

HB5835



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5835

Introduced 11/10/2020, by Rep. Natalie A. Manley

SYNOPSIS AS INTRODUCED:

750 ILCS 50/1

from Ch. 40, par. 1501

Amends the Adoption Act. Provides that a "related child" includes a child subject to adoption where either or both of the adopting parents is a former step-parent.

LRB101 22144 LNS 73168 b

A BILL FOR

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, marriage,
14 adoption, or civil union: parent, grand-parent,
15 great-grandparent, brother, sister, step-parent or former
16 step-parent, step-grandparent, step-brother, step-sister,
17 uncle, aunt, great-uncle, great-aunt, first cousin, or second
18 cousin. A person is related to the child as a first cousin or
19 second cousin if they are both related to the same ancestor as
20 either grandchild or great-grandchild. A child whose parent has
21 executed a consent to adoption, a surrender, or a waiver
22 pursuant to Section 10 of this Act or whose parent has signed a
23 denial of paternity pursuant to Section 12 of the Vital Records

1 Act or Section 12a of this Act, or whose parent has had his or
2 her parental rights terminated, is not a related child to that
3 person, unless (1) the consent is determined to be void or is
4 void pursuant to subsection O of Section 10 of this Act; or (2)
5 the parent of the child executed a consent to adoption by a
6 specified person or persons pursuant to subsection A-1 of
7 Section 10 of this Act and a court of competent jurisdiction
8 finds that such consent is void; or (3) the order terminating
9 the parental rights of the parent is vacated by a court of
10 competent jurisdiction.

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

13 D. "Unfit person" means any person whom the court shall
14 find to be unfit to have a child, without regard to the
15 likelihood that the child will be placed for adoption. The
16 grounds of unfitness are any one or more of the following,
17 except that a person shall not be considered an unfit person
18 for the sole reason that the person has relinquished a child in
19 accordance with the Abandoned Newborn Infant Protection Act:

20 (a) Abandonment of the child.

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

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

25 (b) Failure to maintain a reasonable degree of
26 interest, concern or responsibility as to the child's

1 welfare.

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

4 (d) Substantial neglect of the child if continuous or
5 repeated.

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

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

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

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

19 (2) The parent has been convicted or found not
20 guilty by reason of insanity and the conviction or
21 finding resulted from the death of any child by
22 physical abuse; or

23 (3) There is a finding of physical child abuse
24 resulting from the death of any child under Section
25 2-21 of the Juvenile Court Act of 1987.

26 No conviction or finding of delinquency pursuant to

1 Article V of the Juvenile Court Act of 1987 shall be
2 considered a criminal conviction for the purpose of
3 applying any presumption under this item (f).

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

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

15 (i) Depravity. Conviction of any one of the following
16 crimes shall create a presumption that a parent is deprived
17 which can be overcome only by clear and convincing
18 evidence: (1) first degree murder in violation of paragraph
19 (1) ~~1~~ or (2) ~~2~~ of subsection (a) of Section 9-1 of the
20 Criminal Code of 1961 or the Criminal Code of 2012 or
21 conviction of second degree murder in violation of
22 subsection (a) of Section 9-2 of the Criminal Code of 1961
23 or the Criminal Code of 2012 of a parent of the child to be
24 adopted; (2) first degree murder or second degree murder of
25 any child in violation of the Criminal Code of 1961 or the
26 Criminal Code of 2012; (3) attempt or conspiracy to commit

1 first degree murder or second degree murder of any child in
2 violation of the Criminal Code of 1961 or the Criminal Code
3 of 2012; (4) solicitation to commit murder of any child,
4 solicitation to commit murder of any child for hire, or
5 solicitation to commit second degree murder of any child in
6 violation of the Criminal Code of 1961 or the Criminal Code
7 of 2012; (5) predatory criminal sexual assault of a child
8 in violation of Section 11-1.40 or 12-14.1 of the Criminal
9 Code of 1961 or the Criminal Code of 2012; (6) heinous
10 battery of any child in violation of the Criminal Code of
11 1961; (7) aggravated battery of any child in violation of
12 the Criminal Code of 1961 or the Criminal Code of 2012; (8)
13 any violation of Section 11-1.20 or Section 12-13 of the
14 Criminal Code of 1961 or the Criminal Code of 2012; (9) any
15 violation of subsection (a) of Section 11-1.50 or Section
16 12-16 of the Criminal Code of 1961 or the Criminal Code of
17 2012; (10) any violation of Section 11-9.1 of the Criminal
18 Code of 1961 or the Criminal Code of 2012; (11) any
19 violation of Section 11-9.1A of the Criminal Code of 1961
20 or the Criminal Code of 2012; or (12) an offense in any
21 other state the elements of which are similar and bear a
22 substantial relationship to any of the enumerated offenses
23 in this subsection (i).

