

SB3666



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3666

Introduced 2/10/2012, by Sen. Darin M. LaHood - William R. Haine

SYNOPSIS AS INTRODUCED:

750 ILCS 50/1

from Ch. 40, par. 1501

Amends the Adoption Act. In the definition of "depravity", adds language providing that a parent is depraved if he or she has inherent deficiencies of moral sense and rectitude.

LRB097 18018 AJO 63241 b

A BILL FOR

1 AN ACT concerning civil law.

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

1 child welfare agency or a licensed child welfare agency.

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

9 (a) Abandonment of the child.

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

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

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

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

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

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

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

25 (f) There is a rebuttable presumption, which can be
26 overcome only by clear and convincing evidence, that a

1 parent is unfit if:

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

8 (2) The parent has been convicted or found not
9 guilty by reason of insanity and the conviction or
10 finding resulted from the death of any child by
11 physical abuse; or

12 (3) There is a finding of physical child abuse
13 resulting from the death of any child under Section
14 2-21 of the Juvenile Court Act of 1987.

15 No conviction or finding of delinquency pursuant
16 to Article 5 of the Juvenile Court Act of 1987 shall be
17 considered a criminal conviction for the purpose of
18 applying any presumption under this item (f).

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

21 (h) Other neglect of, or misconduct toward the child;
22 provided that in making a finding of unfitness the court
23 hearing the adoption proceeding shall not be bound by any
24 previous finding, order or judgment affecting or
25 determining the rights of the parents toward the child
26 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. A parent is depraved if he or she has
5 inherent deficiencies of moral sense and rectitude.

6 Conviction of any one of the following crimes shall create
7 a presumption that a parent is depraved which can be
8 overcome only by clear and convincing evidence: (1) first
9 degree murder in violation of paragraph 1 or 2 of
10 subsection (a) of Section 9-1 of the Criminal Code of 1961
11 or conviction of second degree murder in violation of
12 subsection (a) of Section 9-2 of the Criminal Code of 1961
13 of a parent of the child to be adopted; (2) first degree
14 murder or second degree murder of any child in violation of
15 the Criminal Code of 1961; (3) attempt or conspiracy to
16 commit first degree murder or second degree murder of any
17 child in violation of the Criminal Code of 1961; (4)
18 solicitation to commit murder of any child, solicitation to
19 commit murder of any child for hire, or solicitation to
20 commit second degree murder of any child in violation of
21 the Criminal Code of 1961; (5) predatory criminal sexual
22 assault of a child in violation of Section 11-1.40 or
23 12-14.1 of the Criminal Code of 1961; (6) heinous battery
24 of any child in violation of the Criminal Code of 1961; or
25 (7) aggravated battery of any child in violation of the
26 Criminal Code of 1961.

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

8 There is a rebuttable presumption that a parent is
9 depraved 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 No conviction or finding of delinquency pursuant to
15 Article 5 of the Juvenile Court Act of 1987 shall be
16 considered a criminal conviction for the purpose of
17 applying any presumption under this item (i).

18 (j) Open and notorious adultery or fornication.

19 (j-1) (Blank).

20 (k) Habitual drunkenness or addiction to drugs, other
21 than those prescribed by a physician, for at least one year
22 immediately prior to the commencement of the unfitness
23 proceeding.

24 There is a rebuttable presumption that a parent is
25 unfit under this subsection with respect to any child to
26 which that parent gives birth where there is a confirmed

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

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

15 (m) Failure by a parent (i) to make reasonable efforts
16 to correct the conditions that were the basis for the
17 removal of the child from the parent, or (ii) to make
18 reasonable progress toward the return of the child to the
19 parent within 9 months after an adjudication of neglected
20 or abused minor under Section 2-3 of the Juvenile Court Act
21 of 1987 or dependent minor under Section 2-4 of that Act,
22 or (iii) to make reasonable progress toward the return of
23 the child to the parent during any 9-month period after the
24 end of the initial 9-month period following the
25 adjudication of neglected or abused minor under Section 2-3
26 of the Juvenile Court Act of 1987 or dependent minor under

1 Section 2-4 of that Act. If a service plan has been
2 established as required under Section 8.2 of the Abused and
3 Neglected Child Reporting Act to correct the conditions
4 that were the basis for the removal of the child from the
5 parent and if those services were available, then, for
6 purposes of this Act, "failure to make reasonable progress
7 toward the return of the child to the parent" includes (I)
8 the parent's failure to substantially fulfill his or her
9 obligations under the service plan and correct the
10 conditions that brought the child into care within 9 months
11 after the adjudication under Section 2-3 or 2-4 of the
12 Juvenile Court Act of 1987 and (II) the parent's failure to
13 substantially fulfill his or her obligations under the
14 service plan and correct the conditions that brought the
15 child into care during any 9-month period after the end of
16 the initial 9-month period following the adjudication
17 under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.
18 Notwithstanding any other provision, when a petition or
19 motion seeks to terminate parental rights on the basis of
20 item (iii) of this subsection (m), the petitioner shall
21 file with the court and serve on the parties a pleading
22 that specifies the 9-month period or periods relied on. The
23 pleading shall be filed and served on the parties no later
24 than 3 weeks before the date set by the court for closure
25 of discovery, and the allegations in the pleading shall be
26 treated as incorporated into the petition or motion.

1 Failure of a respondent to file a written denial of the
2 allegations in the pleading shall not be treated as an
3 admission that the allegations are true.

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

1 legal custodian.

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

1 the husband of the mother.

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

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

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

26 (p) Inability to discharge parental responsibilities

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

14 (q) (Blank).

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

26 (s) The child is in the temporary custody or

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

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

23 E. "Parent" means the father or mother of a lawful child of
24 the parties or child born out of wedlock. For the purpose of
25 this Act, a person who has executed a final and irrevocable
26 consent to adoption or a final and irrevocable surrender for

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

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

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

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

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

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

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

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

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

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

1 H. "Adoption disruption" occurs when an adoptive placement
2 does not prove successful and it becomes necessary for the
3 child to be removed from placement before the adoption is
4 finalized.

5 I. "Foreign placing agency" is an agency or individual
6 operating in a country or territory outside the United States
7 that is authorized by its country to place children for
8 adoption either directly with families in the United States or
9 through United States based international agencies.

10 J. "Immediate relatives" means the biological parents, the
11 parents of the biological parents and siblings of the
12 biological parents.

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

15 L. "Intercountry Adoption Coordinator" is a staff person of
16 the Department of Children and Family Services appointed by the
17 Director to coordinate the provision of services by the public
18 and private sector to prospective parents of foreign-born
19 children.

20 M. "Interstate Compact on the Placement of Children" is a
21 law enacted by most states for the purpose of establishing
22 uniform procedures for handling the interstate placement of
23 children in foster homes, adoptive homes, or other child care
24 facilities.

25 N. "Non-Compact state" means a state that has not enacted
26 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

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

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

24 R. "Putative father" means a man who may be a child's
25 father, but who (1) is not married to the child's mother on or
26 before the date that the child was or is to be born and (2) has

1 not established paternity of the child in a court proceeding
2 before the filing of a petition for the adoption of the child.
3 The term includes a male who is less than 18 years of age.
4 "Putative father" does not mean a man who is the child's father
5 as a result of criminal sexual abuse or assault as defined
6 under Article 12 of the Criminal Code of 1961.

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

12 T. (Blank).

13 (Source: P.A. 96-1551, eff. 7-1-11; 97-227, eff. 1-1-12;
14 revised 9-15-11.)