

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

POLICY GUIDE 2020.04

**RULE 309, ADOPTION SERVICES FOR CHILDREN FOR WHOM THE
DEPARTMENT OF CHILDREN AND FAMILY SERVICES IS LEGALLY
RESPONSIBLE**

DATE: January 7, 2020
TO: All DCFS and Private Agency Child Welfare Workers and Supervisors
FROM: Marc D. Smith, Acting Director
EFFECTIVE: Immediately

I. PURPOSE

The purpose of this Policy Guide is to inform DCFS and POS of several amendments in Illinois law affecting **Rule 309, Adoption Services for Children for whom the Department of Children and Family Services is Legally Responsible**. In accordance with **Public Act 101-0529 and Public Act 101-0155**. DCFS Rules will be amended to reflect these and previous statutory changes.

II. PRIMARY USERS

The primary users of this Policy Guide are POS and DCFS permanency workers, adoption/post adoption workers, and their supervisors and managers.

III. SUMMARY OF LEGISLATIVE CHANGES

Effective January 1, 2020 **Public Act 101-0529** amends Sections 2-13 of the **Juvenile Court Act** of 1987 [705 ILCS 405/2-13]. This legislation expands the list of circumstances requiring the Department to request the State's Attorney to file a petition for termination of parental rights. The legislation also expands the definition of unfitness based on depravity, to include convictions for numerous additional crimes (for example, sexual exploitation of a child).

Effective January 1, 2020 **Public Act 101-0155** amends Sections 1 and 18.9 of the **Adoption Act** of 1987 [705 ILCS 50/1, 18.9].



As a result, **Rule 309 Adoption Services for Children for whom the Department of Children and Family Services is Legally Responsible** will be amended as follows:

Section 309.20 Definitions

The following definition has been added:

"Post-placement and post-adoption support services" means support services for placed or adopted children and families that include, but are not limited to, mental health treatment, including counseling and other support services for emotional, behavioral, or developmental needs, and treatment for substance abuse.

Section 309.50 Identification of Children for Potential Adoption Planning

- a) The Department shall immediately consider for all children under its care the possibility of adoption when exploring permanency options, and begin adoption planning when it is in the child's best interests and when either the grounds for parental unfitness as defined in the Adoption Act described in subsection (b) below are present or other additional factors as described in subsection (c) or (d) of this Section are present.
- b) When any of the grounds for parental unfitness, as defined in the Adoption Act, or expedited termination of parental rights are identified, the following actions shall be taken:
 - 1) the parents shall explore the opportunity to voluntarily surrender their child for adoption or consent to the adoption of their child by a specified person as described in Section 309.70(c) or (d); or
 - 2) if the parents are unwilling to voluntarily surrender or consent to the adoption of the child, the case shall be referred for an internal legal screening in accordance with Section 309.80 (Termination of Parental Rights) to determine whether to seek involuntary termination of parental rights.
- c) The following grounds of parental unfitness are defined in Section 1 of the Adoption Act [750 ILCS 50/1] and should be considered when adoption is in the best interests of the child:
 - 1) *Abandonment of the child. Abandonment of a newborn infant in a hospital. Abandonment of a newborn infant in any setting where the evidence suggests that the parent intended to relinquish his or her parental rights.*
 - 2) *Failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare.*
 - 3) *Desertion of the child for more than three months next preceding the commencement of the adoption proceeding.*

