ **2. Note Services of Process and Notice**

- ☐ A. Minor(s)
- ☐ B. Mother(s)
- ☐ C. Father(s)
- ☐ D. Legal Custodian
- ☐ E. Guardian
- ☐ F. Nearest Relative
- ☐ G. Foster Parents

☐ **3. Check for Face-to-Face Meeting of GAL with Minor(s)**

☐ **4. Waive Presence of Minor(s) if Appropriate**

☐ **5. Special Evidentiary Rules of 705 ILCS 405/2-18**

☐ **6. Findings and Order**

- ☐ A. Factual Basis
- B. If appropriate, findings of actual physical or sexual abuse by parent, guardian, or legal custodian
- ☐ C. Written Order
- ☐ D. Copy of Order distributed to parties.

☐ **7. Disposition Hearing Set**

☐ **8. Termination Admonishment**

If custody of the child is not removed from you, you must cooperate with the Illinois Department of Children and Family Services and complete the service plan proposed or custody may be removed from you. The parental rights of a respondent whose child is a ward of the Court and in guardianship may be terminated if the respondent fails to cooperate with the agency or fails to comply with the service plan and correct the conditions which cause the child to be in foster care.

DISPOSITION HEARING
CHECKLIST

☐ **1. Appearances**

- ☐ A. Mother(s)
- ☐ B. Father(s)
- ☐ C. Legal Custodian
- ☐ D. Guardian
- ☐ E. Nearest Relative
- ☐ F. Foster Parents
- ☐ G. Former Foster Parents

☐ **2. Notice**

- ☐ A. Mother(s)
- ☐ B. Father(s)
- ☐ C. Minor(s)
- ☐ D. Legal Custodian
- ☐ E. Guardian
- ☐ F. Guardian
- ☐ G. Nearest Relative
- ☐ H. Foster Parents
- ☐ I. Former Foster Parents
- ☐ J. Any Other Parties

☐ **3. Note for the Record the Social Investigation, Reports and Other Materials Considered.**

☐ **4. Findings and Order**

- ☐ A. Whether it is in the best interests of the minor that
  - ☐ (1) the minor be adjudicated neglected, abused or dependent;
  - ☐ (2) the minor be adjudicated a ward of the court;
- ☐ B. Adjudicating or not adjudicating the minor neglected, abused or dependent
- ☐ C. Is the parent, who is before the Court, the one responsible for the abuse or neglect?
- ☐ D. Is the parent a fit, able or willing parent?
- ☐ E. If the parent is not a fit, able or willing parent, is the basis for that conclusion other than finances? If so, the reasons must be specified in the written order.
- ☐ F. Have reasonable services been attempted?
- ☐ G. Removal is necessary for the health, safety and welfare of the minor
- ☐ H. Visitation
  - ☐ (1) Supervised
  - ☐ (2) By whom supervised

☐ I. Services needed

- ☐ (1) Evaluations
- ☐ (2) Parenting classes
- ☐ (3) Counseling
- ☐ (4) Drug - Alcohol treatment and testing
- ☐ (5) Education
  - ☐ a. G.E.D.
  - ☐ b. Vocational
- ☐ (6) Child's special needs
  - ☐ a. Services
  - ☐ b. Parental education
- ☐ (7) Information
  - ☐ a. Residence
  - ☐ b. Employment
  - ☐ c. Written proof of service
- ☐ (8) Release of information
- ☐ (9) Access to home

☐ **5. Permanency Review Hearing Date**

☐ **6. Notice of Right to Appeal**

☐ **7. Appoint Appellate Counsel if Necessary**

☐ **8. Termination Admonishment**

If custody of the child is not removed, you must cooperate with the Illinois Department of Children and Family Services and complete the service plan proposed or custody may be removed from you. The parental rights of a respondent whose child is a ward of the Court and in guardianship may be terminated if the respondent fails to cooperate with the agency or fails to comply with the service plan and correct the conditions which cause the child to be in foster care.

☐ **9. Written Order Entered**

PERMANENCY HEARING PROCEDURAL CHECKLIST

☐ 1. Note respondents, attorneys, agency representatives and others present, making sure caseworker appears.

☐ 2. Make record of notice according to Supreme Court Rule 11 for those who fail to appear.

☐ 3. Determine whether the Agency's review report and service plan were filed at least fourteen (14) days before the hearing, whether the parties and counsel have had the opportunity to read them.

☐ 4. Find that there has been at least one personal meeting by the GAL and the minor(s) and physical caretakers since the last court hearing.

☐ 5. Explain the nature of the proceedings, to review case progress and determine the future status of the minor(s). Advise parties respondent of their right to present evidence or other material to explain, correct or add to the report.

☐ 6. Conduct the Permanency Hearing to:

- ☐ A. Review the appropriateness of the permanency goal;
- ☐ B. Review the services contained in the plan;
- ☐ C. Determine whether those services are appropriate to the goal**;**
- ☐ D. Determine whether reasonable efforts have been made by D.C.F.S.;
- ☐ E. Determine whether the parents have made reasonable efforts and progress to achieve the goal; and
- ☐ F. Whether the plan and goal have been achieved.

☐ 7. Determine the future status (the desired permanency outcome) of the child and select the appropriate goal, making written findings of fact.

☐ 8. Determine whether the minor's placement outside the home is necessary and appropriate to the plan and goal. If it is, consider whether the placement is:

- ☐ A. the least restrictive setting available;
- ☐ B. in close proximity to the parents; and
- ☐ C. consistent with the health, safety, best interest and special needs of the child.

☐ 9. If the goal has been changed, direct the Illinois Department of Children and Family Services to file a new or amended service plan consistent with the findings within forty-five (45) days.

☐ 10. Enter any additional orders necessary to conform the minor's status or facilitate the goal.

☐ 11. Advise the parents that they must cooperate with the Illinois Department of Children and Family Services, comply with the terms of the service plan and correct any conditions that require the child to be in care, or risk termination of parental rights; if the child has been returned home, advise parents that they must still cooperate with D.C.F.S. and comply with terms of the after-care plan or risk loss of custody and termination of parental rights.

☐ 12. Set the date for the next permanency hearing (if child in care), review (if child not in care) hearing within six (6) months, unless finding made that child is in stable, private guardianship and further monitoring unnecessary.

☐ 13. If necessary, excuse a face-to-face meeting between the GAL and the minor(s) prior to the next hearing.

FORM ORDERS EXPLANATION

The enclosed orders have been designed to fulfill a number of critical functions. First, the orders incorporate the findings required by federal law **(45 C.F.R. § 1356.21)** when a child is removed from the custody of a biological parent or parents. The absence of these findings when the 2003 federal review of the Illinois Juvenile Court is conducted will jeopardize federal funding which supports foster care services in Illinois. Second, the proposed orders incorporate the findings required by the Illinois Juvenile Court Act. Third, the orders are designed to provide a clear judicial statement to the parties which identifies the parental problems which the court will require be addressed before custody will be returned to the parent or parents. Fourth, the orders provide a convenient summary of the previous findings made and steps taken by the court which hopefully will facilitate any change in caseworkers, attorneys or judges.

The following explanation is respectfully intended to facilitate use of the orders. It should be noted that these orders are simply suggestions. They have not been approved by any federal regulatory agency or by the Illinois Supreme Court. Those findings which the committee believes are mandated by federal or state law or both are highlighted in gray.

TEMPORARY CUSTODY ORDER

Paragraphs a, b and c

These paragraphs, if completed, will provide a convenient method to determine whether a party has been served or has appeared or whether service of summons upon that party must be effectuated in the future. (**705 ILCS 405/2-15 (1) and (7)**). They will also alert the court as to whether an order of temporary custody must be renewed within 10 days because a parent was neither notified nor present. (**705 ILCS 2-10 (3)**).

Paragraph d

Paragraph d need be completed only if no parent can be found. (**705 ILCS 405/2-13(2)(d)**).

Paragraph e

If the first box is checked, *i.e.* the court finds that probable cause does not exist, the petition must be dismissed. Thus, the judge should go directly to number 1 under the "ordering" portion of the order. (**705 ILCS 405/210 (1)**). If probable cause is found, the court is required by the Illinois Juvenile Court Act to state in writing the factual basis supporting the finding. (**705 ILCS 405/2-10 (2)**).

Paragraph f

A finding of immediate and urgent necessity is a statutory prerequisite to placement of a child outside the home of the biological parents. (**705 ILCS 405/2-10 (2)**). If the judge finds no immediate and urgent necessity for removal, the judge must return custody to a parent. Therefore, number 2 of the ordering portion of the order must be used and the judge need not address paragraph g.

Paragraph g

If the court orders a child removed from the custody of the biological parents and placed outside the home of such parents, both the Illinois Juvenile Court Act (**705 ILCS 405/2-10 (2)**) and federal law (**45 C.F.R. §1356.21**) absolutely require the court make one of the findings provided for in paragraph g. While neither statute requires that the factual basis for the finding be set forth, it may be preferable to do so.

