

*The Adoption and Safe Families Act
and the Illinois Permanency Initiative of 1997*

Part I -- Juvenile Court Time Table for Attaining Permanency

*** Changes made by 1997 and 1998 legislation are italicized and footnoted*

Day 0, Case Opening

Temporary Protective Custody. In response to calls from the Child Abuse Hotline, DCFS assigns a Child Protection Investigator to investigate allegations of child abuse or neglect. When the investigator determines that the child cannot remain safely at home, the investigator is authorized by law to take temporary protective custody of the child. When temporary protective custody is taken, the investigator must contact the State's Attorney's office and request the filing of a Petition for Adjudication of Wardship. The petition must be filed with the Court to initiate a proceeding under the Juvenile Court Act. After the petition is filed, the Court schedules a Shelter Care Hearing within 48 hours (excluding holidays and weekends) of the time temporary protective custody was taken.

Day 2

Shelter Care Hearing. A shelter care hearing is an emergency hearing to determine whether a child is at such immediate risk of serious injury that the child must be placed away from the parent or caretaker pending further juvenile court proceedings. Evidence is presented to support the allegations contained in the report of alleged child abuse or neglect (or additional allegations which have surfaced), the immediate safety of the child in the home, and the reasonable efforts made or community resources available that could allow the child to safely remain in the home pending further court action. If no resources or reasonable efforts could provide a safe environment for the child in the home, this is explained to justify the child's removal from the home.

When there are several children in the home, and they are not all taken into protective custody, the State must offer evidence to explain why the child or children remaining at home are not at risk of serious injury, or what reasonable efforts have prevented the need for placement of these other children.

In a shelter care hearing, the court is required to find:

- whether there is probable cause to believe that the child is abused, neglected or dependent;
- whether there is an immediate and urgent necessity to place the child away from his/her parents pending an adjudicatory hearing;
- whether reasonable efforts have been made to prevent placement away from the parent, or that such efforts would not prevent placement; and
- what is in the best interests of the child (i.e., placement, entry of an order of protection, etc.)

If the child is alleged to be abused, neglected, or dependent, the judge shall admonish the parents that if the child is made a ward of the court and custody or guardianship is awarded to DCFS, the parents must cooperate with DCFS, comply with the service plan, and correct the conditions which require the child to be in care, or risk termination of parental rights.¹

Prior to the Adjudicatory Hearing

The **Petition for Adjudication of Wardship** is served upon the parties as required in Sections 2-15 and 2-16 of the Juvenile Court Act. If the petition is amended prior to the adjudicatory hearing, *the amended petition is served upon the party's attorney or mailed to the party's address of record, in accordance with the Supreme Court Rule 11.² An amended petition adding grounds for parental unfitness and requesting termination of parental rights is served by publication only if a parent's identity or whereabouts are unknown.³ [The terms "petition" and "amended petition" refer only to pleadings filed before an adjudicatory hearing in cases brought under Article 2 of the Juvenile Court Act.⁴]*

A **summons** is served with the Petition *and contains a notice advising that the parties will not be entitled to further written or publication notices of proceedings in this case, including the filing of an amended petition or a motion to terminate parental rights, except as required by Supreme Court Rule 11.⁵*

¹ Public Act 90-28

² Public Acts 90-27 and 90-28

³ Public Act 90-27

⁴ Public Act 90-28

⁵ Supreme Court Rule 11 requires notice to be sent by regular mail to the attorney of record, or directly to any party who appears *pro se* (not represented by counsel). *Pro se* parties are required to provide a mailing address for receipt of court documents and notices.

DCFS will conduct a **diligent search** for a parent whose identity or whereabouts are unknown before the adjudicatory hearing, and, by administrative rule, shall establish formal criteria for conducting the diligent search.⁶ Once conducted, a diligent search is valid for 12 months and need not be repeated to support a notice by publication filed within that time period.⁷

A **notice by publication** to any parent whose identity or whereabouts are unknown *must advise that the court has the authority to take custody and guardianship of the child and to terminate parental rights, and if the petition requests termination of parental rights the parent may lose all parental rights to the child,*⁸ and shall contain a statement that the party will not be entitled to further written notices or publication notices of proceedings in this case except as required by Supreme Court Rule 11.⁹

At the **first appearance** (if not done at shelter care hearing), parents are advised of their rights and the contents of the petition. Counsel is appointed for indigent parents, *and the appointment will continue through the permanency hearings and termination of parental rights proceedings, subject to formal withdrawal or substitution of counsel.*^{10 11} After the dispositional hearing the judge may require appointed counsel, other than counsel for a minor or counsel for the guardian ad litem, to withdraw his/her appearance if the parent fails to attend any subsequent proceedings.¹²

The judge admonishes the parents that they must cooperate with DCFS, comply with the service plan, and correct the conditions which require the child to be in care, or risk termination of parental rights.¹³

⁶ Public Act 90-28

⁷ Public Act 90-27

⁸ Public Act 90-27

⁹ Public Acts 90-27 and 90-28

¹⁰ Public Acts 90-27 and 90-28

¹¹ The processes for substitution of counsel and counsel's withdrawal of appearance on behalf of a client are governed by Supreme Court Rule 13 and require notice to the client, the court and all parties to the proceeding.

