

1 AN ACT in relation to minors.

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
5 Section 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
12 where either or both of the adopting parents stands in any of
13 the following relationships to the child by blood or
14 marriage: 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 (a) Abandonment of the child.

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

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

4 (b) Failure to maintain a reasonable degree of
5 interest, concern or responsibility as to the child's
6 welfare.

7 (c) Desertion of the child for more than 3 months
8 next preceding the commencement of the Adoption
9 proceeding.

10 (d) Substantial neglect of the child if continuous
11 or repeated.

12 (d-1) Substantial neglect, if continuous or
13 repeated, of any child residing in the household which
14 resulted in 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
21 convincing evidence; a criminal conviction or a finding
22 of not guilty by reason of insanity resulting from the
23 death of any child by physical child abuse; or a finding
24 of physical child abuse resulting from the death of any
25 child under Section 4-8 of the Juvenile Court Act or
26 Section 2-21 of the Juvenile Court Act of 1987.

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

29 (h) Other neglect of, or misconduct toward the
30 child; provided that in making a finding of unfitness the
31 court hearing the adoption proceeding shall not be bound
32 by any 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

1 proceedings terminating parental rights as shall be had
2 under either this Act, the Juvenile Court Act or the
3 Juvenile Court Act of 1987.

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

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

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

1 parental rights.

2 (j) Open and notorious adultery or fornication.

3 (j-1) (Blank).

4 (k) Habitual drunkenness or addiction to drugs,
5 other than those prescribed by a physician, for at least
6 one year immediately prior to the commencement of the
7 unfitness proceeding.

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

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

26 (m) Failure by a parent (i) to make reasonable
27 efforts to correct the conditions that were the basis for
28 the removal of the child from the parent, or (ii) to make
29 reasonable progress toward the return of the child to the
30 parent within 9 months after an adjudication of neglected
31 or abused minor under Section 2-3 of the Juvenile Court
32 Act of 1987 or dependent minor under Section 2-4 of that
33 Act, or (iii) to make reasonable progress toward the
34 return of the child to the parent during any 9-month

1 period after the end of the initial 9-month period
2 following the adjudication of neglected or abused minor
3 under Section 2-3 of the Juvenile Court Act of 1987 or
4 dependent minor under Section 2-4 of that Act. If a
5 service plan has been established as required under
6 Section 8.2 of the Abused and Neglected Child Reporting
7 Act to correct the conditions that were the basis for the
8 removal of the child from the parent and if those
9 services were available, then, for purposes of this Act,
10 "failure to make reasonable progress toward the return of
11 the child to the parent" includes (I) the parent's
12 failure to substantially fulfill his or her obligations
13 under the service plan and correct the conditions that
14 brought the child into care within 9 months after the
15 adjudication under Section 2-3 or 2-4 of the Juvenile
16 Court Act of 1987 and (II) the parent's failure to
17 substantially fulfill his or her obligations under the
18 service plan and correct the conditions that brought the
19 child into care during any 9-month period after the end
20 of the initial 9-month period following the adjudication
21 under Section 2-3 or 2-4 of the Juvenile Court Act of
22 1987.

23 (m-1) Pursuant to the Juvenile Court Act of 1987, a
24 child has been in foster care for 15 months out of any 22
25 month period which begins on or after the effective date
26 of this amendatory Act of 1998 unless the child's parent
27 can prove by a preponderance of the evidence that it is
28 more likely than not that it will be in the best
29 interests of the child to be returned to the parent
30 within 6 months of the date on which a petition for
31 termination of parental rights is filed under the
32 Juvenile Court Act of 1987. The 15 month time limit is
33 tolled during any period for which there is a court
34 finding that the appointed custodian or guardian failed

1 to make reasonable efforts to reunify the child with his
2 or her family, provided that (i) the finding of no
3 reasonable efforts is made within 60 days of the period
4 when reasonable efforts were not made or (ii) the parent
5 filed a motion requesting a finding of no reasonable
6 efforts within 60 days of the period when reasonable
7 efforts were not made. For purposes of this subdivision
8 (m-1), the date of entering foster care is the earlier
9 of: (i) the date of a judicial finding at an adjudicatory
10 hearing that the child is an abused, neglected, or
11 dependent minor; or (ii) 60 days after the date on which
12 the child is removed from his or her parent, guardian, or
13 legal custodian.