Ordering Portion

Paragraph 1

This paragraph must be used if the court finds that there is no probable cause to support the allegations of neglect, abuse or dependency. (See explanation for paragraph a above.)

Paragraph 2

This paragraph must be used if the court finds no immediate and urgent necessity for removal in paragraph f above.

Paragraph 3

The first alternative is to be used if the court places the minor with a relative under **705 ILCS 405/2-10 (2)**. The second alternative is for use when DCFS is made the temporary custodian. The third alternative is used if an agency other than DCFS is appointed temporary custodian. The name or position of the appropriate agency executive must also be inserted (**705 ILCS 405/210 (2)**).

Paragraph 4

a. This paragraph is authorized under **705 ILCS 405/2-11**.

b & c. The court is authorized to order DCFS to provide specific services necessary to address the reasons that foster care placement has been ordered. ***In re Lawrence M.***, 172 Ill. 2d 523 (1996). If more detail or space is needed, the judge may wish to consider use of the "Supplemental Order" attached at the end of these draft orders.

d. While neither the federal nor state statutes require the court to address visitation, experience suggests that the question of supervision of and transportation to visitation should be specifically resolved to avoid later confusion.

The remainder of the order is self-explanatory.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

Case No. _____

In The Interest Of

_____,

a minor.

Date of hearing: _____

Parties present for hearing:

Assistant State's Attorney: _____

Minor: **_____** **Attorney for minor:** **_____**
Mother: **_____** **Attorney for mother:** **_____**
Father: **_____** **Attorney for father:** **_____**
Relative, Guardian, Custodian: _____

TEMPORARY CUSTODY ORDER

[705 ILCS 405/2-10]

THIS MATTER comes before the Court for hearing on the date noted above with the parties indicated being present. The parties have been advised of the nature of the proceedings and of their rights. _____ is appointed as Guardian *ad Litem* and attorney for the minor.

The Court **FINDS** that:

a. The minor has

☐ been served with summons
☐ **not** been served with summons but is present
☐ **not** been served with summons but has entered an appearance and is under the age of 8 years.

b. The mother of the minor

☐ has received notice and is present
☐ has **not** received notice and is present
☐ has received notice and is **not** present
☐ has **not** received notice and is **not** present

c. The father of the minor

☐ has received notice and is present
☐ has **not** received notice and is present
☐ has received notice and is **not** present
☐ has **not** received notice and is **not** present
☐ cannot be found after a diligent search has been made to locate him
☐ is unknown

d. The responsible relative/guardian/custodian of the minor

☐ has received notice and is present ☐ has received notice and is **not** present
☐ has **not** received notice and is present ☐ has **not** received notice and is **not** present

e. ☐ Probable cause for the filing of the petition does **not** exist
☐ Probable cause for the filing of the petition does exist based on the following facts: _____
_____
_____
_____

f. ☐ There is **no** immediate and urgent necessity to remove the minor from the home and leaving the minor in the home is not contrary to the health, welfare and safety of the minor
☐ There is immediate and urgent necessity to remove the minor from the home and leaving the minor in the home is contrary to the health, welfare and safety of the minor based on the following facts: _____
_____
_____

g. ☐ Reasonable efforts have **not** been made to keep the minor in the home
☐ Reasonable efforts have been made to keep the minor in the home and they have eliminated the immediate and urgent necessity to remove the minor
☐ Reasonable efforts have been made to keep the minor in the home but they have **not** eliminated the necessity for removal of the minor from the home and leaving the minor in the home is contrary to the health, welfare and safety of the minor
☐ Reasonable efforts, at this time, cannot prevent or eliminate the necessity for removal of the minor from the home and leaving the minor in the home is contrary to the health, welfare and safety of the minor
☐ The following facts form the basis for this finding: _____
_____
_____
_____
_____

THEREFORE, it is the **ORDER** of this Court that:

1. The Petition is
☐ **DISMISSED**.

2. ☐ The request for temporary custody is denied.

3. Temporary custody of the minor is given to:
☐ _____ who is the _____ of the minor
(Name of person) (Relationship of person)
☐ The Guardianship Administrator of the Illinois Department of Children and Family Services who is authorized to place the minor
☐ _____
(Other agency)

4. Based on the findings, the following order are necessary and proper:

a. The temporary custodian is:

☐ **not** authorized to consent to major medical care for the minor

☐ authorized to consent to major medical care including surgical needs, psychological services, optical care and dental services for the minor

☐ authorized to consent to major medical care including surgical needs, psychological services, optical care and dental services for the minor after consultation with _____ and in the event the named person cannot be located without such consent

☐ _____
_____

b. The Illinois Department of Children and Family Services shall investigate the need for services and provide the needed services in the following areas:_____
_____
_____

The parties are advised that the acceptance of services will not be considered an admission of neglect, abuse or dependency.

c. The following services are necessary to ameliorate the causes contributing to the finding of probable cause and immediate and urgent necessity and they **are ordered** to be provided
_____
_____
_____

d. Visitation

☐ There is to be no visitation with the minor until further Order of the Court

☐ Supervised visitation with the supervision to be monitored by
  ☐ the Illinois Department of Children and Family Services or its designee
  ☐ _____

☐ Unsupervised visitation

☐ There is **no requirement** that the agency provide transportation for the purpose of visitation.

☐ The agency is to provide transportation for the purpose of visitation.

Visitation is to be arranged in such a manner so as not to disrupt the foster placement or place unreasonable demands on personnel of the agency providing or monitoring the visitation.

e. The Illinois Department of Children and Family Services or other appropriate agency shall prepare and file a 45-day Case Plan pursuant to 705ILCS 405/2-10.1 on or before
_____

f. A Social Investigation is to be prepared and filed by the Illinois Department of Children and Family Services or other appropriate agency on or before _____

g. The temporary custodian is to make arrangements for a medical examination of the minor pursuant to 705 ILCS 405/2-19.

h. The next hearing is set for _____ at _____ for

☐ Renewal of the temporary custody order (if entered *ex parte*)

☐ Adjudicatory Hearing

☐ Status Hearing

☐ Hearing on diligent efforts to notify

☐ Progress report

☐ Court family conference

Notice of the hearing date is to be provided by _____

i. If the minor is placed outside of the home, the first Permanency Hearing date shall be set not later than 12 months from the date temporary custody was taken.

j. **The parents are admonished that they must cooperate with the Illinois Department of Children and Family Services. The parents must comply with the terms of the service plan and correct the conditions that require the minor to be in care or they risk termination of their parental rights.**

Entered _____

Time _____

_____

Judge

ADJUDICATORY ORDER

Paragraph b

705 ILCS 405/2-21(1) specifically requires that the court "state for the record" the manner in which each party has been served.

Paragraph c

This paragraph is also mandated by **705 ILCS 405/2-21(1)**.

Paragraphs a and g

705 ILCS 405/2-21(1) expressly requires that the court state, in writing, the factual basis for its finding that the minor or minors are or are not abused, neglected or dependent.

Paragraph f

This alternative is to be used only if the court is going to enter an order of continuance under supervision rather than find that the minors are abused, neglected or dependent.

Paragraph g

See the explanation for paragraphs a and g above.

Paragraph h

A finding as provided for in this paragraph is required by **705 ILCS 405/2-23 (a) and (b)** before a proper custodial order may be entered.

Paragraph i

See the explanatory comments for paragraph a and g above.

Paragraph j

This finding must be made if the child remains outside the home.

ORDERING PORTION

Paragraph 1

This paragraph must be used if paragraph a above has been checked.

Paragraph 2

The judge may wish to make the finding by clear and convincing evidence if the evidence adduced warrants such a finding in the event that a parental fitness issue later arises under **750 ILCS 50/1 D(t)**.

Paragraph 3

The dispositional hearing must be held within 30 days under **705 ILCS 405/2-21(2)** unless all parties waive the requirement and the court makes the finding set forth in paragraph 4 below.

Paragraph 4

To grant a continuance, the court must make the finding set forth in this paragraph. **705 ILCS 405/221 (3)**. Apparently, only one continuance is permissible. **705 ILCS 405/2-21(2)**.

Paragraph 5

This paragraph may be used when the court exercises the power to order an investigation and report conferred by **705 ILCS 405/2-21(2)**.

Paragraph 6

This paragraph is designed to assure that the parties cooperate with the investigation process ordered in paragraph 5.

Paragraph 7

This provision is suggested to afford the parties an opportunity to review and consider the report and to prepare to confront any portion a party believes is inaccurate. Hopefully this will obviate the necessity of a continuance.

Paragraph 8

Hopefully, this is self-explanatory.

Paragraph 9

This admonition is mandated by **705 ILCS 405/2 -21(1)**.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

Case No. _____

In The Interest Of

_____,

a minor.