- 4) *Substantial neglect of the child if continuous or repeated. Substantial neglect, if continuous or repeated, of any child residing in the household which resulted in the death of that child.*
- 5) *Extreme or repeated cruelty to the child.*
- 6) *Two or more findings of physical abuse to any children under Section 2-21 of the Juvenile Court Act of 1987 [705 ILCS 405], the most recent of which was determined by the juvenile court hearing the matter to be supported by clear and convincing evidence; a criminal conviction or a finding of not guilty by reason of insanity resulting from the death of any child by physical abuse; or a finding of physical child abuse resulting from the death of any child under Section 2-21 of the Juvenile Court Act of 1987.*
- 7) *Failure to protect the child from conditions within his environment injurious to the child's welfare.*
- 8) *Other neglect of, or misconduct toward, the child; provided that in making a finding of unfitness the court hearing the adoption proceeding shall not be bound by any previous finding, order or judgment affecting or determining the rights of the parents toward the child sought to be adopted in any other proceeding except such proceedings terminating parental rights as shall be had under either the Adoption Act, the Juvenile Court Act or the Juvenile Court Act of 1987.*
- 9) *Depravity.*
 - A) *Conviction of any one of the following crimes shall create a presumption that a parent is deprived which can be overcome only by clear and convincing evidence:*
 - i) *first degree murder in violation of paragraph 1 or 2 of subsection (a) of Section 9-1 of the Criminal Code of 1961 or the Criminal Code of 2012 or conviction of second degree murder in violation of subsection (a) of Section 9-2 of the Criminal Code of 1961 of a parent of the child to be adopted;*
 - ii) *first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012;*
 - iii) *attempt or conspiracy to commit first degree murder or second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012;*

- iv) *solicitation to commit murder of any child, solicitation to commit murder of any child for hire, or solicitation to commit second degree murder of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012; or*
- v) *predatory criminal sexual assault of a child in violation of Section 11-1.40 or 12-14.1 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- vi) *aggravated criminal sexual assault;*
- vii) *heinous battery of any child in violation of the Criminal Code of 1961;*
- viii) *aggravated battery of any child in violation of the Criminal Code of 1961 or the Criminal Code of 2012.*
- ix) *criminal sexual assault in violation of Section 11-1.20 or Section 12-13 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- x) *criminal sexual abuse in violation of subsection (a) of Section 11-1.50 or Section 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- xi) *sexual exploitation of a child in violation of Section 11-9.1 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- xii) *permitting sexual abuse of a child in violation of Section 11-9.1A of the Criminal Code of 1961 or the Criminal Code of 2012; or*
- xiii) *an offense in any other state the elements of which are similar and bear a substantial relationship to any of the enumerated offenses in this subsection (Sec.1(i)) of the Adoption Act.*

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

C) *There is a rebuttable presumption that a parent is deprived if that parent has been criminally convicted of either first or second degree murder of any person as defined in the Criminal Code of 1961 or the Criminal Code of 2012 within 10 years of the filing date of the petition or motion to terminate parental rights.*

- 10) *Open and notorious adultery or fornication.*
- 11) *Habitual drunkenness or addiction to drugs, other than those prescribed by a physician, for at least one year immediately prior to the commencement of the unfitness proceeding. There is a rebuttable presumption that a parent is unfit under this subsection (c) with respect to any child to which that parent gives birth where there is a confirmed test result that at birth the child's blood, urine, or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act or metabolites of such substances, the presence of which in the newborn infant was not the result of medical treatment administered to the mother or the newborn infant; and the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987.*
- 12) *Failure to demonstrate a reasonable degree of interest, concern or responsibility as to the welfare of a newborn child during the first 30 days after its birth.*
- 13) *Failure by a parent to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor or dependent minor under Section 2-3 of the Juvenile Court Act or the Juvenile Court Act of 1987. 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 the removal of the child from the parent and if those services were available, then, for purposes of this Part, "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 within 9 months after the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987.*
- 14) *Evidence of intent to forego his or her parental rights, whether or not the child is a ward of the court:*
 - A) *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 by court order, or*
 - iii) *to maintain contact with or plan for the future of the child, although physically able to do so; or*

