



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4304

Introduced 02/02/04, by James H. Meyer

SYNOPSIS AS INTRODUCED:

750 ILCS 50/1

from Ch. 40, par. 1501

Amends the Adoption Act. Provides, in the definition of "unfit parent", that evidence of the parent's intent to forgo his or her parental rights is manifested by his or her failure for a period of 6 months (instead of 12 months) to visit the child or to have significant and meaningful contact with the child or agency (instead of to communicate with the child or agency). Provides that evidence of the parent's intent to forgo his or her parental rights is manifested by his or her continued chronic abuse of the minor. Defines "chronic abuse of a minor" and "significant and meaningful contact". Effective immediately.

LRB093 17811 LCB 43492 b

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) Two or more findings of physical abuse to any
17 children under Section 4-8 of the Juvenile Court Act or
18 Section 2-21 of the Juvenile Court Act of 1987, the most
19 recent of which was determined by the juvenile court
20 hearing the matter to be supported by clear and convincing
21 evidence; a criminal conviction or a finding of not guilty
22 by reason of insanity resulting from the death of any child
23 by physical child abuse; or a finding of physical child
24 abuse resulting from the death of any child under Section
25 4-8 of the Juvenile Court Act or Section 2-21 of the
26 Juvenile Court Act of 1987.

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

29 (h) Other neglect of, or misconduct toward the child;
30 provided that in making a finding of unfitness the court
31 hearing the adoption proceeding shall not be bound by any
32 previous finding, order or judgment affecting or
33 determining the rights of the parents toward the child
34 sought to be adopted in any other proceeding except such
35 proceedings terminating parental rights as shall be had
36 under either this Act, the Juvenile Court Act or the

1 Juvenile Court Act of 1987.

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

20 There is a rebuttable presumption that a parent is
21 deprived if the parent has been criminally convicted of at
22 least 3 felonies under the laws of this State or any other
23 state, or under federal law, or the criminal laws of any
24 United States territory; and at least one of these
25 convictions took place within 5 years of the filing of the
26 petition or motion seeking termination of parental rights.

27 There is a rebuttable presumption that a parent is
28 deprived if that parent has been criminally convicted of
29 either first or second degree murder of any person as
30 defined in the Criminal Code of 1961 within 10 years of the
31 filing date of the petition or motion to terminate parental
32 rights.

33 (j) Open and notorious adultery or fornication.

34 (j-1) (Blank).

35 (k) Habitual drunkenness or addiction to drugs, other
36 than those prescribed by a physician, for at least one year

1 immediately prior to the commencement of the unfitness
2 proceeding.

3 There is a rebuttable presumption that a parent is
4 unfit under this subsection with respect to any child to
5 which that parent gives birth where there is a confirmed
6 test result that at birth the child's blood, urine, or
7 meconium contained any amount of a controlled substance as
8 defined in subsection (f) of Section 102 of the Illinois
9 Controlled Substances Act or metabolites of such
10 substances, the presence of which in the newborn infant was
11 not the result of medical treatment administered to the
12 mother or the newborn infant; and the biological mother of
13 this child is the biological mother of at least one other
14 child who was adjudicated a neglected minor under
15 subsection (c) of Section 2-3 of the Juvenile Court Act of
16 1987.

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

20 (m) Failure by a parent (i) to make reasonable efforts
21 to correct the conditions that were the basis for the
22 removal of the child from the parent, or (ii) to make
23 reasonable progress toward the return of the child to the
24 parent within 9 months after an adjudication of neglected
25 or abused minor under Section 2-3 of the Juvenile Court Act
26 of 1987 or dependent minor under Section 2-4 of that Act,
27 or (iii) to make reasonable progress toward the return of
28 the child to the parent during any 9-month period after the
29 end of the initial 9-month period following the
30 adjudication of neglected or abused minor under Section 2-3
31 of the Juvenile Court Act of 1987 or dependent minor under
32 Section 2-4 of that Act. If a service plan has been
33 established as required under Section 8.2 of the Abused and
34 Neglected Child Reporting Act to correct the conditions
35 that were the basis for the removal of the child from the
36 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 (I)
3 the 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 within 9 months
6 after the adjudication under Section 2-3 or 2-4 of the
7 Juvenile Court Act of 1987 and (II) the parent's failure to
8 substantially fulfill his or her obligations under the
9 service plan and correct the conditions that brought the
10 child into care during any 9-month period after the end of
11 the initial 9-month period following the adjudication
12 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.

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

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

29 For the purposes of this subsection (n), "significant
30 and meaningful contact" includes, but is not limited to,
31 the affirmative assumption by the parents of the duties
32 encompassed by the role of being a parent. The affirmative
33 duty, in addition to financial obligations, requires
34 continued interest in the child, an effort to complete the
35 responsibilities prescribed in the case permanency plan,
36 an effort to maintain communication with the child, and

1 that the parents establish and maintain a place of
2 importance in the child's life.

3 For the purposes of this subsection (n), "chronic abuse
4 of a minor" means the maltreatment of the minor that
5 reoccurs after the Department of Children and Family
6 Services has conducted an investigation regarding a
7 specific report and has rendered a finding of abuse or
8 neglect and, despite efforts on the part of the family or
9 the utilization of available resources, the child
10 re-enters the foster care system within 6 months of the
11 initial report.

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

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

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

36 (p) Inability to discharge parental responsibilities

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

14 (q) The parent has been criminally convicted of
15 aggravated battery, heinous battery, or attempted murder
16 of any child.