Date of hearing: _____

Parties present for hearing:

Assistant State's Attorney: _____

Minor: **_____** **Attorney for minor:** **_____**
Mother: **_____** **Attorney for mother:** **_____**
Father: **_____** **Attorney for father:** **_____**
Relative, Guardian, Custodian: _____

ADJUDICATORY ORDER

[705 ILCS 405/2-21]

THIS MATTER comes before the Court for hearing on the date noted above with the parties indicated being present. The parties have been advised of the nature of the proceedings as well as their rights and the dispositional alternatives available to the Court. The case is called for hearing on the Petition for Adjudication of Wardship. The Court makes the following **FINDINGS**:

a. The Court has jurisdiction of the subject matter
b. The Court has jurisdiction of the parties in that the Court file shows that:

i. The minor has

☐ been served with summons
☐ **not** been served with summons but is present
☐ **not** been served with summons but has entered an appearance and is under the age of 8 years

ii. The mother of the minor has

☐ been served with summons
☐ **not** been served with summons but is present
☐ been notified by publication
☐ **not** been served with summons but service is not required because:
_____

iii. The father of the minor has

☐ been served with summons
☐ **not** been served with summons but is present

☐ been notified by publication

☐ **not** been served with summons but service is not required because:
_____

iv. The responsible relative/guardian/custodian of the minor has

☐ been served with summons
☐ **not** been served with summons but is present
☐ been notified by publication
☐ **not** been served with summons but service is not required because:
_____

v. A diligent search has been conducted but _____ cannot be found.

c. Those respondents who have been served with summons or by publication and have not entered an appearance are in default.

d. The guardian *ad litem* has had personal contact with the minor and with the foster parents or care caregivers of the minor or such contact has been excused [**705 ILCS 405/2-17(8)**].

e. □ The minor is **not** abused, neglected or dependent based on the following facts:
_____
_____
_____

f. □ Findings of abuse, neglect or dependency are reserved pursuant to **705 ILCS 405/2-20**.

g. □ The minor is abused or neglected as defined by **705 ILCS 405/2-3** in that the minor:

☐ suffers from a lack of support, education, remedial care as defined by **705 ILCS 405/2-3(1)(a)**
☐ is in an environment that is injurious to the welfare of the minor as defined by **705 ILCS 405/2-3 (1) (b)**
☐ as a newborn was exposed to illicit drugs as defined by **705 ILCS 405/2-3 (1) (c)**
☐ is under 14 years of age and unsupervised for an unreasonable period of time as defined by **705 ILCS 405/2-3 (1) (d)**
☐ is physically abused as defined by **705 ILCS 405/2-3 (2) (i)**
☐ is in substantial risk of physically abuse as defined by **705 ILCS 405/2-3 (2) (ii)**
☐ is sexually abused as defined by **705 ILCS 405/2-3 (2) (iii)**
☐ has been tortured as defined by **705 ILCS 405/2-3 (2) (iv)**
☐ has been the subject of excessive corporal punishment as defined by **705 ILCS 405/2-3 (2) (v)**

This finding is based on the following facts: _____
_____
_____

h. The abuse or neglect

☐ was **not** inflicted by a parent, guardian or legal custodian
☐ was inflicted by:
☐ a parent or parents, specifically _____
☐ a guardian specifically _____
☐ a legal custodian specifically _____
☐ _____ who is _____

i. □ The minor is dependent as defined by **705 ILCS 405/2-4** in that the minor:

☐ is without a parent, guardian or legal custodian as defined by **705 ILCS 405/2-4 (1) (a)**
☐ is without proper care because of the physical or mental disability of a parent, guardian or legal custodian as defined by **705 ILCS 405/2-4 (1) (b)**
☐ is without necessary and proper medical or remedial care through no fault, neglect or lack of concern of a parent, guardian or legal custodian as defined by **705 ILCS 405/2-4 (1) (c)**

☐ has a parent, guardian or legal custodian who with good cause wishes to be relieved of all residual parental rights and responsibilities as defined by **705 ILCS 405/2-4 (1) (d)**

This finding is based on the following facts: _____
_____
_____

j. If the minor remains placed outside the home, it is because it is contrary to the health, welfare and safety of the minor to remain in the home, and reasonable efforts have been offered or engaged in by the responsible agency.

THEREFORE, it is the **ORDER** of this Court that:

1. The Petition is
   ☐ **DISMISSED**.

2. The allegations of the petition with respect to the minor have been proved by
   ☐ a preponderance of the evidence
   ☐ clear and convincing evidence

3. The dispositional hearing will be held:
   ☐ *instanter*
   ☐ on the _____ at _____.
   _____ is to send notice.

4. The 30 day requirement of **705 ILCS 405/2-21 (2)** is waived by the parties and the waiver is consistent with the health, safety and best interests of the minor.

5. An investigation shall be made and a report prepared by
   ☐ the Illinois Department of Children and Family Services
   ☐ _____
   (other agency)
   detailing the physical and mental history of the minor, the family situation and such other relevant information deemed appropriate.

6. The parents and the minor are directed to immediately contact the office of the agency preparing the investigation to make an appointment concerning the report. They are to provide the information requested and execute releases allowing the agency to collect information for the report.

7. The report is to be submitted to the Court and the parties not less than seventy-two (72) hours prior to the dispositional hearing.

8. Terms and conditions concerning the temporary custody of the minor remain as previously set forth in the Temporary Custody Order. (If custody is removed at the adjudicatory hearing, a written temporary custody order must be used.)

9. **The parents are admonished that they must cooperate with the Illinois Department of Children and Family Services. The parents must comply with the terms of the service plan and correct the conditions that require the minor to be in care or they risk termination of their parental rights.**

_____ _____
Date Judge

DISPOSITIONAL ORDER

Paragraph a

This paragraph is intended to assure compliance with **705 ILCS 405/2-22(2)** requiring notice to all parties respondent of the dispositional hearing under Supreme Court Rule 11.

Paragraph b

A finding with respect to the health, welfare and safety of the minor and the minors best interest must be made in conjunction with the decision whether or not to make the minor a ward of the court. **705 ILCS 405/2-22(i)**. If b(i) is used *i.e.* a finding that it is not consistent with the health welfare, and safety of the minor nor in the best interest of the minor to make the minor a ward of the court, the petition must be dismissed and the judge should go directly to paragraph 1 of the ordering portion of the order and paragraph 3 of the same portion of the order. If b(ii) is used, the judge eventually will wish to use the first box of paragraph 3 and page 3 of the order.

Paragraph c

The finding of fitness set forth in i must be made prior to returning custody of minor to a parent whose acts or omissions formed the basis of a finding of neglect, abuse or dependency. **705 ILCS 405/2-23(a) and (b)** generally alternative (i)will be utilized with one or both of the first two alternatives under paragraph 4 on page 3 of the order.

Alternative (ii) contains the finding of unfitness, inability or unwillingness contemplated by **705 ILCS 405/2-27(i)** and require to precede a placement of custody and guardianship with a person other than a parent or with an agency such as DCFS under **705 ILCS405/2-27(1)(a), (a-5), (b), (c) or (d).** Alternative (ii) also contains the health, safety and best interests determination which must precede removal of custody from a parent under **705 ILCS 404/2-27 (1.5)** and under the federal law previously discussed. If alternative (ii) is utilized, the second alternative under paragraph 1 on page 3, the appropriate alternative in paragraph 2, the first alternative in paragraph 3, the third and fourth or third and fifth alternatives in paragraph 4, the third or fourth alternatives in paragraph 5 and paragraphs 6 through 13 on pages 3 and 4 respectively will be utilized.

Paragraph d

See suggestions for the use of paragraph c above.

Paragraph e

See suggestions for the use of paragraph c above.

Paragraph f

The appropriate finding in paragraph f and a specification of the factual basis therefore is required by **705 ILCS 405/2-27 (1.5) (West 2014)** if custody is removed from the parents or if custody remains removed from the parents.

Paragraphs g, h, i and j

Consideration of the service plan and permanency goal is required by **705 ILCS 2-22 (i) and 2-23(3)**.

ORDERING PORTION

Paragraph 1

If alternative (i) in paragraph b on page 1 is used, the first alternative in this paragraph must be marked and the petition dismissed. If alternative (ii) in paragraph b on page 1 is used, the second alternative here should be used. Additionally, the appropriate alternative or alternatives in paragraph 2 and the first alternative in paragraph 3 must be utilized. The appropriate alternatives in paragraphs 4 and 5 should be marked and paragraphs 10, 11, 12 and 13 utilized.

Paragraph 2

The appropriate box or boxes must be marked if the minor is to be made a ward of the court.

Paragraph 3

Without utilization of the first alternative, the court loses jurisdiction to enter further orders other than dismissing the petition.

Paragraphs 4 and 5

Hopefully these are self-explanatory.

Paragraph 6

This paragraph should be stricken if custody is given or remains with the parents.

Paragraph 7

The paragraph should be utilized in conjunction with the second alternative findings under paragraph c on page 1 and/or paragraph d on page 2 and the fourth or fifth alternatives under paragraph 4 on page 3.

Paragraph 8

This admonition is mandated by **705 ILCS 405/2-23(1)(a)(c) and 2-22(6)**.

Paragraph 9

The initial permanency hearing must be held within 12 months from the date temporary custody was taken.