- B) *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 [750 ILCS 45] or the law of the jurisdiction of the child's birth within 30 days of being informed, pursuant to Section 12a of the Adoption 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 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 subsection (b) shall only be available where the petition is brought by the mother or the husband of the mother.*
- 15) *Repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, or shelter.*
- 16) *Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-116], or developmental disability as defined in Section 1-106 of that Code, and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period.*
- 17) *The parent has been criminally convicted of aggravated battery, heinous battery, or attempted murder of any child.*
- 18) *a finding that at birth the child's blood, urine or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant was the result of medical treatment administered to the mother or the newborn infant, and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987, after which the biological mother had the opportunity to enroll in and participate in a clinically appropriate substance abuse counseling, treatment, and rehabilitation program.*

- 19) *the child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated as a result of 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 will prevent the parent from discharging his or her parental responsibilities for the child for a period in excess of 2 years after the filing of the petition or motion for termination of parental rights.*
- 20) *the child is in the temporary custody or guardianship of the Department of Children and Family Services, the parent is incarcerated at the time the petition or motion for termination is filed, the parent has been repeatedly incarcerated as a result of criminal convictions, and the parent's repeated incarceration has prevented the parent from discharging his or her parental responsibilities for the child.*

d) Expedited Termination of Parental Rights

At any time between case opening and 30 days prior to court adjudication, if it becomes known that one or more of the grounds for parental unfitness listed in subsection (d)(1) or (2) exist, the caseworker will seek immediate supervisory consultation to request that a legal screening be convened in accordance with Section 309.80 (Termination of Parental Rights). The purpose of the legal screening will be to determine whether the State's Attorney should be asked to file a petition for expedited termination of parental rights.

- 1) Grounds for which expedited termination of parental rights must be sought are:
 - A) extreme or repeated cruelty to the child;
 - B) a finding of physical abuse and criminal conviction of aggravated battery of the child;
 - C) Conviction of: first degree murder in violation of Section 9-1(a)(1) or (2) of the Criminal Code of 1961 or conviction of second degree murder in violation of Section 9-2(a) of the Criminal Code of 1961 of a parent of the child to be adopted; a criminal conviction of first degree murder or second degree murder of any child in violation of the Criminal Code of 1961; a criminal conviction of attempt or conspiracy to commit first degree murder or second degree murder of any child in violation of the Criminal Code of 1961; a criminal conviction of solicitation to commit murder of any child, solicitation to commit murder of any child for hire, or solicitation to commit second degree murder of any child in violation of the Criminal Code of 1961; or a criminal conviction of aggravated criminal sexual assault in violation of Section 12-14(b)(1) of the Criminal Code of 1961;

- D) abandonment of a newborn infant in a hospital;
 - E) abandonment of a newborn infant in a setting where the evidence suggests that the parent intended to relinquish parental rights;
 - F) incarceration of a parent as a result of a criminal conviction where prior to incarceration the parent had little or no contact with the child or provided little or no support of the child, and the parent's incarceration will prevent the parent from discharging his or her parental responsibilities for the child for a period of two years after the filing of the petition or motion for termination of parental rights.
- 2) Grounds for which expedited termination of parental rights shall be considered, and for which the casework supervisor must document the reason for not considering expedited termination of parental rights, are:
- A) abandonment of the child (other than a newborn infant);
 - B) desertion;
 - C) inability to discharge parental responsibility due to mental illness, mental impairment or developmental disability;
 - D) a finding that at birth the child's blood, urine or meconium contained any amount of a controlled substance as defined in subsection (f) of Section 102 of the Illinois Controlled Substances Act, or a metabolite of a controlled substance, with the exception of controlled substances or metabolites of such substances, the presence of which in the newborn infant was the result of medical treatment administered to the mother or the newborn infant, and that the biological mother of this child is the biological mother of at least one other child who was adjudicated a neglected minor under subsection (c) of Section 2-3 of the Juvenile Court Act of 1987, after which the biological mother had the opportunity to enroll and participate in a clinically appropriate substance abuse counseling, treatment, and rehabilitation program.
- e) Other additional factors to be considered in identifying the possibility of adoption for a child are:
- 1) the parents have signed or indicated a desire to sign a consent or surrender for adoption;
 - 2) the parents have previously signed a consent or surrender for adoption with regards to other children in the past and those children were the subjects of abuse, neglect or dependency petitions and/or parental rights have been terminated with regard to other children in the past, thus indicating that there may be risk of harm to other children in the parents' care; or

