



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

SB1686

Introduced 2/15/2013, by Sen. Darin M. LaHood

#### SYNOPSIS AS INTRODUCED:

750 ILCS 50/1

from Ch. 40, par. 1501

Amends the Adoption Act. Makes various changes in provisions including in the definition of "unfit person" a parent who fails to make reasonable efforts to correct specified conditions or reasonable progress toward the return of the child so that the provisions include: failure by a parent 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 or dependent minor; and failure by a parent to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication. Deletes language that included, in provisions defining "failure to make reasonable progress toward the return of the child to the parent" when a service plan has been established to correct the conditions that were the basis for the removal of the child from the parent and those services were available, 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 an adjudication under specified provisions of the Juvenile Court Act of 1987. Makes other changes.

LRB098 00154 KTG 30155 b

1 AN ACT concerning civil law.

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

1 child welfare agency or a licensed child welfare agency.

2 D. "Unfit person" means any person whom the court shall  
3 find to be unfit to have a child, without regard to the  
4 likelihood that the child will be placed for adoption. The  
5 grounds of unfitness are any one or more of the following,  
6 except that a person shall not be considered an unfit person  
7 for the sole reason that the person has relinquished a child in  
8 accordance with the Abandoned Newborn Infant Protection Act:

9 (a) Abandonment of the child.

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

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

14 (b) Failure to maintain a reasonable degree of  
15 interest, concern or responsibility as to the child's  
16 welfare.

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

19 (d) Substantial neglect of the child if continuous or  
20 repeated.

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

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

25 (f) There is a rebuttable presumption, which can be  
26 overcome only by clear and convincing evidence, that a

1 parent is unfit if:

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

8 (2) The parent has been convicted or found not  
9 guilty by reason of insanity and the conviction or  
10 finding resulted from the death of any child by  
11 physical abuse; or

12 (3) There is a finding of physical child abuse  
13 resulting from the death of any child under Section  
14 2-21 of the Juvenile Court Act of 1987.

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

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

21 (h) Other neglect of, or misconduct toward the child;  
22 provided that in making a finding of unfitness the court  
23 hearing the adoption proceeding shall not be bound by any  
24 previous finding, order or judgment affecting or  
25 determining the rights of the parents toward the child  
26 sought to be adopted in any other proceeding except such

1 proceedings terminating parental rights as shall be had  
2 under either this Act, the Juvenile Court Act or the  
3 Juvenile Court Act of 1987.

4 (i) Depravity. Conviction of any one of the following  
5 crimes shall create a presumption that a parent is deprived  
6 which can be overcome only by clear and convincing  
7 evidence: (1) first degree murder in violation of paragraph  
8 1 or 2 of subsection (a) of Section 9-1 of the Criminal  
9 Code of 1961 or conviction of second degree murder in  
10 violation of subsection (a) of Section 9-2 of the Criminal  
11 Code of 1961 of a parent of the child to be adopted; (2)  
12 first degree murder or second degree murder of any child in  
13 violation of the Criminal Code of 1961; (3) attempt or  
14 conspiracy to commit first degree murder or second degree  
15 murder of any child in violation of the Criminal Code of  
16 1961; (4) solicitation to commit murder of any child,  
17 solicitation to commit murder of any child for hire, or  
18 solicitation to commit second degree murder of any child in  
19 violation of the Criminal Code of 1961; (5) predatory  
20 criminal sexual assault of a child in violation of Section  
21 11-1.40 or 12-14.1 of the Criminal Code of 1961; (6)  
22 heinous battery of any child in violation of the Criminal  
23 Code of 1961; or (7) aggravated battery of any child in  
24 violation of the Criminal Code of 1961.

25 There is a rebuttable presumption that a parent is  
26 deprived 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 deprived 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

1 defined in subsection (f) of Section 102 of the Illinois  
2 Controlled Substances Act or metabolites of such  
3 substances, the presence of which in the newborn infant was  
4 not the result of medical treatment administered to the  
5 mother or the newborn infant; and the biological mother of  
6 this child is the biological mother of at least one other  
7 child who was adjudicated a neglected minor under  
8 subsection (c) of Section 2-3 of the Juvenile Court Act of  
9 1987.

10 (l) Failure to demonstrate a reasonable degree of  
11 interest, concern or responsibility as to the welfare of a  
12 new born child during the first 30 days after its birth.

