



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2588

Introduced 02/18/05, by Rep. Monique D. Davis

SYNOPSIS AS INTRODUCED:

750 ILCS 50/1

from Ch. 40, par. 1501

Amends the Adoption Act. Provides that there is a rebuttable presumption that a parent is depraved if the parent has been convicted of 3 forcible felonies (instead of felonies) and that at least 3 of these convictions (instead of one of these convictions) took place within 5 years of the filing of the petition or motion seeking the termination of parental rights. Provides that a petition or motion seeking to terminate parental rights for lack of progress, in a 9-month period toward the return of the child, shall specify the 9-month period relied upon by the petitioner.

LRB094 11111 LCB 41736 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 forcible felonies as defined in Section 2-8 of the
23 Criminal Code of 1961 under the laws of this State or any
24 other state, or under federal law, or the criminal laws of
25 any United States territory; and at least 3 ~~one~~ of these
26 convictions took place within 5 years of the filing of the
27 petition or motion seeking termination of parental rights.

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

34 (j) Open and notorious adultery or fornication.

35 (j-1) (Blank).

36 (k) Habitual drunkenness or addiction to drugs, other

1 than those prescribed by a physician, for at least one year
2 immediately prior to the commencement of the unfitness
3 proceeding.

4 There is a rebuttable presumption that a parent is
5 unfit under this subsection with respect to any child to
6 which that parent gives birth where there is a confirmed
7 test result that at birth the child's blood, urine, or
8 meconium contained any amount of a controlled substance as
9 defined in subsection (f) of Section 102 of the Illinois
10 Controlled Substances Act or metabolites of such
11 substances, the presence of which in the newborn infant was
12 not the result of medical treatment administered to the
13 mother or the newborn infant; and the biological mother of
14 this child is the biological mother of at least one other
15 child who was adjudicated a neglected minor under
16 subsection (c) of Section 2-3 of the Juvenile Court Act of
17 1987.

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

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

1 parent and if those services were available, then, for
2 purposes of this Act, "failure to make reasonable progress
3 toward the return of the child to the parent" includes (I)
4 the parent's failure to substantially fulfill his or her
5 obligations under the service plan and correct the
6 conditions that brought the child into care within 9 months
7 after the adjudication under Section 2-3 or 2-4 of the
8 Juvenile Court Act of 1987 and (II) the parent's failure to
9 substantially fulfill his or her obligations under the
10 service plan and correct the conditions that brought the
11 child into care during any 9-month period after the end of
12 the initial 9-month period following the adjudication
13 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.
14 Notwithstanding any other provision, a petition or motion
15 seeking to terminate parental rights on the basis of this
16 subsection (m) shall specify the 9-month period relied upon
17 by the petitioner.

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

1 (i) the date of a judicial finding at an adjudicatory
2 hearing that the child is an abused, neglected, or
3 dependent minor; or (ii) 60 days after the date on which
4 the child is removed from his or her parent, guardian, or
5 legal custodian.

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

32 Contact or communication by a parent with his or her
33 child that does not demonstrate affection and concern does
34 not constitute reasonable contact and planning under
35 subdivision (n). In the absence of evidence to the
36 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 mental retardation
24 as defined in Section 1-116 of the Mental Health and
25 Developmental Disabilities Code, or developmental
26 disability as defined in Section 1-106 of that Code, and
27 there is sufficient justification to believe that the
28 inability to discharge parental responsibilities shall
29 extend beyond a reasonable time period. However, this
30 subdivision (p) shall not be construed so as to permit a
31 licensed clinical social worker to conduct any medical
32 diagnosis to determine mental illness or mental
33 impairment.

34 (q) The parent has been criminally convicted of
35 aggravated battery, heinous battery, or attempted murder
36 of any child.

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

12 (s) The child is in the temporary custody or
13 guardianship of the Department of Children and Family
14 Services, the parent is incarcerated at the time the
15 petition or motion for termination of parental rights is
16 filed, the parent has been repeatedly incarcerated as a
17 result of criminal convictions, and the parent's repeated
18 incarceration has prevented the parent from discharging
19 his or her parental responsibilities for the child.

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

35 E. "Parent" means the father or mother of a legitimate or
36 illegitimate child. For the purpose of this Act, a person who

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

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

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

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

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

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

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

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

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

26 G. The singular includes the plural and the plural includes
27 the singular and the "male" includes the "female", as the
28 context of this Act may require.

29 H. "Adoption disruption" occurs when an adoptive placement
30 does not prove successful and it becomes necessary for the
31 child to be removed from placement before the adoption is
32 finalized.

33 I. "Foreign placing agency" is an agency or individual
34 operating in a country or territory outside the United States
35 that is authorized by its country to place children for
36 adoption either directly with families in the United States or

1 through United States based international agencies.

2 J. "Immediate relatives" means the biological parents, the
3 parents of the biological parents and siblings of the
4 biological parents.

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

7 L. "Intercountry Adoption Coordinator" is a staff person of
8 the Department of Children and Family Services appointed by the
9 Director to coordinate the provision of services by the public
10 and private sector to prospective parents of foreign-born
11 children.

12 M. "Interstate Compact on the Placement of Children" is a
13 law enacted by most states for the purpose of establishing
14 uniform procedures for handling the interstate placement of
15 children in foster homes, adoptive homes, or other child care
16 facilities.

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

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

23 P. "Abused child" means a child whose parent or immediate
24 family member, or any person responsible for the child's
25 welfare, or any individual residing in the same home as the
26 child, or a paramour of the child's parent:

27 (a) inflicts, causes to be inflicted, or allows to be
28 inflicted upon the child physical injury, by other than
29 accidental means, that causes death, disfigurement,
30 impairment of physical or emotional health, or loss or
31 impairment of any bodily function;

32 (b) creates a substantial risk of physical injury to
33 the child by other than accidental means which would be
34 likely to cause death, disfigurement, impairment of
35 physical or emotional health, or loss or impairment of any
36 bodily function;

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

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

7 (e) inflicts excessive corporal punishment.

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

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

32 R. "Putative father" means a man who may be a child's
33 father, but who (1) is not married to the child's mother on or
34 before the date that the child was or is to be born and (2) has
35 not established paternity of the child in a court proceeding
36 before the filing of a petition for the adoption of the child.

1 The term includes a male who is less than 18 years of age.
2 "Putative father" does not mean a man who is the child's father
3 as a result of criminal sexual abuse or assault as defined
4 under Article 12 of the Criminal Code of 1961.

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

10 T. (Blank).

11 (Source: P.A. 92-16, eff. 6-28-01; 92-375, eff. 1-1-02; 92-408,
12 eff. 8-17-01; 92-432, eff. 8-17-01; 92-651, eff. 7-11-02;
13 93-732, eff. 1-1-05.)