¹² Public Acts 90-27 and 90-608

¹³ Public Act 90-28

The guardian ad litem appointed for a child shall remain the child's guardian ad litem through the entire proceedings including permanency hearings and termination of parental rights proceedings.¹⁴ The guardian ad litem shall have at least one in-person contact with the child and a contact with one of the foster parents or caregivers before the adjudicatory hearing, one additional in-person contact with the child and a contact with one of the foster parents or caregivers before the first permanency hearing, and then once yearly contact thereafter.¹⁵

A motion requesting **early termination of reasonable efforts** to reunify the child and parent may be filed by the State's Attorney, guardian ad litem or DCFS. The court shall grant this motion if the court finds that the parent has:

- 1) had his or her parental rights to another child of the parent involuntarily terminated; or
- 2) been convicted of:
 - A) first degree or second degree murder of another child of the parent;
 - B) attempt or conspiracy to commit first degree or second degree murder of another child of the parent;
 - C) solicitation to commit murder of another child of the parent, solicitation to commit murder for hire of another child of the parent, or solicitation to commit second degree murder of another child of the parent;
 - D) aggravated battery, aggravated battery of a child, or felony domestic battery, any of which has resulted in serious bodily injury to the minor or another child of the parent; or
 - E) an offense in any other state the elements of which are similar and bear substantial relationship to any of the foregoing offenses;

unless the court sets forth in writing a compelling reason why terminating reasonable efforts to reunify the child and parent would not be in the best interests of that child.¹⁶

The State may seek termination of parental rights in the petition or an amended petition if unfitness grounds exist.¹⁷ The Juvenile Court Act suggests expediting termination of parental rights when:

¹⁴ Public Acts 90-27 and 90-28

¹⁵ Public Act 90-27

¹⁶ Public Act 90-608

¹⁷ Public Acts 89-704, 90-27, and 90-28

- 1) *reasonable efforts to reunify are inappropriate or have been provided and were unsuccessful and there are aggravating circumstances including but not limited to those cases in which A) the child or another child of the child's parent was abandoned, tortured, or chronically abused; or B) the parent is criminally convicted of first or second degree murder of any child, attempt or conspiracy to commit first or second degree murder of any child, solicitation to commit murder, solicitation to commit murder for hire, or solicitation to commit second degree murder of any child, aggravated assault, or aggravated criminal sexual assault of any child;*¹⁸ or
- 2) *the parental rights of a parent with respect to another child of the parent have been involuntarily*¹⁹ *terminated; or*
- 3) *in extreme cases in which the parent's incapacity to care for the child, combined with an extremely poor prognosis for treatment or rehabilitation, justifies expedited termination of parental rights.*²⁰

*When placing the child in substitute care, DCFS shall consider **concurrent planning**, described in the Children and Family Services Act, Sections 5(l-1) and 7, so that if reunification fails or is delayed the child is in the best available placement to provide permanency.*²¹

90 Days

Adjudicatory Hearing. The adjudicatory hearing is the actual "trial phase" of the juvenile proceeding when the State must establish that the child was abused, neglected or dependent as alleged in the Petition for Adjudication of Wardship, and who caused the abuse, neglect or dependency.

¹⁸ Public Acts 89-704, 90-27, 90-28, and 90-608

¹⁹ Public Act 90-27

²⁰ Public Act 90-28

²¹ Public Acts 90-27 and 90-28

The adjudicatory hearing must be held within 90 days of service on all the parties (*unless an earlier date is required*),²² with one opportunity for a continuance not to exceed 30 days.²³ The hearing may not extend beyond the this time frame without consent of all the parties and approval of the court.

*At the hearing, the judge specifically notes for the record the manner in which the parents received service. The court shall default any parent who fails to appear. The caseworker testifies about the diligent search conducted for any parent who has been served by publication and fails to appear.*²⁴

The judge determines whether the preponderance of the evidence establishes that the child is abused, neglected or dependent. If so, the judge *will specify, to the extent possible, the acts or omissions or both of each parent that form the basis of the court's findings. That finding shall appear in the order of the court.*²⁵ *If the court finds that the child has been abused, neglected or dependent, the judge will admonish the parents to cooperate with DCFs, comply with the service plan, and correct the conditions which require the child to be in care, or risk termination of parental rights.*²⁶

*If the petition seeks an **expedited termination of parental rights**, the judge will also hear evidence on the unfitness grounds alleged in the petition and will make a special finding, by clear and convincing evidence, whether the parent is an unfit person because one or more of the grounds exists as to that parent.*²⁷

²² See 705 ILCS 405/2-13.1(2)(a), which requires the court to conduct a permanency hearing within 30 days when the court grants a motion for early termination of reasonable efforts to reunite the child and parents. If an adjudicatory or a dispositional hearing, or both, has not taken place when the court grants the motion, then either or both hearings shall be held as needed so that both take place on or before the date a permanency hearing is held.

