

ADOPTIONS 101

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ADOPTIONS 101 – Types of Adoption

- a. Private-Agency Assisted Adoptions (non-related adoptive parents and minor)
 - i. Adoption agency takes surrender or consent from birth parent
 - ii. Adoption agency provides performs required background checks and home studies, and usually provides mandatory training
 - iii. ICPC may apply (child and adoptive parents in different states and not related – strict rules)
 - iv. Guardian Ad Litem appointed
 - v. Attorney must terminate parental rights and unknown fathers
- b. Foster care conversion Adoptions (underlying JA case (juvenile abuse and neglect)
 - i. DCFS is legal guardian of the minor in most cases
 - ii. Termination of parental rights by hearing, voluntary consent, surrender, or combination
 - iii. Termination of unknown fathers if there is not a DNA test proving biological father
 - iv. DCFS may appoint an adoption agency to serve as the agency required to investigate and file reports to the court
 - v. Guardian Ad Litem appointed (in McLean County, Judge will usually appoint the same Guardian Ad Litem in the JA case)
- c. Related Adoptions (Step-parent, grandparent, aunt, sibling)
 - i. Background checks, and other usual investigations by agencies are usually waived by the court in related adoptions
 - ii. Termination of parental rights by hearing, voluntary consent, or combination
- d. Re-Adoption (Foreign adoption) – IDPH now provides an alternative to Re-adoption for obtaining a certificate of live birth for Illinois
- e. Adult Adoptions

Adoptions 101 – Petition Requirements

750 ILCS 50/5

- i. Must be filed within 30 days after child has become available for adoption (unless related)
- ii. Names of petitioners
- iii. Place of residence of petitioners and the length of residence of each in the State of Illinois
- iv. Date of custody of the child, name and address of the persons or agency from whom the child was or will be received
- v. Name, place and date of birth if known, and the sex of the child sought to be adopted
- vi. The relationship, if any, of the child to each petitioner
- vii. Names, if known, and the place of residence, if known, of the parents; and whether such parents are minors, or otherwise under any legal disability. The names and addresses of the parents shall be omitted and they shall not be made parties defendant to the petition if (1) the rights of the parents have been terminated by a court of competent jurisdiction, or (2) the child has been surrendered to an agency, or (3) the parent or parents have been served with the notice provided in Section 12a of this Act and said parent or parents have filed a disclaimer of paternity or have failed to file such declaration or a request for notice as provided, or (4) the parent is a putative father or legal father of the child who has waived his parental rights by signing a waiver as provided in subsection S of Section 10
- viii. The name to be given the child after adoption
- ix. That the person or agency, having authority to consent under Section 8 of this Act, has consented, or has indicated willingness to consent, to the adoption of the child by the petitioners, or that the person having authority to consent is an unfit person and the ground therefor, or that no consent is required under paragraph (f) of Section 8 of the Adoption Act.
- x. Whatever orders, judgments or decrees have been entered by any court affecting (1) adoption or custody of the child, or (2) the adoptive, custodial or parental rights of either petitioner, including the prior denial of any petition for adoption pertaining to such child, or to the petitioners, or either of them.
- xi. Petition must be verified by the Petitioners.

Adoptions 101 – Preliminary Issues

- a. Short-term guardianship – Illinois form can be used for placements by a birth parent
- b. Interim Hearing and Legal Custody – Obtain court order for adoptive parents to have legal custody pending the final adoption judgment
- c. ICPC
- d. ICWA (see resources)
- e. Visitation rights
- f. Appeals

Adoptions 101 – Termination of Parents and Required Notice

- i. Birth mom – should be on birth certificate
 - 1. Surrender rights to DCFS
 - 2. Sign specific consent for the foster parent(s) to adopt
 - 3. Found unfit by a Judge
 - 4. Publication (if whereabouts unknown)
- ii. Birth father (must have a dna test or it is not conclusive that it is the birth father)
 - 1. Same as birth mom
- iii. Legal father/presumed father: married or in civil union with birth parent at the time of the child's birth or within 300 days prior to that child's birth, unless a denial of paternity or waiver signed); named on birth certificate; or Male who signs a voluntary acknowledgment of paternity (VAP) stating he is the father
 - 1. Same as birth mom
 - 2. Putative father registry search results
 - 3. Must publish against unknown fathers
- iv. Presumed father (married to birth mom)
 - 1. Same as birth mom
 - 2. Putative father registry search results
 - 3. Must publish against unknown fathers
- v. Putative father (person who birth mom identifies as the father)
 - 1. Same as birth mom
 - 2. Putative father registry search results
 - 3. Must publish against unknown fathers
- vi. Unknown father
 - 1. Publish against unknown fathers

Adoptions 101 – Termination – con't.

