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LRB094 11111 LCB 43128 a

1 AMENDMENT TO HOUSE BILL 2588

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2588 by replacing  
3 everything after the enacting clause with the following:

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.

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

8 (a) Abandonment of the child.

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

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

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

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

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

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

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

24 (f) Two or more findings of physical abuse to any  
25 children under Section 4-8 of the Juvenile Court Act or  
26 Section 2-21 of the Juvenile Court Act of 1987, the most  
27 recent of which was determined by the juvenile court  
28 hearing the matter to be supported by clear and convincing  
29 evidence; a criminal conviction or a finding of not guilty  
30 by reason of insanity resulting from the death of any child  
31 by physical child abuse; or a finding of physical child  
32 abuse resulting from the death of any child under Section  
33 4-8 of the Juvenile Court Act or Section 2-21 of the  
34 Juvenile Court Act of 1987.

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

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

12 (i) Depravity. Conviction of any one of the following  
13 crimes shall create a presumption that a parent is deprived  
14 which can be overcome only by clear and convincing  
15 evidence: (1) first degree murder in violation of paragraph  
16 1 or 2 of subsection (a) of Section 9-1 of the Criminal  
17 Code of 1961 or conviction of second degree murder in  
18 violation of subsection (a) of Section 9-2 of the Criminal  
19 Code of 1961 of a parent of the child to be adopted; (2)  
20 first degree murder or second degree murder of any child in  
21 violation of the Criminal Code of 1961; (3) attempt or  
22 conspiracy to commit first degree murder or second degree  
23 murder of any child in violation of the Criminal Code of  
24 1961; (4) solicitation to commit murder of any child,  
25 solicitation to commit murder of any child for hire, or  
26 solicitation to commit second degree murder of any child in  
27 violation of the Criminal Code of 1961; or (5) aggravated  
28 criminal sexual assault in violation of Section  
29 12-14(b)(1) of the Criminal Code of 1961.

30 There is a rebuttable presumption that a parent is  
31 deprived if the parent has been criminally convicted of at  
32 least 3 forcible felonies as defined in Section 2-8 of the  
33 Criminal Code of 1961 under the laws of this State or any  
34 other state, or under federal law, or the criminal laws of

1 any United States territory; and at least one of these  
2 convictions took place within 5 years of the filing of the  
3 petition or motion seeking termination of parental rights.  
4 In determining whether a parent is deprived, the court  
5 shall consider the parent's criminal conviction record  
6 including, but not limited to, the conviction of any felony  
7 that cannot be classified as forcible.

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

14 (j) Open and notorious adultery or fornication.

15 (j-1) (Blank).

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

20 There is a rebuttable presumption that a parent is  
21 unfit under this subsection with respect to any child to  
22 which that parent gives birth where there is a confirmed  
23 test result that at birth the child's blood, urine, or  
24 meconium contained any amount of a controlled substance as  
25 defined in subsection (f) of Section 102 of the Illinois  
26 Controlled Substances Act or metabolites of such  
27 substances, the presence of which in the newborn infant was  
28 not the result of medical treatment administered to the  
29 mother or the newborn infant; and the biological mother of  
30 this child is the biological mother of at least one other  
31 child who was adjudicated a neglected minor under  
32 subsection (c) of Section 2-3 of the Juvenile Court Act of  
33 1987.

34 (l) Failure to demonstrate a reasonable degree of

1 interest, concern or responsibility as to the welfare of a  
2 new born child during the first 30 days after its birth.

3 (m) Failure by a parent (i) to make reasonable efforts  
4 to correct the conditions that were the basis for the  
5 removal of the child from the parent, or (ii) to make  
6 reasonable progress toward the return of the child to the  
7 parent within 9 months after an adjudication of neglected  
8 or abused minor under Section 2-3 of the Juvenile Court Act  
9 of 1987 or dependent minor under Section 2-4 of that Act,  
10 or (iii) to make reasonable progress toward the return of  
11 the child to the parent during any 9-month period after the  
12 end of the initial 9-month period following the  
13 adjudication of neglected or abused minor under Section 2-3  
14 of the Juvenile Court Act of 1987 or dependent minor under  
15 Section 2-4 of that Act. If a service plan has been  
16 established as required under Section 8.2 of the Abused and  
17 Neglected Child Reporting Act to correct the conditions  
18 that were the basis for the removal of the child from the  
19 parent and if those services were available, then, for  
20 purposes of this Act, "failure to make reasonable progress  
21 toward the return of the child to the parent" includes (I)  
22 the parent's failure to substantially fulfill his or her  
23 obligations under the service plan and correct the  
24 conditions that brought the child into care within 9 months  
25 after the adjudication under Section 2-3 or 2-4 of the  
26 Juvenile Court Act of 1987 and (II) the parent's failure to  
27 substantially fulfill his or her obligations under the  
28 service plan and correct the conditions that brought the  
29 child into care during any 9-month period after the end of  
30 the initial 9-month period following the adjudication  
31 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.  
32 Notwithstanding any other provision, a petition or motion  
33 seeking to terminate parental rights on the basis of this  
34 subsection (m) shall specify the 9-month period relied upon

1           by the petitioner.

