



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Dale A. Righter

SYNOPSIS AS INTRODUCED:

750 ILCS 50/8	from Ch. 40, par. 1510
750 ILCS 50/13	from Ch. 40, par. 1516

Amends the Adoption Act. Provides that a birth parent who is a minor must be represented by a guardian ad litem appointed by the court for the purposes of giving a consent for adoption, unless the minor birth parent is already represented by counsel. Requires the court to appoint a guardian ad litem in an adoption proceeding for each minor birth parent of the child sought to be adopted, unless the minor birth parent is already represented by counsel. Provides that the same guardian ad litem shall not represent both the minor birth mother and the minor birth father. Effective July 1, 2004.

LRB093 20884 LCB 46839 b

FISCAL NOTE ACT
MAY APPLY

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 Sections
5 8 and 13 as follows:

6 (750 ILCS 50/8) (from Ch. 40, par. 1510)

7 Sec. 8. Consents to adoption and surrenders for purposes of
8 adoption.

9 (a) Except as hereinafter provided in this Section consents
10 or surrenders shall be required in all cases, unless the person
11 whose consent or surrender would otherwise be required shall be
12 found by the court:

13 (1) to be an unfit person as defined in Section 1 of
14 this Act, by clear and convincing evidence; or

15 (2) not to be the biological or adoptive father of the
16 child; or

17 (3) to have waived his parental rights to the child
18 under Section 12a or 12.1 of this Act; or

19 (4) to be the parent of an adult sought to be adopted;
20 or

21 (5) to be the father of the child as a result of
22 criminal sexual abuse or assault as defined under Article
23 12 of the Criminal Code of 1961; or

24 (6) to have been indicated for child sexual abuse as
25 defined in the Abused and Neglected Child Reporting Act
26 that involved sexual penetration of the mother; or

27 (7) to be at least 5 years older than the mother and
28 the mother was under the age 17 at the time of conception
29 of the child to be adopted.

30 (b) Where consents are required in the case of an adoption
31 of a minor child, the consents of the following persons shall
32 be sufficient:

- 1 (1) (A) The mother of the minor child; and
- 2 (B) The father of the minor child, if the father:
- 3 (i) was married to the mother on the date of
- 4 birth of the child or within 300 days before the
- 5 birth of the child, except for a husband or former
- 6 husband who has been found by a court of competent
- 7 jurisdiction not to be the biological father of the
- 8 child; or
- 9 (ii) is the father of the child under a
- 10 judgment for adoption, an order of parentage, or an
- 11 acknowledgment of parentage or paternity pursuant
- 12 to subsection (a) of Section 5 of the Illinois
- 13 Parentage Act of 1984; or
- 14 (iii) in the case of a child placed with the
- 15 adopting parents less than 6 months after birth,
- 16 openly lived with the child, the child's
- 17 biological mother, or both, and held himself out to
- 18 be the child's biological father during the first
- 19 30 days following the birth of the child; or
- 20 (iv) in the case of a child placed with the
- 21 adopting parents less than 6 months after birth,
- 22 made a good faith effort to pay a reasonable amount
- 23 of the expenses related to the birth of the child
- 24 and to provide a reasonable amount for the
- 25 financial support of the child before the
- 26 expiration of 30 days following the birth of the
- 27 child, provided that the court may consider in its
- 28 determination all relevant circumstances,
- 29 including the financial condition of both
- 30 biological parents; or
- 31 (v) in the case of a child placed with the
- 32 adopting parents more than 6 months after birth,
- 33 has maintained substantial and continuous or
- 34 repeated contact with the child as manifested by:
- 35 (I) the payment by the father toward the support of
- 36 the child of a fair and reasonable sum, according

1 to the father's means, and either (II) the father's
2 visiting the child at least monthly when
3 physically and financially able to do so and not
4 prevented from doing so by the person or authorized
5 agency having lawful custody of the child, or (III)
6 the father's regular communication with the child
7 or with the person or agency having the care or
8 custody of the child, when physically and
9 financially unable to visit the child or prevented
10 from doing so by the person or authorized agency
11 having lawful custody of the child. The subjective
12 intent of the father, whether expressed or
13 otherwise unsupported by evidence of acts
14 specified in this sub-paragraph as manifesting
15 such intent, shall not preclude a determination
16 that the father failed to maintain substantial and
17 continuous or repeated contact with the child; or

18 (vi) in the case of a child placed with the
19 adopting parents more than six months after birth,
20 openly lived with the child for a period of six
21 months within the one year period immediately
22 preceding the placement of the child for adoption
23 and openly held himself out to be the father of the
24 child; or

25 (vii) has timely registered with Putative
26 Father Registry, as provided in Section 12.1 of
27 this Act, and prior to the expiration of 30 days
28 from the date of such registration, commenced
29 legal proceedings to establish paternity under the
30 Illinois Parentage Act of 1984 or under the law of
31 the jurisdiction of the child's birth; or

32 (2) The legal guardian of the person of the child, if
33 there is no surviving parent; or

34 (3) An agency, if the child has been surrendered for
35 adoption to such agency; or

36 (4) Any person or agency having legal custody of a

1 child by court order if the parental rights of the parents
2 have been judicially terminated, and the court having
3 jurisdiction of the guardianship of the child has
4 authorized the consent to the adoption; or

5 (5) The execution and verification of the petition by
6 any petitioner who is also a parent of the child sought to
7 be adopted shall be sufficient evidence of such parent's
8 consent to the adoption.