²³ The Illinois Supreme Court recently held that the 90 day time frame for conducting the adjudicatory hearing is a mandatory, and not a discretionary time frame. *In re S.G.*, 175 Ill.2d 471, 677 N.E.2d 90, 222 Ill.Dec. 386 (1997).

²⁴ Public Act 90-28

²⁵ Public Act 90-608

²⁶ Public Act 90-28

²⁷ Public Act 90-28

After the adjudicatory hearing, all supplemental pleadings are filed as motions.²⁸ The only motion requiring the service of process described in 2-15 and 2-16 is a motion to terminate parental rights of a parent for whom an order of default has been entered at adjudication and has not been set aside.²⁹

²⁸ Public Act 90-28

²⁹ Public Acts 90-27 and 90-28

120 Days

Dispositional Hearing. The dispositional hearing is conducted within 30 days of the entry of the findings at adjudication (*unless an earlier date is required*),³⁰ with one opportunity for continuance not to exceed 30 days if necessary to complete the dispositional report.

The judge considers reports submitted by the caseworker and other service providers, hears evidence regarding efforts made to reunify the child and family, the services delivered or to be delivered under the family's service plan, placement alternatives (including return home), and the best interests of the child. The judge decides whether to make the child "a ward of the court."

*When guardianship of the child is awarded to DCFS, the judge shall order the parents to cooperate with DCFS, comply with the service plan, and correct the conditions which require the child to be in care, or risk termination of parental rights.*³¹

*When the child is restored to the custody of the parents, the judge shall order the parents to cooperate with DCFS and comply with the terms of an after-care plan, or risk the loss of custody of the child and possible termination of parental rights.*³² *The custody of the child shall not be restored to any parent whose acts or omissions or both have been identified as forming the basis for the court's finding of abuse, neglect or dependency*³³ until a hearing is held on the best interests of the child and the fitness of the parents to care for the child without endangering the child's health or safety, and the court enters an order that the parents are fit to care for the child.

*The judge may select "subsidized guardianship" as the appropriate dispositional placement alternative when the criteria established by DCFS for a subsidized guardianship are met.*³⁴ *If the petition requested an expedited termination of parental rights and at adjudication the judge found, by clear and convincing evidence, that one or more of the unfitness grounds exists as to that parent, the judge shall hear evidence about whether reasonable efforts were inappropriate or were offered and were unsuccessful, and whether adoption is in the best*

³⁰ *Supra* at note 16

³¹ Public Act 90-28

³² Public Act 90-28

³³ Public Act 90-608

³⁴ Public Act 90-512

interests of the child.³⁵ When appropriate, the judge may enter an order terminating parental rights and appointing a guardian with power to consent to adoption for that parent³⁶ without regard to the likelihood that the child will be placed for adoption.³⁷

The judge shall inquire of the parties of any intent to proceed with termination of parental rights of a parent whose identity or whereabouts remain unknown, or who was found in default at the adjudicatory hearing and has not obtained an order setting aside the default.³⁸

*A motion requesting **early termination of reasonable efforts** to reunify the parent and child may be filed by the State's Attorney, guardian ad litem or DCFS. At any time after the dispositional hearing, the court shall grant this motion with respect to a parent of the minor if it determines that further reunification services would no longer be appropriate.³⁹*

12 months

First Permanency Hearing. *The first permanency hearing is conducted by a judge; subsequent permanency hearings may be heard by a judge or hearing officer.⁴⁰*

Notice of the permanency hearing is provided pursuant to Supreme Court Rule 11.⁴¹

³⁵ Public Act 90-27

³⁶ Public Act 90-27

³⁷ Public Act 90-28

³⁸ Public Act 90-608

³⁹ Public Act 90-608

⁴⁰ Public Act 90-608

⁴¹ Public Act 90-27. In civil proceedings, Supreme Court Rule 11 requires that notice be provided by regular mail to the address of record of any party who is not represented by an attorney. For parties represented by attorneys the notice is sent to the attorneys, who are responsible for advising their clients of the upcoming hearing or court action.

Public Act 90-28 removes the requirement for the formal notice of Sections 2-15 and 2-16 prior to permanency hearings. [Sections 2-15 and 2-16 of the Juvenile Court Act describe the process for the court to attach personal jurisdiction of the parties to the proceeding. Since the court already has jurisdiction of the parties and the subject matter at this stage of the proceedings, there is no need to reattach jurisdiction using formal service of process.]

