

1 AN ACT concerning adoption.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Adoption Act is amended by changing Section
5 1 as follows:

6 (750 ILCS 50/1) (from Ch. 40, par. 1501)

7 Sec. 1. Definitions. When used in this Act, unless the
8 context otherwise requires:

9 A. "Child" means a person under legal age subject to
10 adoption under this Act.

11 B. "Related child" means a child subject to adoption where
12 either or both of the adopting parents stands in any of the
13 following relationships to the child by blood or marriage:
14 parent, grand-parent, brother, sister, step-parent,
15 step-grandparent, step-brother, step-sister, uncle, aunt,
16 great-uncle, great-aunt, or cousin of first degree. A child
17 whose parent has executed a final irrevocable consent to
18 adoption or a final irrevocable surrender for purposes of
19 adoption, or whose parent has had his or her parental rights
20 terminated, is not a related child to that person, unless the
21 consent is determined to be void or is void pursuant to
22 subsection O of Section 10.

23 C. "Agency" for the purpose of this Act means a public
24 child welfare agency or a licensed child welfare agency.

25 D. "Unfit person" means any person whom the court shall
26 find to be unfit to have a child, without regard to the
27 likelihood that the child will be placed for adoption. The
28 grounds of unfitness are any one or more of the following,
29 except that a person shall not be considered an unfit person
30 for the sole reason that the person has relinquished a child in
31 accordance with the Abandoned Newborn Infant Protection Act:

32 (a) Abandonment of the child.

1 (a-1) Abandonment of a newborn infant in a hospital.

2 (a-2) Abandonment of a newborn infant in any setting
3 where the evidence suggests that the parent intended to
4 relinquish his or her parental rights.

5 (b) Failure to maintain a reasonable degree of
6 interest, concern or responsibility as to the child's
7 welfare.

8 (c) Desertion of the child for more than 3 months next
9 preceding the commencement of the Adoption proceeding.

10 (d) Substantial neglect of the child if continuous or
11 repeated.

12 (d-1) Substantial neglect, if continuous or repeated,
13 of any child residing in the household which resulted in
14 the death of that child.

15 (e) Extreme or repeated cruelty to the child.

16 (f) There is a rebuttable presumption, which can be
17 overcome only by clear and convincing evidence, that a
18 parent is unfit if:

19 (1) Two or more findings of physical abuse have
20 been entered regarding ~~to~~ any children under ~~Section~~
21 ~~4-8 of the Juvenile Court Act or~~ Section 2-21 of the
22 Juvenile Court Act of 1987, the most recent of which
23 was determined by the juvenile court hearing the matter
24 to be supported by clear and convincing evidence; or

25 (2) The parent has been convicted or found not
26 guilty by reason of insanity and the conviction or
27 finding resulted from the death of any child by
28 physical abuse ~~a criminal conviction or a finding of~~
29 ~~not guilty by reason of insanity resulting from the~~
30 ~~death of any child by physical child abuse; or~~

31 (3) There is ~~or~~ a finding of physical child abuse
32 resulting from the death of any child under ~~Section 4-8~~
33 ~~of the Juvenile Court Act or~~ Section 2-21 of the
34 Juvenile Court Act of 1987.

35 No conviction or finding of delinquency pursuant
36 to Article 5 of the Juvenile Court Act of 1987 shall be

1 considered a criminal conviction for the purpose of
2 applying any presumption under this item (f).

3 (g) Failure to protect the child from conditions within
4 his environment injurious to the child's welfare.

5 (h) Other neglect of, or misconduct toward the child;
6 provided that in making a finding of unfitness the court
7 hearing the adoption proceeding shall not be bound by any
8 previous finding, order or judgment affecting or
9 determining the rights of the parents toward the child
10 sought to be adopted in any other proceeding except such
11 proceedings terminating parental rights as shall be had
12 under either this Act, the Juvenile Court Act or the
13 Juvenile Court Act of 1987.