9 (c) Where surrenders to an agency are required in the case
10 of a placement for adoption of a minor child by an agency, the
11 surrenders of the following persons shall be sufficient:

12 (1) (A) The mother of the minor child; and

13 (B) The father of the minor child, if the father:

14 (i) was married to the mother on the date of
15 birth of the child or within 300 days before the
16 birth of the child, except for a husband or former
17 husband who has been found by a court of competent
18 jurisdiction not to be the biological father of the
19 child; or

20 (ii) is the father of the child under a
21 judgment for adoption, an order of parentage, or an
22 acknowledgment of parentage or paternity pursuant
23 to subsection (a) of Section 5 of the Illinois
24 Parentage Act of 1984; or

25 (iii) in the case of a child placed with the
26 adopting parents less than 6 months after birth,
27 openly lived with the child, the child's
28 biological mother, or both, and held himself out to
29 be the child's biological father during the first
30 30 days following the birth of a child; or

31 (iv) in the case of a child placed with the
32 adopting parents less than 6 months after birth,
33 made a good faith effort to pay a reasonable amount
34 of the expenses related to the birth of the child
35 and to provide a reasonable amount for the
36 financial support of the child before the

1 expiration of 30 days following the birth of the
2 child, provided that the court may consider in its
3 determination all relevant circumstances,
4 including the financial condition of both
5 biological parents; or

6 (v) in the case of a child placed with the
7 adopting parents more than six months after birth,
8 has maintained substantial and continuous or
9 repeated contact with the child as manifested by:

10 (I) the payment by the father toward the support of
11 the child of a fair and reasonable sum, according
12 to the father's means, and either (II) the father's
13 visiting the child at least monthly when
14 physically and financially able to do so and not
15 prevented from doing so by the person or authorized
16 agency having lawful custody of the child or (III)
17 the father's regular communication with the child
18 or with the person or agency having the care or
19 custody of the child, when physically and
20 financially unable to visit the child or prevented
21 from doing so by the person or authorized agency
22 having lawful custody of the child. The subjective
23 intent of the father, whether expressed or
24 otherwise, unsupported by evidence of acts
25 specified in this sub-paragraph as manifesting
26 such intent, shall not preclude a determination
27 that the father failed to maintain substantial and
28 continuous or repeated contact with the child; or

29 (vi) in the case of a child placed with the
30 adopting parents more than six months after birth,
31 openly lived with the child for a period of six
32 months within the one year period immediately
33 preceding the placement of the child for adoption
34 and openly held himself out to be the father of the
35 child; or

36 (vii) has timely registered with the Putative

1 Father Registry, as provided in Section 12.1 of
2 this Act, and prior to the expiration of 30 days
3 from the date of such registration, commenced
4 legal proceedings to establish paternity under the
5 Illinois Parentage Act of 1984, or under the law of
6 the jurisdiction of the child's birth.

7 (d) In making a determination under subparagraphs (b) (1)
8 and (c) (1), no showing shall be required of diligent efforts by
9 a person or agency to encourage the father to perform the acts
10 specified therein.

11 (d-5) In all cases involving a minor birth parent, the
12 court shall appoint a separate guardian ad litem to each minor
13 birth parent, unless the minor birth parent is already
14 represented by counsel. The guardian ad litem shall advise the
15 minor birth parent of his or her rights and the effect of
16 signing the consent. No consent signed by a minor birth parent
17 shall be valid unless the minor birth parent was represented by
18 a guardian ad litem or represented by counsel.

19 (e) In the case of the adoption of an adult, only the
20 consent of such adult shall be required.

21 (Source: P.A. 93-510, eff. 1-1-04.)

22 (750 ILCS 50/13) (from Ch. 40, par. 1516)

23 Sec. 13. Interim order. As soon as practicable after the
24 filing of a petition for adoption the court shall hold a
25 hearing for the following purposes:

26 A. In other than an adoption of a related child or an
27 adoption through an agency, or of an adult:

28 (a) To determine the validity of the consent, provided
29 that the execution of a consent pursuant to this Act shall
30 be prima facie evidence of its validity, and provided that
31 the validity of a consent shall not be affected by the
32 omission therefrom of the names of the petitioners or
33 adopting parents at the time the consent is executed or
34 acknowledged, and further provided that the execution of a
35 consent prior to the filing of a petition for adoption

1 shall not affect its validity.

2 (b) To determine whether there is available suitable
3 temporary custodial care for a child sought to be adopted.