14 (n) Evidence of intent to forgo his or her parental
15 rights, whether or not the child is a ward of the court,
16 (1) as manifested by his or her failure for a period of
17 12 months: (i) to visit the child, (ii) to communicate
18 with the child or agency, although able to do so and not
19 prevented from doing so by an agency or by court order,
20 or (iii) to maintain contact with or plan for the future
21 of the child, although physically able to do so, or (2)
22 as manifested by the father's failure, where he and the
23 mother of the child were unmarried to each other at the
24 time of the child's birth, (i) to commence legal
25 proceedings to establish his paternity under the Illinois
26 Parentage Act of 1984 or the law of the jurisdiction of
27 the child's birth within 30 days of being informed,
28 pursuant to Section 12a of this Act, that he is the
29 father or the likely father of the child or, after being
30 so informed where the child is not yet born, within 30
31 days of the child's birth, or (ii) to make a good faith
32 effort to pay a reasonable amount of the expenses related
33 to the birth of the child and to provide a reasonable
34 amount for the financial support of the child, the court

1 to consider in its determination all relevant
2 circumstances, including the financial condition of both
3 parents; provided that the ground for termination
4 provided in this subparagraph (n)(2)(ii) shall only be
5 available where the petition is brought by the mother or
6 the husband of the mother.

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

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

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

31 (p) Inability to discharge parental
32 responsibilities supported by competent evidence from a
33 psychiatrist, licensed clinical social worker, or
34 clinical psychologist of mental impairment, mental

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

11 (q) The parent has been criminally convicted of
12 aggravated battery, heinous battery, or attempted murder
13 of any child.

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

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

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

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

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

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

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

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

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

1 parents;

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

5 (d) an adult who meets the conditions set forth in
6 Section 3 of this Act.

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

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

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

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

22 J. "Immediate relatives" means the biological parents,
23 the parents of the biological parents and siblings of the
24 biological parents.

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

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

32 M. "Interstate Compact on the Placement of Children" is
33 a law enacted by most states for the purpose of establishing
34 uniform procedures for handling the interstate placement of

1 children in foster homes, adoptive homes, or other child care
2 facilities.

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

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

9 P. "Abused child" means a child whose parent or
10 immediate family member, or any person responsible for the
11 child's welfare, or any individual residing in the same home
12 as the child, or a paramour of the child's parent:

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

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

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

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

30 (e) inflicts excessive corporal punishment.

31 Q. "Neglected child" means any child whose parent or
32 other person responsible for the child's welfare withholds or
33 denies nourishment or medically indicated treatment including
34 food or care denied solely on the basis of the present or

1 anticipated mental or physical impairment as determined by a
2 physician acting alone or in consultation with other
3 physicians or otherwise does not provide the proper or
4 necessary support, education as required by law, or medical
5 or other remedial care recognized under State law as
6 necessary for a child's well-being, or other care necessary
7 for his or her well-being, including adequate food, clothing
8 and shelter; or who is abandoned by his or her parents or
9 other person responsible for the child's welfare.

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

22 R. "Putative father" means a man who may be a child's
23 father, but who (1) is not married to the child's mother on
24 or before the date that the child was or is to be born and
25 (2) has not established paternity of the child in a court
26 proceeding before the filing of a petition for the adoption
27 of the child. The term includes a male who is less than 18
28 years of age. "Putative father" does not mean a man who is
29 the child's father as a result of criminal sexual abuse or
30 assault as defined under Article 12 of the Criminal Code of
31 1961.

32 S. "Standby adoption" means an adoption in which a
33 terminally ill parent consents to custody and termination of
34 parental rights to become effective upon the occurrence of a

1 future event, which is either the death of the terminally ill
2 parent or the request of the parent for the entry of a final
3 judgment of adoption.

4 T. "Terminally ill parent" means a person who has a
5 medical prognosis by a physician licensed to practice
6 medicine in all of its branches that the person has an
7 incurable and irreversible condition which will lead to
8 death.

9 (Source: P.A. 90-13, eff. 6-13-97; 90-15, eff. 6-13-97;
10 90-27, eff. 1-1-98 except subdiv. (D)(m) eff. 6-25-97; 90-28,
11 eff. 1-1-98 except subdiv. (D)(m) eff. 6-25-97; 90-443, eff.
12 8-16-97; 90-608, eff. 6-30-98; 90-655, eff. 7-30-98; 91-357,
13 eff. 7-29-99; 91-373, eff. 1-1-00; 91-572, eff. 1-1-00;
14 revised 8-31-99.)