



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB2738

Introduced 1/20/2006, by Sen. Edward D. Maloney

SYNOPSIS AS INTRODUCED:

750 ILCS 50/1

from Ch. 40, par. 1501

Amends the Adoption Act. Provides that there is a rebuttable presumption, which can be overcome only by clear and convincing evidence, that a parent is unfit if there are 2 or more findings of physical abuse by the juvenile court under the Juvenile Court Act of 1987 (deletes references to the former Juvenile Court Act), the parent has been convicted or found not guilty by reason of insanity in a case of the death of a child by physical abuse, or there is a finding of physical child abuse resulting from the death of a child under the Juvenile Court Act of 1987. Adds to the list of criminal convictions that create a presumption that a parent is depraved by including predatory criminal sexual assault of a child (deletes aggravated criminal sexual assault), heinous battery of a child, or aggravated battery of a child.

LRB094 19043 AJO 54538 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) There is a rebuttable presumption, which can be
17 overcome only by clear and convincing evidence, that a
18 parent is unfit if:

19 (1) Two or more findings of physical abuse have
20 been entered regarding ~~to~~ any children under ~~Section~~
21 ~~4-8 of the Juvenile Court Act or~~ Section 2-21 of the
22 Juvenile Court Act of 1987, the most recent of which
23 was determined by the juvenile court hearing the matter
24 to be supported by clear and convincing evidence; or

25 (2) The parent has been convicted or found not
26 guilty by reason of insanity and the conviction or
27 finding resulted from the death of any child by
28 physical abuse ~~a criminal conviction or a finding of~~
29 ~~not guilty by reason of insanity resulting from the~~
30 ~~death of any child by physical child abuse; or~~

31 (3) There is ~~or~~ a finding of physical child abuse
32 resulting from the death of any child under ~~Section 4-8~~
33 ~~of the Juvenile Court Act or~~ Section 2-21 of the
34 Juvenile Court Act of 1987.

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

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

10 (i) Depravity. Conviction of any one of the following
11 crimes shall create a presumption that a parent is deprived
12 which can be overcome only by clear and convincing
13 evidence: (1) first degree murder in violation of paragraph
14 1 or 2 of subsection (a) of Section 9-1 of the Criminal
15 Code of 1961 or conviction of second degree murder in
16 violation of subsection (a) of Section 9-2 of the Criminal
17 Code of 1961 of a parent of the child to be adopted; (2)
18 first degree murder or second degree murder of any child in
19 violation of the Criminal Code of 1961; (3) attempt or
20 conspiracy to commit first degree murder or second degree
21 murder of any child in violation of the Criminal Code of
22 1961; (4) solicitation to commit murder of any child,
23 solicitation to commit murder of any child for hire, or
24 solicitation to commit second degree murder of any child in
25 violation of the Criminal Code of 1961; ~~or~~ (5) predatory
26 ~~aggravated~~ criminal sexual assault of a child in violation
27 of Section 12-14.1 ~~12-14(b)(1)~~ of the Criminal Code of
28 1961; (6) heinous battery of any child in violation of the
29 Criminal Code of 1961; or (7) aggravated battery of any
30 child in violation of the Criminal Code of 1961.

31 There is a rebuttable presumption that a parent is
32 deprived if the parent has been criminally convicted of at
33 least 3 felonies under the laws of this State or any other
34 state, or under federal law, or the criminal laws of any
35 United States territory; and at least one of these
36 convictions took place within 5 years of the filing of the

1 petition or motion seeking termination of parental rights.

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

8 (j) Open and notorious adultery or fornication.

9 (j-1) (Blank).

10 (k) Habitual drunkenness or addiction to drugs, other
11 than those prescribed by a physician, for at least one year
12 immediately prior to the commencement of the unfitness
13 proceeding.

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

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

31 (m) Failure by a parent (i) to make reasonable efforts
32 to correct the conditions that were the basis for the
33 removal of the child from the parent, or (ii) to make
34 reasonable progress toward the return of the child to the
35 parent within 9 months after an adjudication of neglected
36 or abused minor under Section 2-3 of the Juvenile Court Act