4 B. In all cases except standby adoptions:

5 (a) The court shall appoint some licensed attorney
6 other than the State's attorney acting in his or her
7 official capacity as guardian ad litem to represent a child
8 sought to be adopted. Such guardian ad litem shall have
9 power to consent to the adoption of the child, if such
10 consent is required.

11 (b) The court shall appoint a guardian ad litem for all
12 named minors or defendants who are persons under legal
13 disability, if any.

14 (b-5) The court shall appoint a guardian ad litem for each
15 minor birth parent of the child sought to be adopted, unless
16 the minor birth parent is already represented by counsel. The
17 same guardian ad litem shall not represent both the minor birth
18 mother and the minor birth father.

19 (c) If the petition alleges a person to be unfit
20 pursuant to the provisions of subparagraph (p) of paragraph
21 D of Section 1 of this Act, such person shall be
22 represented by counsel. If such person is indigent or an
23 appearance has not been entered on his behalf at the time
24 the matter is set for hearing, the court shall appoint as
25 counsel for him either the Guardianship and Advocacy
26 Commission, the public defender, or, only if no attorney
27 from the Guardianship and Advocacy Commission or the public
28 defender is available, an attorney licensed to practice law
29 in this State.

30 (d) If it is proved to the satisfaction of the court,
31 after such investigation as the court deems necessary, that
32 termination of parental rights and temporary commitment of
33 the child to an agency or to a person deemed competent by
34 the court, including petitioners, will be for the welfare
35 of the child, the court may order the child to be so
36 committed and may terminate the parental rights of the

1 parents and declare the child a ward of the court or, if it
2 is not so proved, the court may enter such other order as
3 it shall deem necessary and advisable.

4 (e) Before an interim custody order is granted under
5 this Section, service of summons shall be had upon the
6 parent or parents whose rights have not been terminated,
7 except as provided in subsection (f). Reasonable notice and
8 opportunity to be heard shall be given to the parent or
9 parents after service of summons when the address of the
10 parent or parents is available. The party seeking an
11 interim custody order shall make all reasonable efforts to
12 locate the parent or parents of the child or children they
13 are seeking to adopt and to notify the parent or parents of
14 the party's request for an interim custody order pursuant
15 to this Section.

16 (f) An interim custody order may be granted without
17 notice upon presentation to the court of a written
18 petition, accompanied by an affidavit, stating that there
19 is an immediate danger to the child and that irreparable
20 harm will result to the child if notice is given to the
21 parent or parents or legal guardian. Upon making a finding
22 that there is an immediate danger to the child if service
23 of process is had upon and notice of hearing is given to
24 the parent or parents or legal guardian prior to the entry
25 of an order granting temporary custody to someone other
26 than a parent or legal guardian, the court may enter an
27 order of temporary custody which shall expire not more than
28 10 days after its entry. Every ex parte custody order
29 granted without notice shall state the injury which the
30 court sought to avoid by granting the order, the
31 irreparable injury that would have occurred had notice been
32 given, and the reason the order was granted without notice.
33 The matter shall be set down for full hearing before the
34 expiration of the ex parte order and will be heard after
35 service of summons is had upon and notice of hearing is
36 given to the parent or parents or legal guardian. At the

1 hearing the burden of proof shall be upon the party seeking
2 to extend the interim custody order to show that the order
3 was properly granted without notice and that custody should
4 remain with the party seeking to adopt during the pendency
5 of the adoption proceeding. If the interim custody order is
6 extended, the reasons for granting the extension shall be
7 stated in the order.

8 C. In the case of a child born outside the United States or
9 a territory thereof, if the petitioners have previously been
10 appointed guardians of such child by a court of competent
11 jurisdiction in a country other than the United States or a
12 territory thereof, the court may order that the petitioners
13 continue as guardians of such child.

14 D. In standby adoption cases:

15 (a) The court shall appoint a licensed attorney other
16 than the State's Attorney acting in his or her official
17 capacity as guardian ad litem to represent a child sought
18 to be adopted. The guardian ad litem shall have power to
19 consent to the adoption of the child, if consent is
20 required.

21 (b) The court shall appoint a guardian ad litem for all
22 named minors or defendants who are persons under legal
23 disability, if any.

24 (c) The court lacks jurisdiction to proceed on the
25 petition for standby adoption if the child has a living
26 parent, adoptive parent, or adjudicated parent whose
27 rights have not been terminated and whose whereabouts are
28 known, unless the parent consents to the standby adoption
29 or, after receiving notice of the hearing on the standby
30 adoption petition, fails to object to the appointment of a
31 standby adoptive parent at the hearing on the petition.

32 (d) The court shall investigate as needed for the
33 welfare of the child and shall determine whether the
34 petitioner or petitioners shall be permitted to adopt.

35 (Source: P.A. 90-14, eff. 7-1-97; 90-349, eff. 1-1-98; 91-572,
36 eff. 1-1-00.)

1 Section 99. Effective date. This Act takes effect July 1,
2 2004.