- i. If there is no order terminating the rights of the birth mother and birth father but a judge found them to be unfit or they surrendered or consented to the adoption, then the parental rights must be terminated prior to or as part of the adoption hearing.
- ii. If there is an order terminating the rights of the birth mother and a father who has not had any dna test, then the unknown father should also be included in the petition, publication for notice, and termination at or before the adoption hearing.
- iii. Unfitness – Petition for a finding of unfitness is made by State's attorney's office in the JA Case
 - 1. Juvenile Court Act – State proved by clear and convincing evidence that the parents are unfit
 - 2. Best Interest Hearing – if state proves unfitness, then a hearing is held to determine if it is in the best interest of the child that the parental rights are terminated
 - 3. Termination Order – if the judge finds that the parents are unfit and that it is in the best interest of the child to terminate the parental rights, then the rights are terminated and the minor is a ward of the State as the Judge appoints DCFS as guardian with the power to consent to adoption or guardianship over the minor child.
- a. Report of Investigation
 - i. During the JA case, DCFS or an appointed agency will be substantially involved in the case and home visits are made by DCFS/agency and they are also involved in maintaining visitation between siblings that were placed in different homes. As part of the Adoption, even if relatives are adopting, DCFS/agency will prepare a Report of Investigation giving the court final information regarding the child's welfare, the adoptive parents background, and other pertinent information and then gives a recommendation for the adoption.
 - ii. 750 ILCS 50/6 – Investigation – Within 10 days after the filing of a petition for the adoption of a child other than a related child, the court shall appoint a child welfare agency approved by DCFS or a person deemed competent by the court, or DCFS...to investigate accurately, fully and promptly, the allegations contained in the petition; the character, reputation, health and general standing in the community of the petitioners; the religious faith of the petitioners and of the child sought to be adopted; and whether the petitioners are proper persons to adopt the child and whether the child is a proper subject of adoption. Investigation must include a fingerprint based criminal background check with a review of fingerprints by the Illinois State Police and Federal Bureau of Investigation...criminal background check required shall not be more than 2 years old.

Adoptions 101 – Termination – con't.

- a. Appointment of Guardian Ad Litem
 - i. As soon as the case is filed, a Guardian Ad Litem is appointed to represent the best interest of the minor child being adopted. In McLean County, if the underlying JA case was also in McLean County, then the same guardian ad litem is usually appointed in the adoption case.
 - ii. If there is an underlying JA case in any county in Illinois and the parents live in McLean County, then the usual guardian ad litem listed above in e(i) are usually appointed to these as well. When DCFS is involved, the appointed guardian ad litem can rely heavily on the Report of Investigation as they know DCFS was involved throughout the case and they understand that the work does not need to be duplicated.

Adoptions 101 – Documents to Submit to Court

- a. Orders finding parents unfit
- b. Termination of Parental Rights Orders
- c. Consent to adoption – by mother or father or both
- d. Identification of father – affidavit
- e. DNA results for any birth father
- f. Certificate of Publication against any putative, presumed, legal, and unknown father (whichever applies) – 750 ILCS 50/7
- g. Consent to Adoption by DCFS
- h. Affidavit of Fees by DCFS/Agency
- i. Special Needs Child Certification
- j. Death certificates of any deceased parent
- k. Birth certificate
- l. Consent by minor if 14 or older – 750 ILCS 50/12
- m. Proposed Judgment – 750 ILCS 50/14

Adoptions 101 – Final Hearing(s)

- a. Proper Notice – no notice required for parents who have been terminated or have signed surrenders/consents
- b. Closed proceedings
- c. Final Order
- d. New Certificate of Birth and possibly new Social security number

Adoptions 101 - Important Resources

- a. Illinois Adoption Act = 750 ILCS 50 et al
- b. 750 ILCS 50/1 Definitions = D(b) – “Unfit Person” – “failure to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare.”
- c. 750 ILCS 50/1 Definitions = (c) – “unfit person” – desertion of the child for more than 3 months next preceding the commencement of the Adoption proceeding.

Adoptions 101 – Important Resources

- 750 ILCS 50/1 Definitions = D(m) – “Unfit Person” – “failure by parent: (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act, or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that were the basis for removal of the child from the parent and if those services were available, then, for purposes of this Act, “failure to make reasonable progress toward the return of the child to the parent” includes the parent’s failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987...”