NOTE: The judge may wish to specify in more detail the tasks and services which the court is requiring that the parent completes. If so, the judge may find helpful the supplemental order which follows the permanency order herein.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

Case No. _____

In The Interest Of

_____,

a minor.

Date of hearing: _____

Parties present for hearing:

Assistant State's Attorney: _____

Minor: _____ **Attorney for minor:** _____

Mother: _____ **Attorney for mother:** _____
Father:_____ **Attorney for father:** _____
Relative, Guardian, Custodian:_____

DISPOSITIONAL ORDER

[**705 ILCS 405/2-23 - 2/27**]

THIS MATTER comes before the Court for hearing on the date noted above with the parties indicated being present. The parties have been advised of the nature of the proceedings as well as their rights and the dispositional alternatives available to the Court. The case is called for dispositional hearing. The Court, having considered the evidence and the report, makes the following **FINDINGS**:

a. Notice of the hearing has been given to the parties

b.

☐ i. It is neither consistent with the health, welfare and safety of the minor nor in the best interest of the minor to make the minor a ward of the Court

☐ ii. It is consistent with the health, welfare and safety of the minor and in the best interest of the minor to make the minor a ward of the Court

c. The mother is:

☐ i. **fit**, **able** and **willing** to care for, protect, train, educate, supervise or discipline the minor and she will not endanger the health, safety or well-being of the minor.

☐ ii. for reasons other than financial circumstances alone,

- ☐ **unfit**
- ☐ **unable**
- ☐ **unwilling**

to care for, protect, train, educate, supervise or discipline the minor and placement with her is contrary to the health, safety and best interests of the minor because

_____

_____

☐ iii. deceased

d. The father is:

☐ i. **fit**, **able** and **willing** to care for, protect, train, educate, supervise or discipline the minor and he will not endanger the health, safety or well-being of the minor.

☐ ii. for reasons other than financial circumstances alone,
- ☐ **unfit**
- ☐ **unable**
- ☐ **unwilling**

to care for, protect, train, educate, supervise or discipline the minor and placement with him is contrary to the health, safety and best interests of the minor because

_____
_____
_____

☐ iii. deceased

e. The responsible relative/guardian/custodian of the minor is:

☐ i. **fit**, **able** and **willing** to care for, protect, train, educate, supervise or discipline the minor and he/she will not endanger the health, safety or well-being of the minor.

☐ ii. for reasons other than financial circumstances alone,
- ☐ **unfit**
- ☐ **unable**
- ☐ **unwilling**

to care for, protect, train, educate, supervise or discipline the minor and placement with him/her is contrary to the health, safety and best interests of the minor because

_____
_____
_____

☐ iii. deceased

f. Reasonable efforts and appropriate services aimed at family reunification

☐ have been made to keep the minor in the home and the health, welfare and safety of the minor is not compromised by leaving the minor in the home

☐ have been made to keep the minor in the home but they have **not eliminated** the necessity for removal of the minor from the home and leaving the minor in the home is contrary to the health, welfare and safety of the minor

☐ cannot prevent or eliminate the necessity for removal of the minor from the home at this time and leaving the minor in the home is contrary to the health, welfare and safety of the minor

☐ have not been made to prevent or eliminate the need for removal of the minor from the home

This finding is based on the consideration of the Court of the necessity, success, failure and general effect of appropriate services aimed at family preservation or reunification in the best interest of the minor. The following facts form the basis for this finding:_____
_____
_____

g. The service plan

☐ is appropriate

☐ is **not** appropriate for the following reasons: _____
_____
_____

h. The services which have been delivered and are to be delivered

☐ are appropriate
☐ are **not** appropriate for the following reasons: _____
_____
_____

i. The permanency goal

☐ is appropriate
☐ is **not** appropriate for the following reasons: _____
_____
_____

j. The Illinois Department of Children and Family Services _____ is to:
(other agency)

☐ i. develop a permanency goal in conformity with this Order
☐ ii. develop and implement a new service plan in conformity with this Order
☐ iii. make changes to the service plan in conformity with this order

THEREFORE, it is in the best interest of the minor that the Court **ORDERS** that:

1. The Petition is
   ☐ **DISMISSED**
   ☐ **GRANTED**

2. The minor is adjudicated:

☐ neglected
☐ abused
☐ dependent

3. The minor is

☐ made a ward of the Court
☐ **not** made a ward of the Court

4. Custody of the minor is placed with:

☐ Mother
☐ Father
☐ The parents are ordered to cooperate with the Illinois Department of Children and Family Services. Specifically, they are to comply with the terms of the after care plan or risk loss of custody and possible termination of their parental rights
☐ The Guardianship Administrator of the Illinois Department of Children and Family Services with the right to place the minor
☐ _____
[Other]

5. Guardianship of the minor:

☐ Remains with the respondent mother
☐ Remains with the respondent father
☐ is placed with the Guardianship Administrator of the Illinois Department of Children and Family Services
☐ _____
[Other]

6. Custody of the minor is not to be returned to the parents without an Order of this Court after further hearing

7. Visitation

☐ There is to be no visitation with the minor until further Order of the Court
☐ Supervised visitation with the supervision to be monitored by
  ☐ the Illinois Department of Children and Family Services or its designee
  ☐ _____
☐ Unsupervised visitation
☐ The guardian is authorized to approve unsupervised visitation not to exceed _____ in the guardian's discretion.
☐ There is **no requirement** that the agency provide transportation for the purpose of visitation.
☐ The agency is to provide transportation for the purpose of visitation.

Visitation is to be arranged in such a manner so as not to disrupt the foster placement or place unreasonable demands on personnel of the agency providing or monitoring the visitation.

8. **The parents are admonished that they must cooperate with the Illinois Department of Children and Family Services. The parents must comply with the terms of the service plan and correct the conditions that require the minor to be in care or they risk termination of their parental rights.**

9. The permanency hearing is set for _____ at _____ _____ is to send notice. The Department of Children and Family Services shall provide a copy of the most recent service plan at least 14 days prior to the hearing and shall provide a report to the Court, CASA, all parties and counsel containing the information specified in 720 ILCS 405/2-28 (2) (i & ii) at least 72 hours before the permanency hearing.

10. The Department of Children and Family Services is the only agency accountable to the Court for the full and complete implementation of this Order and is the only agency with full knowledge of the services available. The Guardianship Administrator is **ordered** to personally appear, or by assigned caseworker, at the permanency hearing with the minor unless the presence of the minor is specifically excused by the Court prior to said hearing. This requirement **may not be delegated** to another agency.

11. Appeal rights are given.

Entered _____

_____
Judge

PERMANENCY ORDER

Paragraph a

This finding is required by **705 ILCS 405/2-28(2)**. The same statutory provision requires that the court indicate in writing the reasons the goal was selected.

Paragraphs b and c

A finding as to the reasonableness of the progress and efforts of the parents is required by **705 ILCS 405/2-28(2)(iii) and (3)** as is the reduction of the finding to writing together with the reasons for the finding. **705 ILCS 405/2-28(2)(B-1)**. In the event that the court finds that a parent has not made reasonable efforts and progress, the next hearing designated in paragraph 10 on page 4 must be a status hearing to be held not less than nine nor more than eleven months after the adjudication.

Paragraph d

A finding as provided for in this paragraph is required by **705 ILCS 405/2-28(2)** and **(3)(b)(ii)**. If the court utilizes the second alternative *i.e.* that the services contained in the plan are not appropriate and reasonably calculated to facilitate achievement of the permanency goal, the court must also utilize paragraph 2 on page 4 of this order.

Paragraph e

This finding is required by **705 ILCS 405/2-28(2)(ii) and (3)(b)(ii)**.

Paragraph f

This finding is required by **705 ILCS 405/2-28 (2) (iv)**.

Paragraph g

A finding as set forth in the first alternative must precede a return of custody to a parent. **705 ILCS 405/2-28(1)**. If custody is to continue removed from a parent, a finding as provided in the second, third or fourth alternative must be made under **705 ILCS 405/228(3)(b)(iii)** and by the federal law discussed earlier.

Paragraph h

A finding as to the reasonableness of DCFS efforts is mandated by **705 ILCS 405/2-28(2)(iii) and (3)(b)(ii)(A) and (B)** and by the federal law discussed earlier.

Paragraph i

This paragraph allows for situations in which the court wishes to enter orders such as those contained in the Supplemental Order provided herewith or other order not provided for in this form order.

Paragraph j

Before custody may be returned to a parent, this finding must be made and must be supported by the evidence adduced. **705 ILCS 405/2-28(1) and (4)(b)**. It should be noted that if the court is returning custody to a parent, the first alternative under paragraph g should have been selected and the first alternative in paragraph 5 on page 4 will be utilized.

Paragraph k

The finding is provided for in **705 ILCS 405/2-28(2)**. If this finding is made, no further permanency hearing need be set. Obviously, this finding may be made only if the permanency goal of "private guardianship" is chosen in paragraphs a (page 1) and the second alternative in paragraphs 5 and 6 (page 4) is utilized.