13 (m) Failure by a parent (i) to make reasonable efforts  
14 to correct the conditions that were the basis for the  
15 removal of the child from the parent during any 9-month  
16 period following the adjudication of neglected or abused  
17 minor under Section 2-3 of the Juvenile Court Act of 1987  
18 or dependent minor under Section 2-4 of that Act, or (ii)  
19 ~~to make reasonable progress toward the return of the child~~  
20 ~~to the parent within 9 months after an adjudication of~~  
21 ~~neglected or abused minor under Section 2-3 of the Juvenile~~  
22 ~~Court Act of 1987 or dependent minor under Section 2-4 of~~  
23 ~~that Act, or (iii)~~ to make reasonable progress toward the  
24 return of the child to the parent during any 9-month period  
25 ~~after the end of the initial 9-month period~~ following the  
26 adjudication of neglected or abused minor under Section 2-3

1 of the Juvenile Court Act of 1987 or dependent minor under  
2 Section 2-4 of that Act. If a service plan has been  
3 established as required under Section 8.2 of the Abused and  
4 Neglected Child Reporting Act to correct the conditions  
5 that were the basis for the removal of the child from the  
6 parent and if those services were available, then, for  
7 purposes of this Act, "failure to make reasonable progress  
8 toward the return of the child to the parent" includes ~~(I)~~  
9 ~~the parent's failure to substantially fulfill his or her~~  
10 ~~obligations under the service plan and correct the~~  
11 ~~conditions that brought the child into care within 9 months~~  
12 ~~after the adjudication under Section 2-3 or 2-4 of the~~  
13 ~~Juvenile Court Act of 1987 and (II) the parent's failure to~~  
14 ~~substantially fulfill his or her obligations under the~~  
15 ~~service plan and correct the conditions that brought the~~  
16 ~~child into care during any 9-month period after the end of~~  
17 ~~the initial 9 month period~~ following the adjudication  
18 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.  
19 Notwithstanding any other provision, when a petition or  
20 motion seeks to terminate parental rights on the basis of  
21 item (ii) ~~(iii)~~ of this subsection (m), the petitioner  
22 shall file with the court and serve on the parties a  
23 pleading that specifies the 9-month period or periods  
24 relied on. The pleading shall be filed and served on the  
25 parties no later than 3 weeks before the date set by the  
26 court for closure of discovery, and the allegations in the



1 pleading shall be treated as incorporated into the petition  
2 or motion. Failure of a respondent to file a written denial  
3 of the allegations in the pleading shall not be treated as  
4 an admission that the allegations are true.

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

1 the child is removed from his or her parent, guardian, or  
2 legal custodian.

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

1 available where the petition is brought by the mother or  
2 the husband of the mother.

3 Contact or communication by a parent with his or her  
4 child that does not demonstrate affection and concern does  
5 not constitute reasonable contact and planning under  
6 subdivision (n). In the absence of evidence to the  
7 contrary, the ability to visit, communicate, maintain  
8 contact, pay expenses and plan for the future shall be  
9 presumed. The subjective intent of the parent, whether  
10 expressed or otherwise, unsupported by evidence of the  
11 foregoing parental acts manifesting that intent, shall not  
12 preclude a determination that the parent has intended to  
13 forgo his or her parental rights. In making this  
14 determination, the court may consider but shall not require  
15 a showing of diligent efforts by an authorized agency to  
16 encourage the parent to perform the acts specified in  
17 subdivision (n).

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

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

1           (p) Inability to discharge parental responsibilities  
2 supported by competent evidence from a psychiatrist,  
3 licensed clinical social worker, or clinical psychologist  
4 of mental impairment, mental illness or an intellectual  
5 disability as defined in Section 1-116 of the Mental Health  
6 and Developmental Disabilities Code, or developmental  
7 disability as defined in Section 1-106 of that Code, and  
8 there is sufficient justification to believe that the  
9 inability to discharge parental responsibilities shall  
10 extend beyond a reasonable time period. However, this  
11 subdivision (p) shall not be construed so as to permit a  
12 licensed clinical social worker to conduct any medical  
13 diagnosis to determine mental illness or mental  
14 impairment.

15           (q) (Blank).