The first permanency hearing must be held within 12 months of the date temporary custody was taken (unless the parental rights of both parents have been terminated at the dispositional hearing,⁴² or the court has granted a motion for early termination of reasonable efforts,⁴³ either of which will trigger an earlier date for the first permanency hearing.)⁴⁴ Subsequent permanency hearings must be held every 6 months thereafter, or more frequently if necessary. Once the service plan and permanency goal have been achieved, if the child remains in care, the case shall be reviewed at least every 6 months thereafter unless the child is placed in a stable, private guardianship and the judge determines that further monitoring is not necessary.⁴⁵

The time frames for permanency hearings are mandatory; permanency hearings may not be delayed in anticipation of a report from any source or due to an agency's failure to timely file its written report (not the service plan).⁴⁶ The agency is required to file the most recent service plan prepared within the prior 6 months at least 14 days in advance of the hearing date.

At the permanency hearing, the judge reviews the service plan and reports submitted by the caseworker and service providers, hears evidence regarding efforts made to reunify the child and family, the services delivered or to be delivered under the family's service plan, placement alternatives (including return home), and the best interests of the child. *The worker's report must detail what progress or lack of progress the parent has made in correcting the conditions requiring the child to be in care, whether the child can be returned home without jeopardizing the child's health, safety and welfare, and, if not, what permanency goal is recommended to be in the best interests of the child, and why the other permanency goals are not appropriate.⁴⁷*

The worker must appear and testify at the hearing.⁴⁸

⁴² See 705 ILCS 405/2-21(5)

⁴³ *Supra* at note 16

⁴⁴ Public Act 90-608

⁴⁵ Public Acts 90-27 and 90-28

⁴⁶ Public Act 90-27

⁴⁷ Public Act 90-28

⁴⁸ Public Act 90-28

At the permanency hearing, the court shall determine the future status of the child. The court shall set one of the following permanency goals:⁴⁹

- A) The minor will be returned home by a specific date within five months;*
- B) The minor will be in short term care with a continued goal to return home within a period not to exceed one year, where the progress of the parent or parents is substantial giving particular consideration to the age and individual needs of the minor.*
- B-1) The minor will be in short-term care with a continued goal to return home pending a status hearing. When the court finds that a parent has not made reasonable efforts or reasonable progress to date, the court shall identify what actions the parent and the Department must take in order to justify a finding of reasonable efforts or reasonable progress and shall set a status hearing to be held not earlier than 9 months from the date of adjudication nor later than 11 months from the date of adjudication during which the parent's progress will again be reviewed.*
- C) The minor will be in substitute care pending court determination on termination of parental rights;*
- D) Adoption, provided that parental rights have been terminated or relinquished;*
- E) The guardianship of the minor will be transferred to an individual or couple on a permanent basis provided that goals (A) through (D) have been ruled out;*
- F) The minor over age 12 will be in substitute care pending independence;*
- G) The minor will be in substitute care because he or she cannot be provided for in a home environment due to developmental disabilities or mental illness or because he or she is a danger to self or others, provided that goals (A) through (D) have been ruled out.*

The court shall set a permanency goal that is in the best interests of the child. The court's determination shall include the following factors:⁵⁰

- 1) Age of the child*
- 2) Options available for permanency*
- 3) Current placement of the child and the intent of the family regarding adoption*
- 4) Emotional, physical, and mental status or condition of the child*

⁴⁹ Public Acts 90-27 and 90-28

⁵⁰ Public Acts 90-28 and 90-608

- 5) *Types of services previously offered and whether or not the services were successful and, if not successful, the reasons the services failed*
- 6) *Availability of services currently needed and whether the services exist*
- 7) *Status of siblings of the minor*

In a written order, the judge explains the goal selection and why preceding goals were ruled out.⁵¹ When the judge selects a permanency goal other than (A), (B), or (B-1), DCFS shall not provide further reunification services, but shall provide services consistent with the goal selected.⁵²

The court shall consider 1) the permanency goal contained in the service plan, 2) the appropriateness of the services contained in the service plan and whether those services have been provided, 3) whether reasonable efforts have been made by all the parties to the service plan to achieve the goal, and 4) whether the plan and goal have been achieved.⁵³ If the court determines that the services in the plan will not facilitate achievement of the permanency goal, the court shall make written findings to this effect and may order DCFS to develop and implement a new service plan or to implement changes to the current service plan consistent with the court's findings.⁵⁴ The new service plan shall be filed with the court within 45 days of the date of the order. Unless otherwise specifically authorized by law, the court is not empowered, in a permanency hearing, to order specific placements, specific services, or specific service providers to be included in the plan.