Paragraph 2

Paragraph 2 must be utilized if the court, in paragraph d on page 2, finds that the services contained in the service plan are not appropriate and reasonably calculated to facilitate the achievement of the permanency goal. **705 ILCS 405/2-28(2)**.

Paragraph 4

This should be utilized if the "Supplemental Order" attached hereto or other additional orders are entered beyond those contained in this form order.

Paragraphs 5

If the first alternative is chosen, the first alternative in paragraph g on page 3 and paragraph j on page 3 must be utilized with respect to the parent or parents in whom custody is being placed.

Paragraph 6

See paragraph 5 above.

Paragraph 7

It may be necessary to strike or modify paragraph 7 if custody or guardianship is being changed.

Paragraph 8

This expresses the mandate contained in **705 ILCS 405/2-28(2)**.

Paragraph 9

This admonition is required by **705 ILCS 405/2-28(4)**.

Paragraph 10

If the court has made either of the findings set forth as the third or fourth alternatives in paragraphs b and c on page 2, the court must set a status hearing not less than nine (9) months nor more than eleven (11) months from the adjudication to review the progress of the parent who was the subject of the unfavorable finding.

Paragraph 11

If the court selected a permanency goal of return home set forth in any of the first three alternatives in paragraph a on page 1, the next hearing will be a permanency hearing and must be held within the next six months.

If the fourth permanency goal contained in paragraph a on page 1 is selected, the next hearing will be a termination hearing or a case management conference in preparation for the termination hearing.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

Case No. _____

In The Interest Of

_____,

a minor.

Date of hearing: _____

Parties present for hearing:

Assistant State's Attorney: _____

Minor: _____ **Attorney for minor:** _____
Mother: _____ **Attorney for mother:** _____
Father: _____ **Attorney for father:** _____
Relative, Guardian, Custodian:_____

PERMANENCY ORDER
[705 ILCS 405/2-28]

THIS MATTER comes before the Court for hearing on the date noted above with the parties indicated being present. The case is called for permanency hearing and the Court has considered:

☐ the service plan;
☐ the report;
☐ stipulation of the parties;
☐ testimony of witnesses;

as well as all admitted evidence; statutory factors; the appropriateness of the permanency goal; whether the recommended services have been provided; whether reasonable efforts have been made by all parties to achieve the goal; whether the plan has been successful; and whether the goal has been achieved.

The Court **FINDS**:

a. The appropriate permanency goal is:

☐ Return home within five (5) months, which is to be achieved by _____
_____
_____.

☐ Return home within twelve (12) months, where the progress of the parent is substantial, giving particular consideration to the age and individual needs of the minor:
☐ Return home pending status hearing.
☐ Substitute care pending determination of termination of parental rights
☐ Adoption

☐ Private guardianship
☐ Substitute care pending independence
☐ Substitute care due to developmental disabilities or mental illness, or because the minor is a danger to self or others

The above goal was selected and the other goals were ruled out because: _____
_____
_____
_____

b. As to the mother:
☐ The mother has made reasonable and substantial progress toward returning the minor home.
☐ The mother has made reasonable efforts toward returning the minor home.
☐ The mother has **not** made reasonable and substantial progress toward returning the minor home.
☐ The mother has **not** made reasonable efforts toward returning the minor home.

If the mother has **not** made substantial progress toward returning the minor home. The mother and the Department of Children and Family Services must take the following actions to justify a finding of reasonable efforts and progress: _____
_____
_____

A status hearing is set for _____ at _____ to review the progress of the mother, said hearing being between 9 and 11 months from the date of adjudication.

c. As to the father:
☐ The father has made reasonable and substantial progress toward returning the minor home.
☐ The father has made reasonable efforts toward returning the minor home.
☐ The father has **not** made reasonable and substantial progress toward returning the minor home.
☐ The father has **not** made reasonable efforts toward returning the minor home.

If the father has **not** made substantial progress toward returning the minor home. The father and the Department of Children and Family Services must take the following actions to justify a finding of reasonable efforts and progress:_____
_____
_____

A status hearing is set for _____ at _____ to review the progress of the father, said hearing being between 9 and 11 months from the date of adjudication.

d. The services contained in the service plan are:

☐ appropriate and reasonably calculated
☐ **not** appropriate and reasonably calculated

to facilitate the achievement of the permanency goal because:_____
_____
_____

e. The services required by the Court and by the service plan:

☐ have been provided
☐ have **not** been provided because: _____
_____
_____

f. The goal selected:

☐ has been achieved
☐ has **not** been achieved because:_____
_____
_____

g. Placement of the minor outside the home

☐ is **not** necessary and appropriate to the plan and the goal recognizing the right of the minor to the least restrictive setting available consistent with the health, welfare and safety of the minor as well as the best interest and special needs of the minor.
☐ is necessary and appropriate to the plan and the goal recognizing the right of the minor to the least restrictive setting available consistent with the health, welfare and safety of the minor as well as the best interest and special needs of the minor. The parents remain unfit, unable or unwilling to care for, protect, train and discipline the minor for reasons other than financial reasons alone and placement in the home is contrary to the health, welfare and safety of the child.
☐ is necessary because reasonable efforts toward a permanency plan have been offered or engaged in but it is contrary to the health, welfare and safety of the minor to be placed in the home.
☐ is necessary because it is contrary to the health, welfare and safety of the minor to remain in the home even though reasonable efforts toward a permanency plan have **not** been offered or engaged in.

h. The Department of Children and Family Services

☐ has made reasonable efforts
☐ has **not** made reasonable efforts

in providing services to facilitate achievement of the permanency goal

i. Additional Orders

☐ are necessary
☐ are **not** necessary

j. ☐ It is in the best interest of the minor to restore custody to the parent(s)/guardian/legal custodian because the minor can be cared for at home without endangering the health, welfare and safety of the minor and the parent(s)/guardian/legal custodian is now fit, able and willing to care for, protect, train and discipline the minor

k. ☐ The minor has been placed in the guardianship of a suitable person and this is a stable, permanent placement. Further monitoring by the Court will not further the health, safety or best interest of the minor

THEREFORE, it is the **ORDER** of this Court that:

1. The permanency goal is established to be the goal set forth in the findings of this Order

2. The Department of Children and Family Services_____
(other agency)
shall file a new or amended service plan consistent with the findings of this Order on or before _____.
(within forty-five (45) days)

3. The Department of Children and Family Services_____
(other agency)
shall provide services consistent with this goal and the Orders of this Court

4. Concurrent with this Order, the Court is entering additional Orders necessary to conform the status and custody of the minor with the findings of this Order

5. Custody of the minor is:

☐ restored to the parent(s)/guardian/legal custodian
☐ continued in_____

6. Guardianship of the minor is:

☐ restored to the parent(s)/guardian/legal custodian
☐ continued in_____

7. The Dispositional Order previously entered remains in full force and effect as supplemented by this Order

8. The Department of Children and Family Services is ordered to provide a copy of the most recent service plan to the Court, all parties, the CASA and all counsel at least 14 days before the next hearing. The Department shall also provide a report to the Court, the CASA, all parties and all counsel containing the information specified in **705 ILCS 405/2-28(2)(i and ii)** at least 72 hours before the permanency hearing.

9. **The parents are ordered to cooperate with the Illinois Department of Children and Family Services. The parents must comply with the terms of the service plan and correct the conditions which require the minor to be in care, or risk termination of their parental rights.**

10. The next hearing is set for the _____ at _____ for

☐ Progress report ☐ Termination hearing
☐ Status hearing ☐ Further review
☐ Permanency hearing

11. _____ is to provide notice of next hearing.

Entered _____.

_____
Judge

SUPPLEMENTAL ORDER

The supplemental order may be utilized in conjunction with any hearing at which the judge wishes to provide detailed guidance as to the services which the judge expects D.C.F.S. to provide and the steps which the judge will require the parents to accomplish. Hopefully, affording this detail will:

1. Avoid misunderstanding as to the court's expectation and requirements.

2. Avoid wasted time with disputes between the parents and caseworkers as to what the judge is requiring of the parents.

3. Provide a convenient record for successor caseworkers, attorneys and judges who may join the case at a later time.

4. Provide a clear and convenient guide against which to measure later parental efforts and progress.

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
_____ COUNTY

Case No. _____

In The Interest Of

_____,

a minor.

Date of hearing: _____

Parties present for hearing:

Assistant State's Attorney: _____

Minor:_____ **Attorney for minor: _____**
Mother:_____ **Attorney for mother: _____**
Father:_____ **Attorney for father: _____**
Relative, Guardian, Custodian: _____

SUPPLEMENTAL ORDER

THIS ORDER is entered to supplement the ☐ Temporary Custody Order ☐ Adjudicatory Order ☐ Dispositional Order ☐ _____ previously entered in this matter.

IT IS THE ORDER of this Court that:

VISITATION

☐ 1. The parents establish and maintain a regular course of visitation with the minor(s), attending each visit scheduled with the minor(s) unless such attendance is impossible.