- 3) the parents have made unsatisfactory progress in correcting the conditions which led to the removal of his or her children resulting in a rating of unsatisfactory progress which may be indicative of parental unfitness and return home to either parent is unlikely.
- f) The child's case shall be assessed to determine if any of the grounds for parental unfitness or other factors listed above exist:
- 1) when the Department first assumes custody of the child;
 - 2) within 30 days after case opening;
 - 3) at each administrative case review; and
 - 4) at no less than quarterly reviews and supervisory meetings.

Section 309.160 Post Placement Services

a) Purpose of Post Placement Services

Post placement services are services provided to the child and adoptive family from the date of placement of the child in the adoptive home to the date of finalization of the adoption for the purpose of:

- 1) continuing the activities around the preparation of the child for adoption;
- 2) ensuring the health and safety of the child;
- 3) ensuring successful integration of the child in the adoptive home;
- 4) providing continuing support and placement stabilization in order to minimize the risk of placement disruption and multiple placements of the child; and
- 5) facilitating adoption finalization.

b) Services Provided

During the post placement period, the primary services the Department will provide are those activities that are directed toward:

1) Empowerment of the Adoptive Family

The Department or adoption agency will help the family recognize successes, understand the stages of adjustment, and assume a decision making role on behalf of the child.

2) Continued Assessment of the Child and Family

The Department or adoption agency will continue to assess the child and family after placement has occurred to ensure that all existing and potential needs have been identified, and appropriate support services are in place prior to finalization.

3) Assessing Adjustment of the Family and Child to the Placement and Providing Supportive Services

The services provided by the Department or adoption agency will be related to the needs of the adoptive family and the special needs of the adopted child, particularly if the child is older, has medical conditions, or physical, mental, or emotional disabilities, or is of a different ethnic, racial, or cultural background than the adoptive family. The assessment will explore the level of attachment occurring within the adoptive family and will utilize specific activities designed to promote and enhance attachment.

4) Further Discussion of the Child's Background Information

The Department or adoption agency will encourage discussion of the child's background to include specific behaviors exhibited by the child in order to ensure their understanding and acceptance.

5) Predicting and Interpreting Behaviors and Problem Solving

The Department or adoption agency will provide information relating to potential behaviors which may be exhibited by the child and assist the family in dealing with specific behaviors and problems that may arise.

6) Identification of Resources

The Department or adoption agency will make reasonable efforts to ensure that services are accessible and that referrals have been made where appropriate.

7) Completion of Necessary Finalization Papers and Reports

Information relating to the finalization of the adoption is provided to the family and efforts are directed toward completing all necessary reports required prior to finalization.

8) Disruption Services

Although the goal of post-placement services is to maintain the adoptive placement, it may be necessary to provide disruption services when it has been determined that continuation of the placement is not in the best interest of the child and family and removal is necessary.

- c) The Department or adoption agency will schedule regular in-person contacts with the family and child following placement until the adoption is finalized.
- d) The length of time between placement and legal adoption may vary due to the uniqueness of each situation but will extend for at least six months unless waived by the court. The actual length of time shall be determined jointly between the worker, the court, and the adoptive parents.
- e) In accordance to Section 18.9 of the Adoption Act, the Department shall establish, maintain and provide accessible sources of information regarding available post-placement and post-adoption support services described in Section 309.170 below.