Adoptions 101 – Important Resources

- 750 ILCS 50/D(n) – Evidence of intent to forgo his or her parental rights, whether or not the child is a ward of the court, (1) as manifested by his or her failure for a period of 12 months: (i) to visit the child, (ii) to communicate with the child or agency, although able to do so and not prevented from doing so by an agency or court order, or (iii) to maintain contact with or plan for the future of the child, although physically able to do so, or (2) as manifested by the father’s failure , where he and the mother of the child were unmarried to each other at the time of the child’s birth, (i) to commence legal proceedings to establish his paternity under the Illinois Parentage Act of 1984, the Illinois Parentage Act of 2015 or the law of the jurisdiction of the child’s birth within 30 days of being informed, pursuant to Section 12a of this Act, that he is the father or the likely father of the child, or after being so informed where the child is not yet born, within 30 days of the child’s birth or (ii) to make a good faith effort to pay a reasonable amount of the expenses related to the birth of the child and to provide a reasonable amount of the expenses related to the birth of the child and to provide a reasonable amount for the financial support of the child, the court to consider in its determination all relevant circumstances, including the financial condition of both parents; provided that the ground for termination provided in this subparagraph (n)(2)(ii) shall only be available where the petition is brought by the mother or the husband of the mother...
- In re A.S.B., 381 Ill.App. 3d 220, 226 (4th Dist. 2008) Birth mom attempted to terminate birth father’s parental rights without filing a Petition for Adoption under the Adoption Act or seeking wardship/dependency under the Juvenile Court Act. Appellate court stated “Regrettably, the legislature has not created a cause of action for one parent seeking to terminate the other parent’s rights other than by way of the Juvenile Court Act or Adoption Act.
- Petition of Doe, 202 Ill. 2d 347 (“Baby Richard” case), Supreme Court found that they could not terminate birth father based on lack of interest during the 30 days after birth (Section 1(D)(I)) due to the circumstances that the birth mom lied and said that the child had died at birth. As soon as he discovered the lie, he petitioned the court for custody of the child.

Adoptions 101 – Important Resources

- a. Appeal – Supreme Court Rule 305(e) – automatic stay on termination orders under the Juvenile Court Act for 60 days and continues through an appeal of the order if the appeal is filed within the 60 days.
- b. In re M.M., 156 Ill. 2d 5, 61 (1993) – a Petition for Termination of Parental Rights is filed under the Juvenile Court Act when the child has been previously adjudged abused, neglected or dependent and all other involuntary termination actions then must proceed under the Adoption Act.

Adoptions 101 – Who may Adopt

- i. Persons under no legal disability (except certain minorities); and
- ii. Who have resided in the State of Illinois continuously for a period of at least 6 months immediately preceding the commencement of an adoption proceeding (exception for armed forces – 90 days)(exception for related)
- iii. A reputable person of legal age
- iv. IF married or in a civil union – both must be a party to the adoption proceeding (even if it is the birth parent adopting) – unless it is a re-adoption of after an intercountry adoption and the spouse or civil union partner was not a party to the prior adoption.

Adoptions 101 – Additional Resources

- a. Termination actions under the Juvenile Court Act entitle an indigent respondent parent to court-appointed counsel. 705 ILCS 405/1-5.
- b. In re Adoption of L.T.M., 214 Ill. 2d 60 – IL Supreme Court has held that the failure to provide indigent parents under a similar action pursuant to the Adoption Act is a violation of the parent's equal protection rights, and the State must therefore provide appointed counsel to parents facing the loss of parents rights in proceedings under the Adoption Act as well.
- c. In re Adoption of K.L.P., 198 Ill. 2d 448 – Respondent parent is entitled to assistance of counsel where significant state action removed child from parent's care.
- d. ICWA – Indian Child Welfare Act 25 U.S.C.A. Section 1901 et seq.
 - i. Consents taken within 10 days after the child's birth are not valid.
 - ii. ICWA only applies to United States Indian heritage.
 - iii. Whether or not ICWA applies to a case should be ascertained as soon as possible – if it applies it is a lengthy, time-consuming process
- e. Venue – an adoption proceeding may be commenced in any county in this State (750 ILCS 50/4)
- f. ICPC – 750 ILCS 50/4.1 Interstate Compact on the Placement of Children.
- g. Foster Parent Adoptions – In re Adoption of C.D., 313 Ill. App. 3d 301 (4th Dist. 2000) – foster parents who have cared for a child for more than a year are given some preference in adopting the child placed with them.
- h. The court may waive the 6 month waiting period if the court finds a waiver to be for the welfare of the child – 750 ILCS 50/16
- i. Rights of biological relatives after adoption are completely severed. After parental rights are terminated biological grandparents have no right to intervene in adoption.
- j. 750 ILCS 50/20 – Proceedings under this Act shall receive priority over other civil cases in being set for hearing.
- k. 750 ILCS 50/20 – All defects in pleadings, either in form or substance, not objected 45 days prior to the entry of final judgment, shall be deemed to be waived.
- l. 750 ILCS 5/602.9 – Related Adoptions and visitation rights of certain family members.

Adoptions 101 – Additional Resources Con't.

- LINKS
- <https://www.narf.org/cases/brackeen-v-bernhardt/>
- <https://www.nicwa.org/about-icwa/#Summary>
<https://www.npr.org/sections/codeswitch/2013/06/26/195787510/Supreme-Court-Sides-With-Adoptive-Family-In-Dispute>
- <https://www.csmonitor.com/USA/Latest-News-Wires/2013/0924/Baby-Veronica-case-Cherokee-child-in-adoption-dispute-returns-to-adoptive-parents>
- [Illinois Practice Series Vol.12 and Vol. 13 – The Illinois Practice of Family Law Practice 2021 Practice Volume by Jody Meyer Yazici, David I. Grund, and Marvin J. Leavitt, Thomson Reuters, Twentieth Edition, published 2021.](#)
- [750 ILCS 5/602.9](#)