Following the permanency hearing the court shall enter a written order that sets forth 1) the future status of the child, including the permanency goal, and any order necessary to conform the child's legal custody and status to such determination; or 2) if the permanency goal cannot be achieved immediately, the specific reasons for continuing the child in the care of DCFS for short term placement. In the order, the court will also note whether the services required by the court and service plan within the prior 6 months have been provided, and if so their results (and if not, why not); whether the child's placement is necessary and appropriate to the plan and goal; and if the child is placed out-of-state, whether such placement continues to be appropriate and consistent with the health, safety and best interests of the child.⁵⁵

⁵¹ Public Acts 90-27 and 90-28

⁵² Public Act 90-27

⁵³ Public Acts 90-27 and 90-28

⁵⁴ Public Acts 90-27 and 90-28

⁵⁵ Public Acts 90-27 and 90-28

When the court restores custody of a child to the parent, the court shall order the parent to cooperate with DCFS and comply with the terms of an after-care plan developed for the child, or risk the loss of custody or possible termination of parental rights.⁵⁶ As part of the after-care plan, the court may enter an order of protective supervision which may require that the parent take the child for a physical examination by a licensed physician at periodic intervals.⁵⁷ The custody of the child shall not be restored to any parent whose acts or omissions or both have been identified as forming the basis for the court's finding of abuse, neglect or dependency⁵⁸ until a hearing is held on the best interests of the child and the fitness of the parents to care for the child without endangering the child's health or safety, and the court enters an order that the parents are fit to care for the child.

When return home is not selected as the permanency goal, the State may file motion to terminate parental rights of any parent who has failed to make reasonable efforts to correct the conditions which led to the removal of the child or reasonable progress toward the return of the child or for whom any other unfitness ground for terminating parental rights exists. Alternatively, DCFS, the child, or a current foster parent or relative caregiver seeking private guardianship may file a motion for private guardianship.⁵⁹

15 months

DCFS shall request the State's Attorney to file a petition or motion for termination of parental rights if the child has been in foster care 15 of the most recent 22 months, unless:

- 1) the child is being cared for by a relative,*
- 2) DCFS has documented in the case plan a compelling reason for determining that filing a termination petition is not in the best interests of the child, or*
- 3) the court has found within the preceding 12 months that DCFS has failed to make reasonable efforts to reunify the child and family.*

The date the child entered foster care is determined as the earlier of 1) the date of the order of adjudication or 2) 60 days after the date the child was removed from the parent.⁶⁰

⁵⁶ Public Act 90-28

⁵⁷ Public Act 90-28

⁵⁸ Public Act 90-608

⁵⁹ Public Act 90-28

⁶⁰ Public Act 90-608

Part II -- Legislative Changes in Adoption and Child Welfare Practice

1. Amendments to the Adoption Act

Grounds for Termination of Parental Rights.

The **Ground (m)** time frame has been shortened, and now provides that a parent is unfit for failure to make reasonable efforts to correct the conditions which led to the removal of the child or reasonable progress toward the return of the child within 9 months, rather than 12 months, after adjudication. With this change the State can consider termination of parental rights in appropriate cases when preparing for the first permanency hearing, 12 months after a child has come into substitute care. If a service plan has been established to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then “failure to make reasonable progress” 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 within 9 months after adjudication.⁶¹

The entire **Ground (j-1)** has been consolidated into **Ground (i), Depravity**, to establish in one ground a list of criminal convictions which create a rebuttable presumption of unfitness.⁶² Under the new ground (i), conviction of any one of the following crimes shall create a rebuttable presumption of unfitness that may be overcome only by clear and convincing evidence: first degree murder or second degree murder of a parent of the child or of any child; attempt or conspiracy to commit first degree murder or second degree murder of any child; solicitation to commit murder, solicitation to commit murder for hire, or solicitation to commit second degree murder of any child; and aggravated criminal sexual assault of any child.⁶³ In addition, there is a rebuttable presumption that a parent is depraved if the parent has been criminally convicted of 1) at least 3 felonies, and at least one of the convictions took place within 5 years of the filing of the petition or motion for termination; or 2) first or second degree murder of any person within 10 years of the filing of the petition or motion for termination.⁶⁴

Ground (k), addressing drug addiction, has been amended to create a rebuttable presumption of parental unfitness when, at birth, an infant's blood, urine or meconium contained any amount of a controlled substance, or a metabolite of a controlled substance (except for medicine administered to the mother or

⁶¹ Public Acts 90-27 and 90-28

⁶² Public Act 90-608

⁶³ Public Acts 90-27 and 90-28

⁶⁴ Public Act 90-608

newborn), and the mother is the biological mother of at least one other child who was adjudicated a neglected minor based upon the presence of a controlled substance at birth.⁶⁵

Ground (q) has been amended to permit a finding of unfitness when the parent has been convicted of aggravated battery, heinous battery or attempted murder of any child. The requirement of a juvenile court finding of physical abuse of the child has been deleted.⁶⁶

In addition, several new unfitness grounds for termination of parental rights have been added.