☐ a. All contact by the:

☐ mother(s) _____

☐ father(s) _____

is to be directly and immediately supervised by:

☐ the Department of Children and Family Services
☐ a responsible agency designated by the Department of Children and Family Services
☐ by a responsible individual designated by the Department of Children and Family Services

The parents are not to have nor attempt to have contact of any kind with the minor(s) that is not so supervised.

☐ b. Visitation maybe unsupervised up to _____ hours in every _____ day period. However, the parents are not to attempt to have any contact with the minor(s) which is not authorized by the Department of Children and Family Services or its designee

☐ c. Visitation may be supervised or unsupervised as determined by the Department of Children and Family Services.

☐ d. During visitation with the minor(s), the ☐ mother(s) ☐ father(s) is(are) to allow no contact of any kind by_____ with the minor(s).

☐ 2. Immediately notify ☐ the Department of Children and Family Services ☐ _____ of any transportation or scheduling problems which interfere with the ability of the parent to attend visits, services or employment.

EVALUATIONS

☐ 3. Within the next 60 days,

☐ mother(s) _____
☐ father(s) _____
☐ minor(s) _____

is (are) to cooperate fully and truthfully with and complete:
☐ psychological evaluation
☐ psychiatric evaluation
☐ alcohol/drug usage evaluation

to be conducted by an agency or individual designated by ☐ the Department of Children and Family Services ☐ _____ and is(are) to immediately undertake, engage in, and successfully complete any course of counseling, education or treatment recommended as a result of such evaluation(s). Written proof of such completion is to be provided to ☐ the Department of Children and Family Services ☐ _____.

COUNSELING AND COUNTERMEASURES

☐ 4. ☐ The mother(s) _____
☐ The father(s)_____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to successfully complete any course of counseling including marital, couples', individual and family counseling and any course of education including one addressing domestic violence and sexual abuse recommended by the Department of Children and Family Services or an individual or agency designated by the Department of Children and Family Services. Written proof of such completion is to be provided to ☐ the Department of Children and Family Services ☐ _____.

☐ 5. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to cooperate completely with any course of therapy, counseling, and treatment recommended by a physician, dentist, optometrist, ophthalmologist, psychologist, caseworker or counselor designated by ☐

the Department of Children and Family Services ☐ _____ for the minor(s).

☐ 6. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to refrain completely from the use of all mood or mind altering substances including alcohol, cannabis, and controlled substances with the exception of medication prescribed by a licensed physician and then only in such dosages as prescribed. Said persons) is(are) to submit to testing of blood, breath, and urine upon request by ☐ the Department of Children and Family Services ☐ _____ and unless financially unable, is(are) to pay the costs of such testing.

☐ 7. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to sign all authorizations for release of information requested by ☐ the Department of Children and Family Services ☐ _____ ☐ C.A.S.A. to monitor and evaluate her/his/their compliance with this Order, her/his/their progress, and his/her/their future needs and those of the minor(s).

☐ 8. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to cooperate fully with any placement to which he/she/they is(are) directed by the Department of Children and Family Services. He/She/They is(are) to remain at such placement and is(are) not to leave such placement for any time period without proper permission. He/She/They is(are) to obey all the rule and regulations of such placement.

PARENTING SKILLS

☐ 9. ☐ The mother(s) _____
☐ The father(s) _____
☐ Other(s) _____

is(are) to successfully complete any course of parenting education and instruction recommended by ☐ the Department of Children and Family Services ☐ _____, including individual parenting instruction and provide written proof of completion to ☐ the Department of Children and Family Services ☐ _____.

☐ 10. ☐ The mother(s) _____
☐ The father(s) _____
☐ Other(s) _____

is(are) to demonstrate appropriate parenting skills including supervision, limit setting, discipline and interaction with the minor(s) at all times

☐ 11. ☐ The mother(s)_____
☐ The father(s) _____

☐ Others(s) _____

is(are) to refrain completely from the use of corporal punishment.

☐ 12. ☐ The mother(s) _____ ☐ The father(s) _____
☐ Others(s) _____

is(are) to arrange immediately appropriate child-care and babysitting services according to a written plan with a qualified person or persons approved by ☐ the Department of Children and Family Services ☐ _____.

☐ 13. ☐ The guardian ☐ custodian is to notify the
☐ the mother(s) _____
☐ the father(s) _____

of every medical and dental appointment, school conference and staffing for the minor(s) and said parents(s) is(are) to attend each said appointment, conference and staffing unless such attendance is actually impossible.

☐ 14. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to allow representatives of ☐ the Department of Children and Family Services ☐ _____ ☐ C.A.S.A. access to his/her/their home(s) for inspection of the same upon request.

☐ 15. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to refrain completely from making critical or derogatory comments concerning other parents, step-parents, foster parents, the caseworker, counselors, or other service providers in the presence of the minor(s).

☐ 16 ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to refrain from threatening, verbally abusing. directing obscene, racial, ethnic, or threatening language at any employee, representative or individual acting at the direction or request of ☐ the Department of Children and Family Services ☐ _____.

☐ 17. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is to arrange the necessary referrals, evaluations, drug/alcohol testing and all other services necessary to enable the parent(s) to fulfill the requirements of this Order ☐ and to correct the conditions which caused the removal of the minor(s) from the custody of the parent(s).

HEALTH AND HYGIENE

☐ 18. ☐ The mother(s) _____
☐ The father(s) _____

is(are) to plan a regular program of medical and, if appropriate, dental and optical examination and treatment for the respondent minor(s) including health maintenance, as well as, diagnosis and treatment of illness and injury. Said parent(s) is(are) to supply the plan in writing to ☐ the Department of Children and Family Services ☐ _____ within 30 days of the entry of this Order and prove compliance end update of the same every 90 days thereafter.

HOME ENVIRONMENT

☐ 19. ☐ The mother(s) _____
☐ The father(s) _____
☐ Other(s) _____

is(are) to establish and maintain an appropriate, clean, healthy, and stable residences.

☐ 20. ☐ The mother(s) _____
☐ The father(s) _____

is(are) to refrain from changing their place of residence without giving at least 14 days prior notice to ☐ the Department of Children and Family Services ☐ _____.

☐ 21. ☐ The mother(s) _____
☐ The father(s) _____

is(are) to immediately inform ☐ the Department of Children and Family Services ☐ _____ _____ of any change in the number or identity of any of the persons residing or staying at their residence for more than 24 hours.

☐ 22. ☐ The mother(s) _____
☐ The father(s) _____

☐ shall not permit any more than _____ persons in the home while the minor(s) is(are) present.
☐ shall not have any overnight guests while the minor(s) is(are) present.

☐ 23. ☐ The mother(s) _____
☐ The father(s) _____

are to cooperate with any budgeting counseling and assistance recommended by ☐ the Department of Children and Family Services ☐ _____.

GENERAL REQUIREMENTS

☐ 24. ☐ The mother(s) _____
☐ The father(s) _____
☐ Other(s) _____
☐ The minor(s) _____

is(are) to attend each appointment or meeting scheduled by ☐ the Department of Children and Family Services ☐ _____, with a caseworker, family aid specialists, agent,

employee, or other person designated by ☐ the Department of Children and Family Services ☐ _____ unless such attendance is actually impossible.

☐ 25. ☐ The mother(s) _____
☐ The father(s) _____
☐ Other(s) _____

is(are) to make all reasonable efforts to obtain and maintain full-time or other appropriate employment and is(are) to notify ☐ the Department of Children and Family Services ☐ _____ immediately of any change of employment.

☐ 26. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to make all reasonable efforts to obtain a high school diploma, G.E.D., or other high school diploma equivalent.

☐ 27. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to pursue and successfully complete any course of vocational or employment related education, counseling, and training recommended by ☐ the Department of Children and Family Services ☐ _____.

☐ 28. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to attend the school or educational program in which he/she/they is(are) enrolled each and every day that such school or program is in session and is(are) to attend each class to which he/she/they is(are) assigned. He/She/They is(are) not to be absent or tardy without being properly excused. He/She/They is(are) to obey all rules and regulations of the school or educational program in which he/she/they is(are) enrolled.

☐ 29. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

are to refrain from all criminal activity.

☐ 30. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to comply with and successfully complete ☐ probation ☐ parole ☐ supervised release.

☐ 31. ☐ The mother(s) _____
☐ The father(s) _____
☐ The minor(s) _____
☐ Other(s) _____

is(are) to obtain release from incarceration at the earliest date legally possible.

Dated _____

_____

Judge

APPENDIX B

Checklists and Forms Relating to Delinquency

NOTICE OF RIGHTS
(Delinquency)

FOR RESPONDENTS IN JUVENILE COURT PROCEEDINGS
(to be given writing to all adult respondents per **705 ILCS 405/1-5(1)**)

A respondent is normally a minor (under the age of 18), parent, guardian, legal custodian or responsible relative. A respondent is also a person who has done something with respect to the child (make sure it is 18) which has caused the petition to be filed.