1 of 1987 or dependent minor under Section 2-4 of that Act,
2 or (iii) to make reasonable progress toward the return of
3 the child to the parent during any 9-month period after the
4 end of the initial 9-month period following the
5 adjudication of neglected or abused minor under Section 2-3
6 of the Juvenile Court Act of 1987 or dependent minor under
7 Section 2-4 of that Act. If a service plan has been
8 established as required under Section 8.2 of the Abused and
9 Neglected Child Reporting Act to correct the conditions
10 that were the basis for the removal of the child from the
11 parent and if those services were available, then, for
12 purposes of this Act, "failure to make reasonable progress
13 toward the return of the child to the parent" includes (I)
14 the parent's failure to substantially fulfill his or her
15 obligations under the service plan and correct the
16 conditions that brought the child into care within 9 months
17 after the adjudication under Section 2-3 or 2-4 of the
18 Juvenile Court Act of 1987 and (II) the parent's failure to
19 substantially fulfill his or her obligations under the
20 service plan and correct the conditions that brought the
21 child into care during any 9-month period after the end of
22 the initial 9-month period following the adjudication
23 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.
24 Notwithstanding any other provision, when a petition or
25 motion seeks to terminate parental rights on the basis of
26 item (iii) of this subsection (m), the petitioner shall
27 file with the court and serve on the parties a pleading
28 that specifies the 9-month period or periods relied on. The
29 pleading shall be filed and served on the parties no later
30 than 3 weeks before the date set by the court for closure
31 of discovery, and the allegations in the pleading shall be
32 treated as incorporated into the petition or motion.
33 Failure of a respondent to file a written denial of the
34 allegations in the pleading shall not be treated as an
35 admission that the allegations are true.

36 (m-1) Pursuant to the Juvenile Court Act of 1987, a

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

24 (n) Evidence of intent to forgo his or her parental
25 rights, whether or not the child is a ward of the court,
26 (1) as manifested by his or her failure for a period of 12
27 months: (i) to visit the child, (ii) to communicate with
28 the child or agency, although able to do so and not
29 prevented from doing so by an agency or by court order, or
30 (iii) to maintain contact with or plan for the future of
31 the child, although physically able to do so, or (2) as
32 manifested by the father's failure, where he and the mother
33 of the child were unmarried to each other at the time of
34 the child's birth, (i) to commence legal proceedings to
35 establish his paternity under the Illinois Parentage Act of
36 1984 or the law of the jurisdiction of the child's birth

1 within 30 days of being informed, pursuant to Section 12a
2 of this Act, that he is the father or the likely father of
3 the child or, after being so informed where the child is
4 not yet born, within 30 days of the child's birth, or (ii)
5 to make a good faith effort to pay a reasonable amount of
6 the expenses related to the birth of the child and to
7 provide a reasonable amount for the financial support of
8 the child, the court to consider in its determination all
9 relevant circumstances, including the financial condition
10 of both parents; provided that the ground for termination
11 provided in this subparagraph (n)(2)(ii) shall only be
12 available where the petition is brought by the mother or
13 the husband of the mother.

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

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

35 (o) Repeated or continuous failure by the parents,
36 although physically and financially able, to provide the

1 child with adequate food, clothing, or shelter.

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

16 (q) (Blank). ~~The parent has been criminally convicted~~
17 ~~of aggravated battery, heinous battery, or attempted~~
18 ~~murder of any child.~~

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

30 (s) The child is in the temporary custody or
31 guardianship of the Department of Children and Family
32 Services, the parent is incarcerated at the time the
33 petition or motion for termination of parental rights is
34 filed, the parent has been repeatedly incarcerated as a
35 result of criminal convictions, and the parent's repeated
36 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 the father or mother of a lawful child of
18 the parties or child born out of wedlock. For the purpose of
19 this Act, a person who has executed a final and irrevocable
20 consent to adoption or a final and irrevocable surrender for
21 purposes of adoption, or whose parental rights have been
22 terminated by a court, is not a parent of the child who was the
23 subject of the consent or surrender, unless the consent is void
24 pursuant to subsection O of Section 10.

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

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

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

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

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

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

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

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

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

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

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

20 J. "Immediate relatives" means the biological parents, the
21 parents of the biological parents and siblings of the
22 biological parents.

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

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

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

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

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

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

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

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

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

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

25 (e) inflicts excessive corporal punishment.

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

1 abandoned by his or her parents or other person responsible for
2 the child's welfare.

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

14 R. "Putative father" means a man who may be a child's
15 father, but who (1) is not married to the child's mother on or
16 before the date that the child was or is to be born and (2) has
17 not established paternity of the child in a court proceeding
18 before the filing of a petition for the adoption of the child.
19 The term includes a male who is less than 18 years of age.
20 "Putative father" does not mean a man who is the child's father
21 as a result of criminal sexual abuse or assault as defined
22 under Article 12 of the Criminal Code of 1961.

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

28 T. (Blank).

29 (Source: P.A. 93-732, eff. 1-1-05; 94-229, eff. 1-1-06; 94-563,
30 eff. 1-1-06; revised 8-23-05.)