- **Ground (a-1)**, abandonment of newborn infant in a hospital.⁶⁷
- **Ground (a-2)**, abandonment of a newborn infant in any setting where the evidence suggests that the parent intended to relinquish parental rights.⁶⁸
- **Ground (m-1), Child in Foster Care 15 of 22 Months.** This new ground allows a finding of parental unfitness when a child has been in foster care for 15 out of any 22 month period⁶⁹, unless the parent can establish that it will be in the best interests of the child to be returned to the parent within 6 months of the date on which the petition for termination of parental rights was filed. The 15 month period is tolled during any period for which there is a court finding that DCFS failed to make reasonable efforts to reunify the child and family, provided that 1) the finding of no reasonable efforts is made within 60 days of the period when reasonable efforts were not made or 2) the parent filed a motion requesting a finding of no reasonable efforts within 60 days of the period when no reasonable efforts were made. The date the child entered foster care is determined as the earlier of 1) the date of the order of adjudication or 2) 60 days after the date the child was removed from the parent.⁷⁰
- **Ground (r), Incarcerated Parent.** The child is in the temporary custody or guardianship of DCFS, the parent is incarcerated as a result of a criminal conviction at the time the petition or motion for termination of parental rights is filed, prior to incarceration the parent had little or no contact with the child or provided little or no support for the child, and the parent's incarceration

⁶⁵ Public Act 90-608

⁶⁶ Public Act 90-608

⁶⁷ Public Act 90-28

⁶⁸ Public Act 90-28

⁶⁹ The 15 month period must begin on or after June 30, 1998, the effective date of Public Act 90-608.

⁷⁰ Public Act 90-608

will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of two years after the filing of the petition or motion for termination of parental rights.⁷¹

- **Ground (s), Repeatedly Incarcerated Parent.** The child is in the temporary custody or guardianship of DCFS, the parent is incarcerated at the time the petition or motion for termination of parental rights is filed, the parent has been repeatedly incarcerated as a result of criminal convictions in the past, and the parent’s repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child.⁷²
- **Ground (t), Second or Subsequent SEI Infant.** At birth the infant's blood, urine or meconium contained any amount of a controlled substance, or a metabolite of a controlled substance (except for medicine administered to the mother or newborn), and the mother is the biological mother of at least one other child who was adjudicated a neglected minor based upon the presence of a controlled substance at birth, after which the mother had the opportunity to enroll in and participate in a clinically appropriate substance abuse counseling, treatment and rehabilitation program.^{73 74}

Putative Fathers. The Adoption Act's definition for “putative father” does not include a man who is the child’s father as a result of criminal sexual abuse or criminal sexual assault of the child’s mother. In these circumstances the father's consent for adoption is not required and the Putative Father Registry may not be used to notify the father of the child's adoption.⁷⁵

Who May Adopt a Child. The Adoption Act has been amended to permit a married person who has been living separate and apart from his or her spouse for 12 months or longer to file for adoption without joining the spouse as a joint petitioner.⁷⁶

2. Amendments to the Juvenile Court Act

⁷¹ Public Act 90-28

⁷² Public Act 90-28

⁷³ Public Act 90-608 amended this ground to add the words “meconium”, “enroll in and”, and “clinically appropriate substance abuse”, which were left out in error from the enrolled Public Act 90-13.

⁷⁴ Although the language in grounds (k) and (t) is similar, ground (k) does not require that the mother have the opportunity to participate in drug treatment before a finding of unfitness may be sought.

⁷⁵ Public Act 90-15

⁷⁶ Public Act 90-608

The Child's Health and Safety is Paramount.⁷⁷ All decisions in the juvenile court process shall be based upon the health, safety and best interests of the child. [References to health and safety are interspersed throughout the Juvenile Court Act, the Children and Family Services Act, and the Abused and Neglected Child Reporting Act.]

Best Interests Is Defined.⁷⁸ The best interests definition specifies that the child's safety, health and welfare is paramount and must be assured when examining any placement decision. Best interests also includes the development of the child's identity; the child's background and ties (familial, cultural, religious, etc.); the child's sense of attachments; the child's wishes and long-term goals; the child's community ties (church, school, friends, etc.); the need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives⁷⁹; uniqueness of every family and child; risks attendant to entering and being in substitute care; and the preferences of the persons available to care for the child.

DCFS shall request the State's Attorney to file a motion for termination of parental rights:

- 1) if the child has been in foster care 15 of the most recent 22 months;
- 2) if a child under the age of 2 years has been determined to be abandoned at the adjudicatory hearing; or
- 3) if the parent is or has been criminally convicted of first or second degree murder of any child, attempt or conspiracy to commit first or second degree murder of any child, solicitation to commit murder, solicitation to commit murder for hire, or solicitation to commit second degree murder of any child, aggravated battery, aggravated battery of a child, or felony domestic battery resulting in serious injury to the child or a sibling, or aggravated criminal sexual assault of any child;

unless:

- A) the child is being cared for by a relative,
- B) DCFS has documented in the case plan a compelling reason for determining that filing a termination petition is not in the best interests of the child, or
- C) the court has found within the preceding 12 months that DCFS has failed to make reasonable efforts to reunify the child and family.