If you are a respondent in a juvenile court proceeding, you have the following rights:

1. A respondent is entitled to notice of the court proceedings in conformity with the Juvenile Court Act (**705 ILCS 40SI1.1 *et seq.***).

2. A respondent has the right to be present at all court proceedings.

3. A respondent has the right to be represented by counsel. If the respondent is financially unable to hire an attorney, an attorney may be appointed to represent the respondent at no cost. If the respondent is financially able to contribute toward the cost of appointed counsel, the Court may order the respondent to reimburse the County for all or part of the public defender expense.

4. A respondent has the right to a trial or hearing. In almost all cases the trial or hearing will be a bench trial. Jury trials are allowed in only very limited cases.

5. A minor who is charged with a crime has the right to remain silent, and does not have to prove that he or she is innocent. The State has the burden of proving the minor is guilty of the crime charged, and must prove that beyond a reasonable doubt.

6. A respondent has the right to cross-examine witnesses.

7. A respondent has the right to be heard and to present evidence materials to the proceedings. A respondent may use the subpoena power to command witnesses to appear and testify.

8. A respondent has the right to examine pertinent court files and records.

MANDATORY TRANSFER

☐ 1. Motion by the State to prosecute under the criminal laws and petition alleging minor is 15 year old; and

☐ A. Minor has committed a forcible felony; and

☐ B. The court finds probable cause that:

☐ (1) Minor was previously convicted or adjudicated for a felony; and

☐ (2) Act committed in furtherance of criminal activities of an organized gang;

(OR)

☐ 2. Motion by the State to prosecute under the criminal laws and petition alleging minor is 15 years old or older; and

☐ A. Minor has committed a felony; and

☐ B. The court finds probable cause that;

☐ (1) Minor was previously convicted or adjudicated delinquent for a forcible felony; and

☐ (2) Act committed in furtherance of criminal activities of an organized gang;

(OR)

☐ 3. Motion by the State to prosecute under the criminal laws and petition alleging minor 15 years old or older; and

☐ A. Minor has committed one of the following:

☐ (1) Class X Felony other than armed violence;

☐ (2) Aggravated discharged with a firearm;

☐ (3) Armed violence with a firearm when the predicate offense is a Class 1 or 2 felony and the State's Attorney alleges that the offense was committed in furtherance of criminal activities of an organized gang;

☐ (4) Armed violence with a firearm when the predicate offense is a violation of the Controlled Substance Act or the Cannabis Control Act.;

☐ (5) Armed violence with a machine gun or other weapons in 720 ILCS 5/24-1(a) 7; and

☐ B. The court finds probable cause that the minor was previously convicted or adjudicated delinquent for forcible felony;

(THEN)

☐ 4. Court shall enter order;

☐ A. Permitting prosecution under the criminal laws of the State;

☐ B. Juvenile petition to be dismissed once criminal proceedings instituted.

PRESUMPTIVE TRANSFER

☐ 1. Motion by the State to prosecute under the criminal laws and petition alleging

☐ A. Minor is 15 years old or older; and

☐ B. Minor has committed <u>one</u> of the following:

☐ (1) Class X felony other than armed violence;

☐ (2) Aggravated discharge of a firearm;

☐ (3) Armed violence with a firearm when the predicate offense is a Class 1 or 2 felony and the State's Attorney alleges that the offense was committed in furtherance of criminal activities of an organized gang;

☐ (4) Armed violence with a firearm when the predicate offense is a violation of the Controlled Substances Act or the Cannabis Control Act;

☐ (5) Armed violence with a machine gun or other weapon in **720 ILCS 5/24-1(a)7**

☐ 2. Finding and Order

☐ A. Probable cause to believe that allegations of motion and petition are true; and

☐ B. Order entered permitting prosecution under the criminal laws of the state; or

☐ C. Findings that presumption rebutted by clear and convincing evidence that the minor would be amenable to the care, treatment, and training programs available through the juvenile court, after consideration of all relevant factors, including:

☐ (1) The seriousness of the alleged offense (greater weight than other factors);

☐ (2) The minor's history of delinquency (greater weight than other factors);

☐ (3) The age of the minor;

☐ (4) The culpability of the minor in committing the alleged offense;

☐ (5) Whether the offense was committed in an aggressive or premeditated manner;

☐ (6) Whether the minor used or possessed a deadly weapon when committing the alleged offense;

☐ (7) The minor's history of services, including the minor's willingness to participate meaningfully in available services;

☐ (8) Whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

☐ (9) The adequacy of the punishment or services available in the Juvenile Justice System.

DISCRETIONARY TRANSFER

☐ 1. Motion by the State to prosecute under the criminal laws and petition alleging

- ☐ A. Minor is 13 years old or older; and
- ☐ B. Commission of a crime under the laws of this State.

☐ 2. Findings and Order

- ☐ A. Probable cause to believe that allegations of petition are true; and
- ☐ B. Finding that it is not in the best interests of the public to proceed under the Juvenile Act, after consideration of all relevant factors, including:
  - ☐ (1) The seriousness of the alleged offense (greater weight than other factors);
  - ☐ (2) The minor's history of delinquency (greater weight than other factors);
  - ☐ (3) The age of the minor;
  - ☐ (4) The culpability of the minor in committing the alleged offense;
  - ☐ (5) Whether the offense was committed in an aggressive or premeditated manner;
  - ☐ (6) Whether the minor used or possessed a deadly weapon when committing the alleged offense;
  - ☐ (7) The minor's history of services, including the minor's willingness to participate meaningfully in available services;
  - ☐ (8) The adequacy of punishment or services available in the Juvenile Justice System.

FIRST APPEARANCE CHECKLIST

The following are steps the court must take on its own initiative when the minor and his or her parent initially appear before the court regardless of whether the minor has been taken into custody or is being held in detention:

- ☐ 1. Check petition for necessary parties;
- ☐ 2. Check for proper service of summons or notice by publication;
- ☐ 3. Ensure that all parties have received a copy of the petition. If not, immediately provide a petition;
- ☐ 4. Advise the parties and the minor as to:
  - ☐ A. The nature of the proceedings;
  - ☐ B. Possible outcomes;
  - ☐ C. The right to be present;
  - ☐ D. The right to be heard;
  - ☐ E. The right to present evidence;
  - ☐ F. The right to cross-examine witnesses;
  - ☐ G. The right to examine pertinent court files and records;
  - ☐ H. The right to counsel, including appointed counsel if indigent.
  - ☐ I. Trial in absentia
- ☐ 5. Provide written notice of rights if not already provided;
- ☐ 6. Appoint counsel for the minor if private counsel has not been retained for the minor;
- ☐ 7. If necessary, appoint a guardian ad litem for the minor;
- ☐ 8. Appoint counsel for the parents if indigent and an actual conflict exists;
- ☐ 9. Set trial date;
  - ☐ A. Minor in custody; within 30 calendar days;

☐ B. Minor not in custody; within 120 days.

☐ 10. Elicit waiver of service of summons for parties who appear;

☐ 11. Order summons or service by publication for parties who do not appear (returnable for the adjudicatory hearing date). If a summons is ordered, specify method of service (personal, certified mail).

☐ 12. Inform minor of entry of any pretrial conditions order and/or restraining order and sanctions for failure to abide by such order.

☐ 13. If minor is being detained see Detention Hearing Procedural Checklist.

DETENTION HEARING PROCEDURAL CHECKLIST

☐ 1. Minor brought before the court within 40-hour time limit.

☐ 2. Copy of petition for adjudication served on:

- ☐ A. Minor
- ☐ B. Mother
- ☐ C. Father
- ☐ D. Legal custodian
- ☐ E. Guardian
- ☐ F. All other parties

☐ 3. Notice of detention hearing given to:

- ☐ A. Minor
- ☐ B. Mother
- ☐ C. Father
- ☐ D. Legal custodian
- ☐ E. Guardian
- ☐ F. All other parties

Direct appropriate notice to proper parties respondent who do not appear.

☐ 4. Counsel and/or guardian ad litem for minor is present.

☐ 5. Explain nature of proceedings and rights of those present, furnishing written "Notice of Rights."

☐ 6. Findings and Order:

- ☐ A. Probable cause to believe the minor is delinquent; and
- ☐ B. Immediately and urgent necessity
  - ☐ (1) for the protection of the minor; or
  - ☐ (2) for the protection of the person or property of another; or
  - ☐ (3) the minor is likely to leave the jurisdiction;

  that the minor be detained or placed in a shelter care facility.

☐ C. Considering

☐ (1) all reliable and relevant evidence, including proffer;

☐ (2) the nature and seriousness of the alleged offense;

☐ (3) the minor's record of delinquency and willful failure to appear; and

☐ (4) the availability of non-custodial alternatives.

☐ D. Entering findings of fact and appropriate order for the record.

☐ 7. If detention or shelter care is prescribed, order minor be kept

☐ A. In suitable place designated by the court; or

☐ B. In a shelter care facility designed by DCFS or a licensed child welfare agency.