24 There is a rebuttable presumption that a parent is
25 deprived if the parent has been criminally convicted of at
26 least 3 felonies under the laws of this State or any other

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

5 There is a rebuttable presumption that a parent is
6 deprived if that parent has been criminally convicted of
7 either first or second degree murder of any person as
8 defined in the Criminal Code of 1961 or the Criminal Code
9 of 2012 within 10 years of the filing date of the petition
10 or motion to terminate parental rights.

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

15 (j) Open and notorious adultery or fornication.

16 (j-1) (Blank).

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

21 There is a rebuttable presumption that a parent is
22 unfit under this subsection with respect to any child to
23 which that parent gives birth where there is a confirmed
24 test result that at birth the child's blood, urine, or
25 meconium contained any amount of a controlled substance as
26 defined in subsection (f) of Section 102 of the Illinois

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

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

12 (m) Failure by a parent (i) to make reasonable efforts
13 to correct the conditions that were the basis for the
14 removal of the child from the parent during any 9-month
15 period following the adjudication of neglected or abused
16 minor under Section 2-3 of the Juvenile Court Act of 1987
17 or dependent minor under Section 2-4 of that Act, or (ii)
18 to make reasonable progress toward the return of the child
19 to the parent during any 9-month period following the
20 adjudication of neglected or abused minor under Section 2-3
21 of the Juvenile Court Act of 1987 or dependent minor under
22 Section 2-4 of that Act. If a service plan has been
23 established as required under Section 8.2 of the Abused and
24 Neglected Child Reporting Act to correct the conditions
25 that were the basis for the removal of the child from the
26 parent and if those services were available, then, for

1 purposes of this Act, "failure to make reasonable progress
2 toward the return of the child to the parent" includes the
3 parent's failure to substantially fulfill his or her
4 obligations under the service plan and correct the
5 conditions that brought the child into care during any
6 9-month period following the adjudication under Section
7 2-3 or 2-4 of the Juvenile Court Act of 1987.
8 Notwithstanding any other provision, when a petition or
9 motion seeks to terminate parental rights on the basis of
10 item (ii) of this subsection (m), the petitioner shall file
11 with the court and serve on the parties a pleading that
12 specifies the 9-month period or periods relied on. The
13 pleading shall be filed and served on the parties no later
14 than 3 weeks before the date set by the court for closure
15 of discovery, and the allegations in the pleading shall be
16 treated as incorporated into the petition or motion.
17 Failure of a respondent to file a written denial of the
18 allegations in the pleading shall not be treated as an
19 admission that the allegations are true.

20 (m-1) (Blank).

21 (n) Evidence of intent to forgo his or her parental
22 rights, whether or not the child is a ward of the court,
23 (1) as manifested by his or her failure for a period of 12
24 months: (i) to visit the child, (ii) to communicate with
25 the child or agency, although able to do so and not
26 prevented from doing so by an agency or by court order, or

1 (iii) to maintain contact with or plan for the future of
2 the child, although physically able to do so, or (2) as
3 manifested by the father's failure, where he and the mother
4 of the child were unmarried to each other at the time of
5 the child's birth, (i) to commence legal proceedings to
6 establish his paternity under the Illinois Parentage Act of
7 1984, the Illinois Parentage Act of 2015, or the law of the
8 jurisdiction of the child's birth within 30 days of being
9 informed, pursuant to Section 12a of this Act, that he is
10 the father or the likely father of the child or, after
11 being so informed where the child is not yet born, within
12 30 days of the child's birth, or (ii) to make a good faith
13 effort to pay a reasonable amount of the expenses related
14 to the birth of the child and to provide a reasonable
15 amount for the financial support of the child, the court to
16 consider in its determination all relevant circumstances,
17 including the financial condition of both parents;
18 provided that the ground for termination provided in this
19 subparagraph (n)(2)(ii) shall only be available where the
20 petition is brought by the mother or the husband of the
21 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

1 contact, pay expenses and plan for the future shall be
2 presumed. The subjective intent of the parent, whether
3 expressed or otherwise, unsupported by evidence of the
4 foregoing parental acts manifesting that intent, shall not
5 preclude a determination that the parent has intended to
6 forgo his or her parental rights. In making this
7 determination, the court may consider but shall not require
8 a showing of diligent efforts by an authorized agency to
9 encourage the parent to perform the acts specified in
10 subdivision (n).