The date the child entered foster care is determined as the earlier of 1) the date of the order of adjudication or 2) 60 days after the date the child was removed from the parent.⁸⁰

⁷⁷ Public Acts 90-28 and 90-608

⁷⁸ Public Act 90-28

⁷⁹ Public Act 90-608

⁸⁰ Public Act 90-608

Response to Parental Inquiries.⁸¹ DCFS shall devise and maintain a system to respond to inquiries by a parent or putative parent as to whether their child is in DCFS custody or guardianship, and if so, DCFS shall direct the parent or putative parent to the circuit court clerk in the county where the juvenile case is pending. DCFS shall provide notice of this service to the public on a continuing basis.

Guardian ad Litem Training.⁸² In counties with a population of more than 100,000 but less than 3,000,000, guardians ad litem must attend a training program approved by the Department of Children and Family Services. Documents and handout materials shall be distributed to guardians ad litem in the State regardless of whether they are mandated to attend this training.

Appointment and Function of Hearing Officers. In counties with a population of 3 million or more, hearing officers appointed by the court shall be attorneys who have been admitted to practice for at least 7 years,⁸³ and, in addition to the duties currently specified in the Juvenile Court Act, shall also be authorized to:

- accept specific consents for adoption or surrenders for termination of parental rights from a parent;
- conduct hearings on the progress made toward the permanency goal set for the child; and
- perform other duties as assigned by the court.⁸⁴

Foster Parent Order of Protection.⁸⁵ Foster parents may request an order of protection when notified by the child's caseworker of an agency decision to provide their address and/or telephone number to the child's parent. The order of protection may require that the parent refrain from contacting the child and foster parent in any manner that is not specified in the service plan.

Secure Care for DCFS Wards.⁸⁶ This amendment, coupled with amendments to the Child Care Act and Child and Family Services Act, authorizes DCFS to place severely emotionally disturbed wards in secure (locked) child care within Illinois. Secure child care facilities are specialized mental health treatment facilities for mentally and emotionally ill children who present a serious risk of harm to themselves or others. Admission is limited to DCFS wards who are not subject to placement in correctional facilities operated by the Illinois Department of Corrections. Placement is treatment-focused and time-limited. The protections

⁸¹ Public Act 90-27

⁸² Public Act 90-28

⁸³ Public Act 90-28

⁸⁴ Public Act 90-27

⁸⁵ Public Act 90-15

⁸⁶ Public Act 90-608

available to children and families under the Illinois Mental Health Code apply to placement in secure care, including a mechanism for children, parents, and/or advocates to challenge initial or continued secure care placement.

Foster parents and relative caregivers have a right to and shall be given adequate notice at all stages of any juvenile court hearing.⁸⁷

A party shall not be entitled to exercise the **right to a substitution of a judge** without cause in a juvenile court proceeding if the judge is currently assigned to a proceeding involving the alleged abuse, neglect or dependency of the child’s sibling or half sibling and that judge has made a substantive ruling in the proceeding involving the child’s sibling or half sibling.⁸⁸

In any hearing, the court may take judicial notice of prior sworn testimony or evidence admitted in prior proceedings involving the same child if 1) the parties were either represented by counsel at such prior proceedings or the right to counsel was knowingly waived and 2) the taking of judicial notice would not result in admitting hearsay evidence at a hearing where it would otherwise be prohibited.⁸⁹

Upon the filing of a **supplemental petition to reinstate wardship**, the court may, at any time prior to a child’s 18th birthday, reinstate wardship and open a previously closed case when 1) wardship and guardianship was vacated in conjunction with the appointment of a private guardian under the Probate Act, 2) the child is not presently a ward of the juvenile court nor is there a petition for adjudication of wardship⁹⁰ pending on behalf of the child, and 3) it is in the best interests of the child to reinstate wardship. The supplemental petition must be filed in the same proceeding in which the original adjudication order was entered.

3. Amendments to the Child Care Act.

Waiving Criminal Convictions of Current Successful Foster Parents.⁹¹ DCFS may issue waivers to relative caregivers and current licensed foster parents who are providing a safe, stable home environment, to permit them to continue serving as caregivers despite early criminal activity. DCFS must certify that the foster parent or caregiver is currently providing a safe, stable home environment and is able to continue to do so, and that the relevant criminal activity occurred more than 10 years prior to application for licensure.

⁸⁷ Public Act 90-608

⁸⁸ Public Act 90-608

⁸⁹ Public Act 90-608

⁹⁰ Public Act 90-608

⁹¹ Public Acts 90-27 and 90-28

4. Interstate Compact on Adoption⁹² The State of Illinois has joined the Interstate Compact on Adoption. Under this Compact the State of Illinois will provide medical and other necessary services for adopted children covered by state-supported adoption assistance who move to Illinois from another state or U.S. Territory during the period of the adoption assistance agreement.