☐ 8. If detention or shelter care not prescribed, order minor released from custody if parent, guardian or legal custodian appears to take custody.

☐ 9. Consider entry of

☐ A. Pretrial conditions order

☐ B. Restraining order against minor;

☐ C. Order of protection;

☐ D. Order for medical and dental treatment and care; and

☐ E. Order for parental support.

☐ 10. Set petition for trial

☐ A. Within thirty calendar days of the order directing detention or shelter care if all parties have been served; or

☐ B. If all parties not served, at earliest possible date in compliance with the notice provisions of sections 5-525 but no later than 45 calendar days from the date of the detention or shelter care order; or

☐ C. If minor released from custody, within 120 days of a written demand for hearing; and

☐ D. If minor has multiple petitions pending, consult 705 ILCS 405/5-601 (2) for direction.

☐ 11. Provide copy of detention hearing order to parties.

GUILTY PLEA CHECKLIST—JUVENILE PROCEEDING

- ☐ Nature of Change
- ☐ Maximum Sentencing Possible
- ☐ Right to a Jury Trial
- ☐ Right to a Bench Trial
- ☐ Right to Confront a Witness
- ☐ Right to Present Evidence
- ☐ Right against Self-Incrimination
- ☐ Factual Basis
- ☐ Accept Guilty Plea
- ☐ **Rule 605** Admonitions
- ☐ Necessity of Motion to Withdraw Guilty Plea
    - ☐ Right to Appointed Counsel
    - ☐ Right to Free Transcript

CHECKLIST FOR EXTENDED JURISDICTION JUVENILE (E.J.J) (§ 5-810)

☐ 1. Motion filed by the State's Attorney requesting E.J.J. proceeding and alleging minor

- ☐ A. is 13 years old or older; and
- ☐ B. has committed a felony

☐ 2. Set hearing on the E.J.J. request within 30 days

☐ 3. Copy of motion and written notice of hearing served upon:

- ☐ A. Minor or his attorney
- ☐ B. Mother
- ☐ C. Father
- ☐ D. Legal custodian
- ☐ E. Guardian
- ☐ F. All other parties

☐ 4. Findings and Order

- ☐ A. Probable cause to believe minor
  - ☐ (1) is 13 years old or older; and
  - ☐ (2) has committed a felony

AND

  - ☐ (3) E.J.J. granted. Cause set for jury trial within applicable adult speedy trial requirements

OR

- ☐ B. Having considered:
  - ☐ (1) The seriousness of the alleged offense;
  - ☐ (2) The minor's age;
  - ☐ (3) The minor's history of delinquency;
  - ☐ (4) The minor's culpability in committing the alleged offense;

☐ (5) Whether the offense was committed in an aggressive or premeditated manner;

☐ (6) Whether the minor used or possessed a deadly weapon when committing the alleged offense;

AND

☐ (7) Giving greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency;

☐ (8) By clear and convincing evidence the court finds that sentencing under Article V of the Unified Code of Corrections would not be appropriate for the minor.

☐ 5. Petition for E.J.J. Denied. Cause set for bench trial within applicable time limits under the Juvenile Court Act.

CHECKLIST FOR ADMISSION AND GUILTY PLEA IN EXTENDED JURISDICTION JUVENILE (E.J.J) PROCEEDING

☐ Motion filed seeking E.J.J. treatment and alleging that minor

- ☐ is 13 years old or older; and
- ☐ has committed a felony

Waiver of E.J.J. Hearing

Admonish minor as to:

- ☐ Right to E.J.J. hearing at which state must establish probable cause to believe motion is true and minor has opportunity to prove by clear and convincing evidence that adult sentencing would not be appropriate;
- ☐ Waive of E.J.J. hearing means minor may be sentenced as adult;
- ☐ All possible adult sentences;
- ☐ Accept Waiver;
- ☐ Find that minor is 13 years old or older and there is probable cause to believe minor has committed a felony.

☐ Order E.J.J Treatment

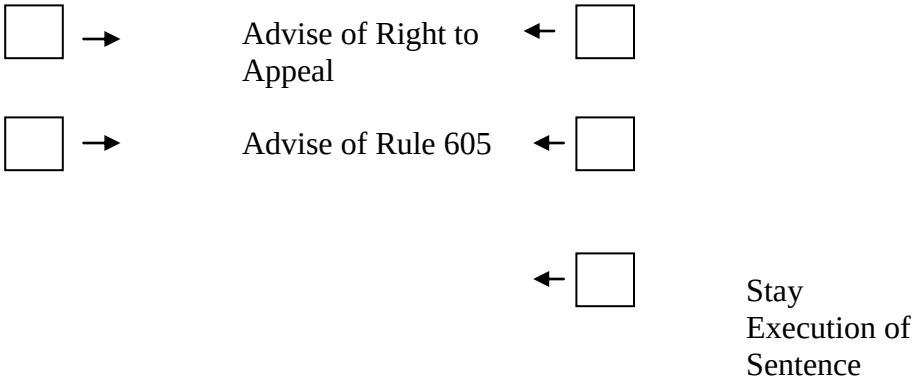
☐ Proceeding conducted by circuit judge or associate judge certified to conduct felony proceedings.

CHECKLIST EJJ (Continued)
(This is a dual admonition proceeding)

GUILTY PLEA-JUVENILE	BOTH	GULITY PLEA-ADULT
☐ →	Nature of Charge ←	☐
		☐ All Possible Sentences and Mandatory Supervised Release
Maximum Sentence Possible ☐		☐ Right to Jury Trial
☐ →	Right to Bench Trial ←	☐
☐ →	Right to Confront Witness ←	☐
☐ →	Right to Present Evidence ←	☐
☐ →	Right Against Self-Incrimination ←	☐
		☐ Factual Basis
☐ →	Accept Guilty Plea ←	☐

SENTENCING

		☐ Waiver of Pre-Sentencing Report
		☐ Right of Allocation
☐ →	Impose Sentence ←	☐


Advise of Right to Appeal
Advise of Rule 605
Stay Execution of Sentence

SENTENCING CHECKLIST

☐ **Notice of Hearing**

- ☐ A. Minor
- ☐ B. Mother
- ☐ C. Father
- ☐ D. Legal Custodian
- ☐ E. Guardian
- ☐ F. All other parties

☐ **Finding of Delinquency**

☐ **Finding (best interests) and Adjudication of Wardship**

☐ **Probation**

- ☐ Definite Term
- ☐ Conditions
- ☐ Certificate of Probation to Minor

☐ **Commitment to D.O.C.**

- ☐ Social Investigation Report Completed within 60 days
- ☐ Minor 13 Years Old
- ☐ Term of Incarceration Permitted for Adult
- ☐ Parental Inability Finding
- ☐ Necessary to Ensure Protection of Public Finding
- ☐ Written Order
- ☐ Assistant Director of Corrections, Juvenile Division Appointed Legal Custodian of the Minor

APPEAL ADMONISHMENT/DELINQUENT CHECKLIST
(**Supreme Court Rules 604*, 605(b), 660, 661, 662**)

S.Ct.Rule 605A

Advise delinquent minor after plea of guilty and judgment entered

☐ 1. You have the right to an appeal;

☐ 2. Prior to taking an appeal if you are challenging the sentence you must file in the trial court, **within 30**** days of the date of the sentence, a written motion to reconsider the sentence or if the plea is being challenged then you must file a motion to withdraw the plea of guilty and vacate the judgment, setting forth the grounds/reasons for either motion. Every reason must be stated in the written motion why the court should reconsider your sentence or allow you to withdraw your plea of guilty or that reason is waived or given up;

☐ 3. If the motion is allowed, the sentence may be modified or the judgment would **be vacated**, or erased, and a trial will be set;

☐ 4. The State may ask to reinstate any charges that were dismissed or reduced and those charges will be set for a trial;

☐ 5. If you are **indigent** and it is determined that you cannot afford it, a copy of the **transcript of proceedings** will be provided free of charge and an **attorney** will be appointed to assist you on your appeal without cost to you;

☐ 6. You must raise all the issues/reasons why your pleas should be vacated or you cannot raise any new issues to appellate court (waived).

*See **Rule 604(d)** no appeal upon plea of guilty unless motion to reconsider sentence or motion to withdraw plea.

See **Rule 662 an appeal may be taken from an adjudication of wardship and revocation of probation or conditional discharge within 90 days, in the event an order of adjudication or dispositional order has not been entered within 30 days of hearing.

ADMONISHMENTS AFTER TRIAL

S.Ct.Rule 605(a)

Advise Delinquent minor after a finding of guilty

In all cases where the minor has been adjudicated delinquent and receives supervision, probation/conditional discharge

1. Advise delinquent minor that s/he has a right to appeal;

   and

2. That s/he has a right to request the clerk to prepare and file a notice of appeal;

3. Right to appeal preserved only if you file within 30 days from the date of sentence;

4. If you are **indigent** and it is determined that you cannot afford it, a copy of the **transcript of proceedings** will be provided free of charge and an **attorney** will be appointed to assist you on your appeal without cost to you.