14 (i) Depravity. Conviction of any one of the following
15 crimes shall create a presumption that a parent is deprived
16 which can be overcome only by clear and convincing
17 evidence: (1) first degree murder in violation of paragraph
18 1 or 2 of subsection (a) of Section 9-1 of the Criminal
19 Code of 1961 or conviction of second degree murder in
20 violation of subsection (a) of Section 9-2 of the Criminal
21 Code of 1961 of a parent of the child to be adopted; (2)
22 first degree murder or second degree murder of any child in
23 violation of the Criminal Code of 1961; (3) attempt or
24 conspiracy to commit first degree murder or second degree
25 murder of any child in violation of the Criminal Code of
26 1961; (4) solicitation to commit murder of any child,
27 solicitation to commit murder of any child for hire, or
28 solicitation to commit second degree murder of any child in
29 violation of the Criminal Code of 1961; ~~or~~ (5) predatory
30 ~~aggravated~~ criminal sexual assault of a child in violation
31 of Section 12-14.1 ~~12-14(b)(1)~~ of the Criminal Code of
32 1961; (6) heinous battery of any child in violation of the
33 Criminal Code of 1961; or (7) aggravated battery of any
34 child in violation of the Criminal Code of 1961.

35 There is a rebuttable presumption that a parent is
36 depraved if the parent has been criminally convicted of at

1 least 3 felonies under the laws of this State or any other
2 state, or under federal law, or the criminal laws of any
3 United States territory; and at least one of these
4 convictions took place within 5 years of the filing of the
5 petition or motion seeking termination of parental rights.

6 There is a rebuttable presumption that a parent is
7 depraved if that parent has been criminally convicted of
8 either first or second degree murder of any person as
9 defined in the Criminal Code of 1961 within 10 years of the
10 filing date of the petition or motion to terminate parental
11 rights.

12 No conviction or finding of delinquency pursuant to
13 Article 5 of the Juvenile Court Act of 1987 shall be
14 considered a criminal conviction for the purpose of
15 applying any presumption under this item (i).

16 (j) Open and notorious adultery or fornication.

17 (j-1) (Blank).

18 (k) Habitual drunkenness or addiction to drugs, other
19 than those prescribed by a physician, for at least one year
20 immediately prior to the commencement of the unfitness
21 proceeding.

22 There is a rebuttable presumption that a parent is
23 unfit under this subsection with respect to any child to
24 which that parent gives birth where there is a confirmed
25 test result that at birth the child's blood, urine, or
26 meconium contained any amount of a controlled substance as
27 defined in subsection (f) of Section 102 of the Illinois
28 Controlled Substances Act or metabolites of such
29 substances, the presence of which in the newborn infant was
30 not the result of medical treatment administered to the
31 mother or the newborn infant; and the biological mother of
32 this child is the biological mother of at least one other
33 child who was adjudicated a neglected minor under
34 subsection (c) of Section 2-3 of the Juvenile Court Act of
35 1987.

36 (l) Failure to demonstrate a reasonable degree of

1 interest, concern or responsibility as to the welfare of a
2 new born child during the first 30 days after its birth.

3 (m) Failure by a parent (i) to make reasonable efforts
4 to correct the conditions that were the basis for the
5 removal of the child from the parent, or (ii) to make
6 reasonable progress toward the return of the child to the
7 parent within 9 months after an adjudication of neglected
8 or abused minor under Section 2-3 of the Juvenile Court Act
9 of 1987 or dependent minor under Section 2-4 of that Act,
10 or (iii) to make reasonable progress toward the return of
11 the child to the parent during any 9-month period after the
12 end of the initial 9-month period following the
13 adjudication of neglected or abused minor under Section 2-3
14 of the Juvenile Court Act of 1987 or dependent minor under
15 Section 2-4 of that Act. If a service plan has been
16 established as required under Section 8.2 of the Abused and
17 Neglected Child Reporting Act to correct the conditions
18 that were the basis for the removal of the child from the
19 parent and if those services were available, then, for
20 purposes of this Act, "failure to make reasonable progress
21 toward the return of the child to the parent" includes (I)
22 the parent's failure to substantially fulfill his or her
23 obligations under the service plan and correct the
24 conditions that brought the child into care within 9 months
25 after the adjudication under Section 2-3 or 2-4 of the
26 Juvenile Court Act of 1987 and (II) the parent's failure to
27 substantially fulfill his or her obligations under the
28 service plan and correct the conditions that brought the
29 child into care during any 9-month period after the end of
30 the initial 9-month period following the adjudication
31 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.
32 Notwithstanding any other provision, when a petition or
33 motion seeks to terminate parental rights on the basis of
34 item (iii) of this subsection (m), the petitioner shall
35 file with the court and serve on the parties a pleading
36 that specifies the 9-month period or periods relied on. The