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

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

20 (p) Inability to discharge parental responsibilities
21 supported by competent evidence from a psychiatrist,
22 licensed clinical social worker, or clinical psychologist
23 of mental impairment, mental illness or an intellectual
24 disability as defined in Section 1-116 of the Mental Health
25 and Developmental Disabilities Code, or developmental
26 disability as defined in Section 1-106 of that Code, and

1 there is sufficient justification to believe that the
2 inability to discharge parental responsibilities shall
3 extend beyond a reasonable time period. However, this
4 subdivision (p) shall not be construed so as to permit a
5 licensed clinical social worker to conduct any medical
6 diagnosis to determine mental illness or mental
7 impairment.

8 (q) (Blank).

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

20 (s) The child is in the temporary custody or
21 guardianship of the Department of Children and Family
22 Services, the parent is incarcerated at the time the
23 petition or motion for termination of parental rights is
24 filed, the parent has been repeatedly incarcerated as a
25 result of criminal convictions, and the parent's repeated
26 incarceration has prevented the parent from discharging

1 his or her parental responsibilities for the child.

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

17 E. "Parent" means a person who is the legal mother or legal
18 father of the child as defined in subsection X or Y of this
19 Section. For the purpose of this Act, a parent who has executed
20 a consent to adoption, a surrender, or a waiver pursuant to
21 Section 10 of this Act, who has signed a Denial of Paternity
22 pursuant to Section 12 of the Vital Records Act or Section 12a
23 of this Act, or whose parental rights have been terminated by a
24 court, is not a parent of the child who was the subject of the
25 consent, surrender, waiver, or denial unless (1) the consent is
26 void pursuant to subsection O of Section 10 of this Act; or (2)

1 the person executed a consent to adoption by a specified person
2 or persons pursuant to subsection A-1 of Section 10 of this Act
3 and a court of competent jurisdiction finds that the consent is
4 void; or (3) the order terminating the parental rights of the
5 person is vacated by a court of competent jurisdiction.

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. (Blank).

3 I. "Habitual residence" has the meaning ascribed to it in
4 the federal Intercountry Adoption Act of 2000 and regulations
5 promulgated thereunder.

6 J. "Immediate relatives" means the biological parents, the
7 parents of the biological parents and siblings of the
8 biological parents.

9 K. "Intercountry adoption" is a process by which a child
10 from a country other than the United States is adopted by
11 persons who are habitual residents of the United States, or the
12 child is a habitual resident of the United States who is
13 adopted by persons who are habitual residents of a country
14 other than the United States.

15 L. (Blank).

16 M. "Interstate Compact on the Placement of Children" is a
17 law enacted by all states and certain territories for the
18 purpose of establishing uniform procedures for handling the
19 interstate placement of children in foster homes, adoptive
20 homes, or other child care facilities.

21 N. (Blank).

22 O. "Preadoption requirements" means any conditions or
23 standards established by the laws or administrative rules of
24 this State that must be met by a prospective adoptive parent
25 prior to the placement of a child in an adoptive home.

26 P. "Abused child" means a child whose parent or immediate

1 family member, or any person responsible for the child's
2 welfare, or any individual residing in the same home as the
3 child, or a paramour of the child's parent:

4 (a) inflicts, causes to be inflicted, or allows to be
5 inflicted upon the child physical injury, by other than
6 accidental means, that causes death, disfigurement,
7 impairment of physical or emotional health, or loss or
8 impairment of any bodily function;

9 (b) creates a substantial risk of physical injury to
10 the child by other than accidental means which would be
11 likely to cause death, disfigurement, impairment of
12 physical or emotional health, or loss or impairment of any
13 bodily function;

14 (c) commits or allows to be committed any sex offense
15 against the child, as sex offenses are defined in the
16 Criminal Code of 2012 and extending those definitions of
17 sex offenses to include children under 18 years of age;

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

20 (e) inflicts excessive corporal punishment.

21 Q. "Neglected child" means any child whose parent or other
22 person responsible for the child's welfare withholds or denies
23 nourishment or medically indicated treatment including food or
24 care denied solely on the basis of the present or anticipated
25 mental or physical impairment as determined by a physician
26 acting alone or in consultation with other physicians or

1 otherwise does not provide the proper or necessary support,
2 education as required by law, or medical or other remedial care
3 recognized under State law as necessary for a child's
4 well-being, or other care necessary for his or her well-being,
5 including adequate food, clothing and shelter; or who is
6 abandoned by his or her parents or other person responsible for
7 the child's welfare.