16           (r) The child is in the temporary custody or  
17 guardianship of the Department of Children and Family  
18 Services, the parent is incarcerated as a result of  
19 criminal conviction at the time the petition or motion for  
20 termination of parental rights is filed, prior to  
21 incarceration the parent had little or no contact with the  
22 child or provided little or no support for the child, and  
23 the parent's incarceration will prevent the parent from  
24 discharging his or her parental responsibilities for the  
25 child for a period in excess of 2 years after the filing of  
26 the petition or motion for termination of parental rights.

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

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

24           E. "Parent" means the father or mother of a lawful child of  
25 the parties or child born out of wedlock. For the purpose of  
26 this Act, a person who has executed a final and irrevocable

1 consent to adoption or a final and irrevocable surrender for  
2 purposes of adoption, or whose parental rights have been  
3 terminated by a court, is not a parent of the child who was the  
4 subject of the consent or surrender, unless the consent is void  
5 pursuant to subsection O of Section 10.

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

7 (a) a child who has been surrendered for adoption to an  
8 agency and to whose adoption the agency has thereafter  
9 consented;

10 (b) a child to whose adoption a person authorized by  
11 law, other than his parents, has consented, or to whose  
12 adoption no consent is required pursuant to Section 8 of  
13 this Act;

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

16 (c-1) a child for whom a parent has signed a specific  
17 consent pursuant to subsection O of Section 10;

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

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

22 A person who would otherwise be available for adoption  
23 shall not be deemed unavailable for adoption solely by reason  
24 of his or her death.

25 G. The singular includes the plural and the plural includes  
26 the singular and the "male" includes the "female", as the

1 context of this Act may require.

2 H. "Adoption disruption" occurs when an adoptive placement  
3 does not prove successful and it becomes necessary for the  
4 child to be removed from placement before the adoption is  
5 finalized.

6 I. "Foreign placing agency" is an agency or individual  
7 operating in a country or territory outside the United States  
8 that is authorized by its country to place children for  
9 adoption either directly with families in the United States or  
10 through United States based international agencies.

11 J. "Immediate relatives" means the biological parents, the  
12 parents of the biological parents and siblings of the  
13 biological parents.

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

16 L. "Intercountry Adoption Coordinator" is a staff person of  
17 the Department of Children and Family Services appointed by the  
18 Director to coordinate the provision of services by the public  
19 and private sector to prospective parents of foreign-born  
20 children.

21 M. "Interstate Compact on the Placement of Children" is a  
22 law enacted by most states for the purpose of establishing  
23 uniform procedures for handling the interstate placement of  
24 children in foster homes, adoptive homes, or other child care  
25 facilities.

26 N. "Non-Compact state" means a state that has not enacted

1 the Interstate Compact on the Placement of Children.

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

6 P. "Abused child" means a child whose parent or immediate  
7 family member, or any person responsible for the child's  
8 welfare, or any individual residing in the same home as the  
9 child, or a paramour of the child's parent:

10 (a) inflicts, causes to be inflicted, or allows to be  
11 inflicted upon the child physical injury, by other than  
12 accidental means, that causes death, disfigurement,  
13 impairment of physical or emotional health, or loss or  
14 impairment of any bodily function;

15 (b) creates a substantial risk of physical injury to  
16 the child by other than accidental means which would be  
17 likely to cause death, disfigurement, impairment of  
18 physical or emotional health, or loss or impairment of any  
19 bodily function;

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

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

26 (e) inflicts excessive corporal punishment.



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

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

25           R. "Putative father" means a man who may be a child's  
26 father, but who (1) is not married to the child's mother on or

1 before the date that the child was or is to be born and (2) has  
2 not established paternity of the child in a court proceeding  
3 before the filing of a petition for the adoption of the child.  
4 The term includes a male who is less than 18 years of age.  
5 "Putative father" does not mean a man who is the child's father  
6 as a result of criminal sexual abuse or assault as defined  
7 under Article 12 of the Criminal Code of 1961.

8 S. "Standby adoption" means an adoption in which a parent  
9 consents to custody and termination of parental rights to  
10 become effective upon the occurrence of a future event, which  
11 is either the death of the parent or the request of the parent  
12 for the entry of a final judgment of adoption.

13 T. (Blank).

14 (Source: P.A. 96-1551, eff. 7-1-11; 97-227, eff. 1-1-12;  
15 revised 9-15-11.)