1 pleading shall be filed and served on the parties no later
2 than 3 weeks before the date set by the court for closure
3 of discovery, and the allegations in the pleading shall be
4 treated as incorporated into the petition or motion.
5 Failure of a respondent to file a written denial of the
6 allegations in the pleading shall not be treated as an
7 admission that the allegations are true.

8 (m-1) Pursuant to the Juvenile Court Act of 1987, a
9 child has been in foster care for 15 months out of any 22
10 month period which begins on or after the effective date of
11 this amendatory Act of 1998 unless the child's parent can
12 prove by a preponderance of the evidence that it is more
13 likely than not that it will be in the best interests of
14 the child to be returned to the parent within 6 months of
15 the date on which a petition for termination of parental
16 rights is filed under the Juvenile Court Act of 1987. The
17 15 month time limit is tolled during any period for which
18 there is a court finding that the appointed custodian or
19 guardian failed to make reasonable efforts to reunify the
20 child with his or her family, provided that (i) the finding
21 of no reasonable efforts is made within 60 days of the
22 period when reasonable efforts were not made or (ii) the
23 parent filed a motion requesting a finding of no reasonable
24 efforts within 60 days of the period when reasonable
25 efforts were not made. For purposes of this subdivision
26 (m-1), the date of entering foster care is the earlier of:
27 (i) the date of a judicial finding at an adjudicatory
28 hearing that the child is an abused, neglected, or
29 dependent minor; or (ii) 60 days after the date on which
30 the child is removed from his or her parent, guardian, or
31 legal custodian.

32 (n) Evidence of intent to forgo his or her parental
33 rights, whether or not the child is a ward of the court,
34 (1) as manifested by his or her failure for a period of 12
35 months: (i) to visit the child, (ii) to communicate with
36 the child or agency, although able to do so and not

1 prevented from doing so by an agency or by court order, or
2 (iii) to maintain contact with or plan for the future of
3 the child, although physically able to do so, or (2) as
4 manifested by the father's failure, where he and the mother
5 of the child were unmarried to each other at the time of
6 the child's birth, (i) to commence legal proceedings to
7 establish his paternity under the Illinois Parentage Act of
8 1984 or the law of the jurisdiction of the child's birth
9 within 30 days of being informed, pursuant to Section 12a
10 of this Act, that he is the father or the likely father of
11 the child or, after being so informed where the child is
12 not yet born, within 30 days of the child's birth, or (ii)
13 to make a good faith effort to pay a reasonable amount of
14 the expenses related to the birth of the child and to
15 provide a reasonable amount for the financial support of
16 the child, the court to consider in its determination all
17 relevant circumstances, including the financial condition
18 of both parents; provided that the ground for termination
19 provided in this subparagraph (n)(2)(ii) shall only be
20 available where the petition is brought by the mother or
21 the husband of the mother.

22 Contact or communication by a parent with his or her
23 child that does not demonstrate affection and concern does
24 not constitute reasonable contact and planning under
25 subdivision (n). In the absence of evidence to the
26 contrary, the ability to visit, communicate, maintain
27 contact, pay expenses and plan for the future shall be
28 presumed. The subjective intent of the parent, whether
29 expressed or otherwise, unsupported by evidence of the
30 foregoing parental acts manifesting that intent, shall not
31 preclude a determination that the parent has intended to
32 forgo his or her parental rights. In making this
33 determination, the court may consider but shall not require
34 a showing of diligent efforts by an authorized agency to
35 encourage the parent to perform the acts specified in
36 subdivision (n).

1 It shall be an affirmative defense to any allegation
2 under paragraph (2) of this subsection that the father's
3 failure was due to circumstances beyond his control or to
4 impediments created by the mother or any other person
5 having legal custody. Proof of that fact need only be by a
6 preponderance of the evidence.