5. Amendments to the Children and Family Services Act.

Concurrent Planning.⁹³ DCFS is required to conduct concurrent planning for children in placement so that permanency may occur at the earliest opportunity. Permanent living arrangements may include prevention of placement of a child outside the home when the child can be cared for at home without endangering the child's health or safety; reunification with the family, when safe and appropriate, if temporary placement is necessary; or movement of the child toward the most permanent living arrangement and permanent legal status. At the time of placement, consideration should also be given so that if reunification fails or is delayed, the placement made is the best available placement to provide permanency for the child.

Adoption Assistance.⁹⁴ DCFS may provide adoption assistance for children who were determined eligible for adoption assistance with respect to a prior adoption and who become available for adoption because the parental rights of the adoptive parents have been terminated or because the adoptive parents have died.

DCFS shall not deny or delay the placement of a child for adoption if an approved family is available either outside of the DCFS region handling the case, or outside of the State of Illinois. Prospective adoptive parents who allege a violation of this provision may file a DCFS service appeal.⁹⁵

Reasonable Efforts.⁹⁶ When determining reasonable efforts to be made with respect to a child, and in the making of such reasonable efforts, the child's health and safety shall be the paramount concern. The Department must make reasonable efforts to reunify the family when temporary placement of the child occurs unless otherwise required, pursuant to the Juvenile Court Act.

92 Public Act 90-28

93 Public Act 90-28

94 Public Act 90-608

95 Public Act 90-608

96 Public Act 90-608

Child’s Individual Needs.⁹⁷ DCFS shall ensure that the child’s health, safety, and best interests are met in making a family foster care placement. DCFS shall consider the child’s individual needs and the capacity of the foster parents to meet the child’s needs. Statutory language permitting consideration of the child’s race or ethnic heritage in placement decisions has been deleted to comply with the federal Interethnic Placement Act (IEPA).

Foster Parent Confidentiality. DCFS shall adopt rules to protect foster parent addresses and telephone numbers from disclosure and to provide sufficient prior notice of any authorized disclosure for foster parents to seek an order of protection.⁹⁸ A person to whom disclosure of a foster parent’s name, address or telephone number is made shall not redisclose that information except as provided in the Child and Family Services Act or the Juvenile Court Act. Willful or knowing redisclosure is punishable as a Class A misdemeanor.⁹⁹

Reporting Missing Children.¹⁰⁰ DCFS must report missing children to local law enforcement and prepare an annual report to the General Assembly regarding the number of children missing and the number of missing children recovered.

6. Amendments to the Abused and Neglected Child Reporting Act.

The definition of “abused child” is expanded to include a child whose parent commits or allows to be committed the offense of **female genital mutilation** against the child.¹⁰¹

Disclosure of Information About a Child Abuse or Neglect Investigation.¹⁰² The DCFS Director (or person designated in writing specifically for this purpose) may disclose information regarding the abuse or neglect of a child, the Department’s investigation and any services related to the abuse and neglect disclosure is not contrary to the best interests of the child, the child’s siblings, or other children in the household, and one of the following factors are present:

- The subject of the report has been criminally charged with committing a crime related to the child abuse or neglect report; or

⁹⁷ Public Act 90-608

⁹⁸ Public Act 90-15

⁹⁹ Public Act 90-629

¹⁰⁰ Public Act 90-27

¹⁰¹ Public Act 90-684

¹⁰² Public Act 90-75

- A law enforcement agency or official, a State's Attorney, or a judge has publicly disclosed information regarding the investigation of the report or the provision of services by DCFS; or
- An adult subject of the report has made a public disclosure concerning the report; or
- The child named in the report has been critically injured or died.

Information that may be disclosed includes the name of the child, the current status of the investigation, identification of the services provided or actions taken regarding the child and family as a result of the report, whether there have been past reports involving this child or family, whether there is a current or past open service case and a history of what types of services have been or are being provided, and any extraordinary or pertinent information concerning the circumstances of the report deemed consistent with the public interest.

7. Amendments to the Mental Health and Developmental Disabilities Confidentiality Act.

Mental health facilities may disclose information about a recipient to DCFS when DCFS is conducting a diligent search for a missing parent and has reason to believe that the parent is residing in a mental health facility. DCFS shall not redisclose information except as necessary for service provision or for proceedings in juvenile court.¹⁰³

Records and communications of a recipient shall be disclosed in juvenile court when the recipient is named as a parent, guardian or legal custodian in a child abuse, neglect, dependency or termination of parental rights proceeding.¹⁰⁴

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¹⁰³ Public Act 90-608

¹⁰⁴ Public Act 90-608