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

28 (s) The child is in the temporary custody or
29 guardianship of the Department of Children and Family
30 Services, the parent is incarcerated at the time the
31 petition or motion for termination of parental rights is
32 filed, the parent has been repeatedly incarcerated as a
33 result of criminal convictions, and the parent's repeated
34 incarceration has prevented the parent from discharging
35 his or her parental responsibilities for the child.

36 (t) A finding that at birth the child's blood, urine,

1 or meconium contained any amount of a controlled substance
2 as defined in subsection (f) of Section 102 of the Illinois
3 Controlled Substances Act, or a metabolite of a controlled
4 substance, with the exception of controlled substances or
5 metabolites of such substances, the presence of which in
6 the newborn infant was the result of medical treatment
7 administered to the mother or the newborn infant, and that
8 the biological mother of this child is the biological
9 mother of at least one other child who was adjudicated a
10 neglected minor under subsection (c) of Section 2-3 of the
11 Juvenile Court Act of 1987, after which the biological
12 mother had the opportunity to enroll in and participate in
13 a clinically appropriate substance abuse counseling,
14 treatment, and rehabilitation program.

15 E. "Parent" means the father or mother of a legitimate or
16 illegitimate child. For the purpose of this Act, a person who
17 has executed a final and irrevocable consent to adoption or a
18 final and irrevocable surrender for purposes of adoption, or
19 whose parental rights have been terminated by a court, is not a
20 parent of the child who was the subject of the consent or
21 surrender, unless the consent is void pursuant to subsection O
22 of Section 10.

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

24 (a) a child who has been surrendered for adoption to an
25 agency and to whose adoption the agency has thereafter
26 consented;

27 (b) a child to whose adoption a person authorized by
28 law, other than his parents, has consented, or to whose
29 adoption no consent is required pursuant to Section 8 of
30 this Act;

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

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

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

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

3 A person who would otherwise be available for adoption
4 shall not be deemed unavailable for adoption solely by reason
5 of his or her death.

6 G. The singular includes the plural and the plural includes
7 the singular and the "male" includes the "female", as the
8 context of this Act may require.

9 H. "Adoption disruption" occurs when an adoptive placement
10 does not prove successful and it becomes necessary for the
11 child to be removed from placement before the adoption is
12 finalized.

13 I. "Foreign placing agency" is an agency or individual
14 operating in a country or territory outside the United States
15 that is authorized by its country to place children for
16 adoption either directly with families in the United States or
17 through United States based international agencies.

18 J. "Immediate relatives" means the biological parents, the
19 parents of the biological parents and siblings of the
20 biological parents.

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

23 L. "Intercountry Adoption Coordinator" is a staff person of
24 the Department of Children and Family Services appointed by the
25 Director to coordinate the provision of services by the public
26 and private sector to prospective parents of foreign-born
27 children.

28 M. "Interstate Compact on the Placement of Children" is a
29 law enacted by most states for the purpose of establishing
30 uniform procedures for handling the interstate placement of
31 children in foster homes, adoptive homes, or other child care
32 facilities.

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

35 O. "Preadoption requirements" are any conditions
36 established by the laws or regulations of the Federal

1 Government or of each state that must be met prior to the
2 placement of a child in an adoptive home.

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

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

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

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

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

23 (e) inflicts excessive corporal punishment.

24 Q. "Neglected child" means any child whose parent or other
25 person responsible for the child's welfare withholds or denies
26 nourishment or medically indicated treatment including food or
27 care denied solely on the basis of the present or anticipated
28 mental or physical impairment as determined by a physician
29 acting alone or in consultation with other physicians or
30 otherwise does not provide the proper or necessary support,
31 education as required by law, or medical or other remedial care
32 recognized under State law as necessary for a child's
33 well-being, or other care necessary for his or her well-being,
34 including adequate food, clothing and shelter; or who is
35 abandoned by his or her parents or other person responsible for
36 the child's welfare.

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

12 R. "Putative father" means a man who may be a child's
13 father, but who (1) is not married to the child's mother on or
14 before the date that the child was or is to be born and (2) has
15 not established paternity of the child in a court proceeding
16 before the filing of a petition for the adoption of the child.
17 The term includes a male who is less than 18 years of age.
18 "Putative father" does not mean a man who is the child's father
19 as a result of criminal sexual abuse or assault as defined
20 under Article 12 of the Criminal Code of 1961. ~~A child shall
21 not be considered neglected or abused for the sole reason that
22 the child's parent or other person responsible for the child's
23 welfare failed to vaccinate, delayed vaccination, or refused
24 vaccination for the child due to a waiver on religious or
25 medical grounds as permitted by law.~~

26 S. "Standby adoption" means an adoption in which a
27 terminally ill parent consents to custody and termination of
28 parental rights to become effective upon the occurrence of a
29 future event, which is either the death of the terminally ill
30 parent or the request of the parent for the entry of a final
31 judgment of adoption.

32 T. "Terminally ill parent" means a person who has a medical
33 prognosis by a physician licensed to practice medicine in all
34 of its branches that the person has an incurable and
35 irreversible condition which will lead to death.

36 (Source: P.A. 91-357, eff. 7-29-99; 91-373, eff. 1-1-00;

1 91-572, eff. 1-1-00; 92-16, eff. 6-28-01; 92-375, eff. 1-1-02;
2 92-408, eff. 8-17-01; 92-432, eff. 8-17-01; 92-651, 7-11-02;
3 revised 8-23-02.)

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.