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

26           (n) Evidence of intent to forgo his or her parental  
27 rights, whether or not the child is a ward of the court,  
28 (1) as manifested by his or her failure for a period of 12  
29 months: (i) to visit the child, (ii) to communicate with  
30 the child or agency, although able to do so and not  
31 prevented from doing so by an agency or by court order, or  
32 (iii) to maintain contact with or plan for the future of  
33 the child, although physically able to do so, or (2) as  
34 manifested by the father's failure, where he and the mother

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

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

33 It shall be an affirmative defense to any allegation  
34 under paragraph (2) of this subsection that the father's

1 failure was due to circumstances beyond his control or to  
2 impediments created by the mother or any other person  
3 having legal custody. Proof of that fact need only be by a  
4 preponderance of the evidence.

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

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

22 (q) The parent has been criminally convicted of  
23 aggravated battery, heinous battery, or attempted murder  
24 of any child.

25 (r) The child is in the temporary custody or  
26 guardianship of the Department of Children and Family  
27 Services, the parent is incarcerated as a result of  
28 criminal conviction at the time the petition or motion for  
29 termination of parental rights is filed, prior to  
30 incarceration the parent had little or no contact with the  
31 child or provided little or no support for the child, and  
32 the parent's incarceration will prevent the parent from  
33 discharging his or her parental responsibilities for the  
34 child for a period in excess of 2 years after the filing of



1 the petition or motion for termination of parental rights.

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

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

25 E. "Parent" means the father or mother of a legitimate or  
26 illegitimate child. For the purpose of this Act, a person who  
27 has executed a final and irrevocable consent to adoption or a  
28 final and irrevocable surrender for purposes of adoption, or  
29 whose parental rights have been terminated by a court, is not a  
30 parent of the child who was the subject of the consent or  
31 surrender, unless the consent is void pursuant to subsection O  
32 of Section 10.

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

34 (a) a child who has been surrendered for adoption to an

1 agency and to whose adoption the agency has thereafter  
2 consented;

3 (b) a child to whose adoption a person authorized by  
4 law, other than his parents, has consented, or to whose  
5 adoption no consent is required pursuant to Section 8 of  
6 this Act;

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

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

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

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

15 A person who would otherwise be available for adoption  
16 shall not be deemed unavailable for adoption solely by reason  
17 of his or her death.

18 G. The singular includes the plural and the plural includes  
19 the singular and the "male" includes the "female", as the  
20 context of this Act may require.

21 H. "Adoption disruption" occurs when an adoptive placement  
22 does not prove successful and it becomes necessary for the  
23 child to be removed from placement before the adoption is  
24 finalized.

25 I. "Foreign placing agency" is an agency or individual  
26 operating in a country or territory outside the United States  
27 that is authorized by its country to place children for  
28 adoption either directly with families in the United States or  
29 through United States based international agencies.

30 J. "Immediate relatives" means the biological parents, the  
31 parents of the biological parents and siblings of the  
32 biological parents.

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

1 L. "Intercountry Adoption Coordinator" is a staff person of  
2 the Department of Children and Family Services appointed by the  
3 Director to coordinate the provision of services by the public  
4 and private sector to prospective parents of foreign-born  
5 children.

6 M. "Interstate Compact on the Placement of Children" is a  
7 law enacted by most states for the purpose of establishing  
8 uniform procedures for handling the interstate placement of  
9 children in foster homes, adoptive homes, or other child care  
10 facilities.

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

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

17 P. "Abused child" means a child whose parent or immediate  
18 family member, or any person responsible for the child's  
19 welfare, or any individual residing in the same home as the  
20 child, or a paramour of the child's parent:

21 (a) inflicts, causes to be inflicted, or allows to be  
22 inflicted upon the child physical injury, by other than  
23 accidental means, that causes death, disfigurement,  
24 impairment of physical or emotional health, or loss or  
25 impairment of any bodily function;

26 (b) creates a substantial risk of physical injury to  
27 the child by other than accidental means which would be  
28 likely to cause death, disfigurement, impairment of  
29 physical or emotional health, or loss or impairment of any  
30 bodily function;

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

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

3 (e) inflicts excessive corporal punishment.

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

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

28 R. "Putative father" means a man who may be a child's  
29 father, but who (1) is not married to the child's mother on or  
30 before the date that the child was or is to be born and (2) has  
31 not established paternity of the child in a court proceeding  
32 before the filing of a petition for the adoption of the child.  
33 The term includes a male who is less than 18 years of age.  
34 "Putative father" does not mean a man who is the child's father

1 as a result of criminal sexual abuse or assault as defined  
2 under Article 12 of the Criminal Code of 1961.

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

8 T. (Blank).

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