7 (o) Repeated or continuous failure by the parents,
8 although physically and financially able, to provide the
9 child with adequate food, clothing, or shelter.

10 (p) Inability to discharge parental responsibilities
11 supported by competent evidence from a psychiatrist,
12 licensed clinical social worker, or clinical psychologist
13 of mental impairment, mental illness or mental retardation
14 as defined in Section 1-116 of the Mental Health and
15 Developmental Disabilities Code, or developmental
16 disability as defined in Section 1-106 of that Code, and
17 there is sufficient justification to believe that the
18 inability to discharge parental responsibilities shall
19 extend beyond a reasonable time period. However, this
20 subdivision (p) shall not be construed so as to permit a
21 licensed clinical social worker to conduct any medical
22 diagnosis to determine mental illness or mental
23 impairment.

24 (q) (Blank). ~~The parent has been criminally convicted~~
25 ~~of aggravated battery, heinous battery, or attempted~~
26 ~~murder of any child.~~

27 (r) The child is in the temporary custody or
28 guardianship of the Department of Children and Family
29 Services, the parent is incarcerated as a result of
30 criminal conviction at the time the petition or motion for
31 termination of parental rights is filed, prior to
32 incarceration the parent had little or no contact with the
33 child or provided little or no support for the child, and
34 the parent's incarceration will prevent the parent from
35 discharging his or her parental responsibilities for the
36 child for a period in excess of 2 years after the filing of

1 the petition or motion for termination of parental rights.

2 (s) The child is in the temporary custody or
3 guardianship of the Department of Children and Family
4 Services, the parent is incarcerated at the time the
5 petition or motion for termination of parental rights is
6 filed, the parent has been repeatedly incarcerated as a
7 result of criminal convictions, and the parent's repeated
8 incarceration has prevented the parent from discharging
9 his or her parental responsibilities for the child.

10 (t) A finding that at birth the child's blood, urine,
11 or meconium contained any amount of a controlled substance
12 as defined in subsection (f) of Section 102 of the Illinois
13 Controlled Substances Act, or a metabolite of a controlled
14 substance, with the exception of controlled substances or
15 metabolites of such substances, the presence of which in
16 the newborn infant was the result of medical treatment
17 administered to the mother or the newborn infant, and that
18 the biological mother of this child is the biological
19 mother of at least one other child who was adjudicated a
20 neglected minor under subsection (c) of Section 2-3 of the
21 Juvenile Court Act of 1987, after which the biological
22 mother had the opportunity to enroll in and participate in
23 a clinically appropriate substance abuse counseling,
24 treatment, and rehabilitation program.

25 E. "Parent" means the father or mother of a lawful child of
26 the parties or child born out of wedlock. For the purpose of
27 this Act, a person who has executed a final and irrevocable
28 consent to adoption or a final and irrevocable surrender for
29 purposes of adoption, or whose parental rights have been
30 terminated by a court, is not a parent of the child who was the
31 subject of the consent or surrender, unless the consent is void
32 pursuant to subsection O of Section 10.

33 F. A person is available for adoption when the person is:

34 (a) a child who has been surrendered for adoption to an
35 agency and to whose adoption the agency has thereafter
36 consented;

1 (b) a child to whose adoption a person authorized by
2 law, other than his parents, has consented, or to whose
3 adoption no consent is required pursuant to Section 8 of
4 this Act;

5 (c) a child who is in the custody of persons who intend
6 to adopt him through placement made by his parents;

7 (c-1) a child for whom a parent has signed a specific
8 consent pursuant to subsection 0 of Section 10;

9 (d) an adult who meets the conditions set forth in
10 Section 3 of this Act; or

11 (e) a child who has been relinquished as defined in
12 Section 10 of the Abandoned Newborn Infant Protection Act.

13 A person who would otherwise be available for adoption
14 shall not be deemed unavailable for adoption solely by reason
15 of his or her death.

16 G. The singular includes the plural and the plural includes
17 the singular and the "male" includes the "female", as the
18 context of this Act may require.

19 H. "Adoption disruption" occurs when an adoptive placement
20 does not prove successful and it becomes necessary for the
21 child to be removed from placement before the adoption is
22 finalized.