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

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

1 under Article 11 of the Criminal Code of 2012.

2 S. "Standby adoption" means an adoption in which a parent
3 consents to custody and termination of parental rights to
4 become effective upon the occurrence of a future event, which
5 is either the death of the parent or the request of the parent
6 for the entry of a final judgment of adoption.

7 T. (Blank).

8 T-5. "Biological parent", "birth parent", or "natural
9 parent" of a child are interchangeable terms that mean a person
10 who is biologically or genetically related to that child as a
11 parent.

12 U. "Interstate adoption" means the placement of a minor
13 child with a prospective adoptive parent for the purpose of
14 pursuing an adoption for that child that is subject to the
15 provisions of the Interstate Compact on the Placement of
16 Children.

17 V. (Blank).

18 W. (Blank).

19 X. "Legal father" of a child means a man who is recognized
20 as or presumed to be that child's father:

21 (1) because of his marriage to or civil union with the
22 child's parent at the time of the child's birth or within
23 300 days prior to that child's birth, unless he signed a
24 denial of paternity pursuant to Section 12 of the Vital
25 Records Act or a waiver pursuant to Section 10 of this Act;
26 or

1 (2) because his paternity of the child has been
2 established pursuant to the Illinois Parentage Act, the
3 Illinois Parentage Act of 1984, or the Gestational
4 Surrogacy Act; or

5 (3) because he is listed as the child's father or
6 parent on the child's birth certificate, unless he is
7 otherwise determined by an administrative or judicial
8 proceeding not to be the parent of the child or unless he
9 rescinds his acknowledgment of paternity pursuant to the
10 Illinois Parentage Act of 1984; or

11 (4) because his paternity or adoption of the child has
12 been established by a court of competent jurisdiction.

13 The definition in this subsection X shall not be construed
14 to provide greater or lesser rights as to the number of parents
15 who can be named on a final judgment order of adoption or
16 Illinois birth certificate that otherwise exist under Illinois
17 law.

18 Y. "Legal mother" of a child means a woman who is
19 recognized as or presumed to be that child's mother:

20 (1) because she gave birth to the child except as
21 provided in the Gestational Surrogacy Act; or

22 (2) because her maternity of the child has been
23 established pursuant to the Illinois Parentage Act of 1984
24 or the Gestational Surrogacy Act; or

25 (3) because her maternity or adoption of the child has
26 been established by a court of competent jurisdiction; or

1 (4) because of her marriage to or civil union with the
2 child's other parent at the time of the child's birth or
3 within 300 days prior to the time of birth; or

4 (5) because she is listed as the child's mother or
5 parent on the child's birth certificate unless she is
6 otherwise determined by an administrative or judicial
7 proceeding not to be the parent of the child.

8 The definition in this subsection Y shall not be construed
9 to provide greater or lesser rights as to the number of parents
10 who can be named on a final judgment order of adoption or
11 Illinois birth certificate that otherwise exist under Illinois
12 law.

13 Z. "Department" means the Illinois Department of Children
14 and Family Services.

15 AA. "Placement disruption" means a circumstance where the
16 child is removed from an adoptive placement before the adoption
17 is finalized.

18 BB. "Secondary placement" means a placement, including but
19 not limited to the placement of a youth in care as defined in
20 Section 4d of the Children and Family Services Act, that occurs
21 after a placement disruption or an adoption dissolution.
22 "Secondary placement" does not mean secondary placements
23 arising due to the death of the adoptive parent of the child.

24 CC. "Adoption dissolution" means a circumstance where the
25 child is removed from an adoptive placement after the adoption
26 is finalized.

1 DD. "Unregulated placement" means the secondary placement
2 of a child that occurs without the oversight of the courts, the
3 Department, or a licensed child welfare agency.

4 EE. "Post-placement and post-adoption support services"
5 means support services for placed or adopted children and
6 families that include, but are not limited to, mental health
7 treatment, including counseling and other support services for
8 emotional, behavioral, or developmental needs, and treatment
9 for substance abuse.

10 (Source: P.A. 100-159, eff. 8-18-17; 101-155, eff. 1-1-20;
11 101-529, eff. 1-1-20; revised 9-17-19.)