23 I. "Foreign placing agency" is an agency or individual
24 operating in a country or territory outside the United States
25 that is authorized by its country to place children for
26 adoption either directly with families in the United States or
27 through United States based international agencies.

28 J. "Immediate relatives" means the biological parents, the
29 parents of the biological parents and siblings of the
30 biological parents.

31 K. "Intercountry adoption" is a process by which a child
32 from a country other than the United States is adopted.

33 L. "Intercountry Adoption Coordinator" is a staff person of
34 the Department of Children and Family Services appointed by the
35 Director to coordinate the provision of services by the public
36 and private sector to prospective parents of foreign-born

1 children.

2 M. "Interstate Compact on the Placement of Children" is a
3 law enacted by most states for the purpose of establishing
4 uniform procedures for handling the interstate placement of
5 children in foster homes, adoptive homes, or other child care
6 facilities.

7 N. "Non-Compact state" means a state that has not enacted
8 the Interstate Compact on the Placement of Children.

9 O. "Preadoption requirements" are any conditions
10 established by the laws or regulations of the Federal
11 Government or of each state that must be met prior to the
12 placement of a child in an adoptive home.

13 P. "Abused child" means a child whose parent or immediate
14 family member, or any person responsible for the child's
15 welfare, or any individual residing in the same home as the
16 child, or a paramour of the child's parent:

17 (a) inflicts, causes to be inflicted, or allows to be
18 inflicted upon the child physical injury, by other than
19 accidental means, that causes death, disfigurement,
20 impairment of physical or emotional health, or loss or
21 impairment of any bodily function;

22 (b) creates a substantial risk of physical injury to
23 the child by other than accidental means which would be
24 likely to cause death, disfigurement, impairment of
25 physical or emotional health, or loss or impairment of any
26 bodily function;

27 (c) commits or allows to be committed any sex offense
28 against the child, as sex offenses are defined in the
29 Criminal Code of 1961 and extending those definitions of
30 sex offenses to include children under 18 years of age;

31 (d) commits or allows to be committed an act or acts of
32 torture upon the child; or

33 (e) inflicts excessive corporal punishment.

34 Q. "Neglected child" means any child whose parent or other
35 person responsible for the child's welfare withholds or denies
36 nourishment or medically indicated treatment including food or

1 care denied solely on the basis of the present or anticipated
2 mental or physical impairment as determined by a physician
3 acting alone or in consultation with other physicians or
4 otherwise does not provide the proper or necessary support,
5 education as required by law, or medical or other remedial care
6 recognized under State law as necessary for a child's
7 well-being, or other care necessary for his or her well-being,
8 including adequate food, clothing and shelter; or who is
9 abandoned by his or her parents or other person responsible for
10 the child's welfare.

11 A child shall not be considered neglected or abused for the
12 sole reason that the child's parent or other person responsible
13 for his or her welfare depends upon spiritual means through
14 prayer alone for the treatment or cure of disease or remedial
15 care as provided under Section 4 of the Abused and Neglected
16 Child Reporting Act. A child shall not be considered neglected
17 or abused for the sole reason that the child's parent or other
18 person responsible for the child's welfare failed to vaccinate,
19 delayed vaccination, or refused vaccination for the child due
20 to a waiver on religious or medical grounds as permitted by
21 law.

22 R. "Putative father" means a man who may be a child's
23 father, but who (1) is not married to the child's mother on or
24 before the date that the child was or is to be born and (2) has
25 not established paternity of the child in a court proceeding
26 before the filing of a petition for the adoption of the child.
27 The term includes a male who is less than 18 years of age.
28 "Putative father" does not mean a man who is the child's father
29 as a result of criminal sexual abuse or assault as defined
30 under Article 12 of the Criminal Code of 1961.

31 S. "Standby adoption" means an adoption in which a parent
32 consents to custody and termination of parental rights to
33 become effective upon the occurrence of a future event, which
34 is either the death of the parent or the request of the parent
35 for the entry of a final judgment of adoption.

36 T. (Blank).

1 (Source: P.A. 93-732, eff. 1-1-05; 94-229, eff. 1-1-06; 94-563,
2 eff. 1-1-06; revised 8-23-05.)