Section 309.170 Post-Adoption Services

- a) Purpose of Post-Adoption Services

Services after adoption of a child are often essential in maintaining the adoptive family unit and empowering families to be advocates in the community for their children's needs. Consequently, the Department will provide post-adoption services in order to reduce the risk of adoption dissolution and to support the goal of permanency in adoption. Post-Adoption Services shall be provided to *all* adopted and guardianship *children residing in this State adopted pursuant to the Interstate Compact on the Placement of Children, all children residing in this State adopted pursuant to the Intercountry Adoption Act of 2000, and all former youth in care, as defined by the Children and Family Services Act, who have been placed in a guardianship.*

- b) Post-Adoption Services

The Department provides the following post-adoption services either directly or through purchase of service providers:

- 1) Adoption preservation services will be provided to families with adopted children under age 18. These services are provided in accordance with 89 Ill. Adm. Code 302 (Services Delivered by the Department) Subpart D: Intensive Family Preservation Services, and through other contracts with service providers.
- 2) Services to families receiving adoption assistance as described in 89 Ill. Adm. Code 302.310 (Adoption Assistance). These services include:
 - A) assisting families to utilize and access services available to them through adoption assistance;
 - B) assisting adoptive parents of children with developmental disabilities to access services available through the Illinois Department of Human Services;

- C) assisting families who are eligible for conditional adoption assistance to access benefits at such time as their children's condition warrants treatment or professional intervention.
- 3) Search and on-going sharing of information among members of the adoption triad. This service includes:
- A) providing to adults who had been the legal responsibility of the Department or to biological families of adult adoptees adopted through the Department, when they have requested information in writing:
 - i) non-identifying information regarding their biological background when requested;
 - ii) attempts to locate biological family members for purposes of updating social history and/or medical information, if desired;
 - iii) identifying information upon the successful completion of a search, when consents that have been witnessed by an adult third party from all members of the adoption triad are received. The Department will provide names, addresses, and telephone numbers so that they may arrange a reunion provided that consents that have been witnessed by an adult third party from all birth parents and adult adoptees are received.
 - iv) updated medical and psychosocial information between members of the adoption triad, when consents from all birth parents and adult adoptees that have been witnessed by an adult third party have been received.
 - B) acting as or cooperating with confidential intermediaries appointed by the court in accordance with the Adoption Act [750 ILCS 50/18.3a]. In addition, the Department will maintain a list of confidential intermediaries who have been trained and certified by the Department.
 - C) providing to adoptive parents of minor children, if requested, non-identifying information on a child's background, if this information is available. The Department will also facilitate the exchange of updated medical and psychosocial information between members of the adoption triad and facilitate contact when members of the triad have signed consents that have been witnessed by an adult third party.

- D) facilitating contact between adoptees and their siblings when one or more is still in the Department's care or adopted elsewhere with the consent of the adoptive parents of a minor child that has been witnessed by an adult third party.
 - E) facilitating contact, with the consent of the adoptive parents that has been witnessed by an adult third party, between adoptees who are minors and significant relationships in the minor adoptee's past when such contact has been established to be necessary to the adoptee's best interests, when all involved parties have provided written consent witnessed by an adult third party for release of such identifying information.
- 4) Information and referral to services available in the community which would be of benefit to the adoption triad. These services would include, but not be limited to: adoption preservation services, therapists sensitive to the issues of adoption, education advocates to assist families to obtain special services, mental health agencies, support groups, respite care, financial services and professional search groups. The Department, through its agent, will maintain a listing of post-adoption services and will make this information available to persons upon request.
 - 5) The Department will also provide to any interested adult adoptee, biological parents and siblings information regarding the Illinois Adoption Registry described in Section 309.190 of this Part.
- c) Who is Eligible for Post-Adoption Services

Post-adoption services are available to:

- 1) Families who have adopted children for whom the Department of Children and Family Services had legal responsibility immediately preceding the adoption. These families are eligible for the services described in subsection (b)(1), adoption preservation services, (b)(2), adoption assistance, if they meet eligibility criteria, (b)(3), search and ongoing sharing of information, and (b)(4), information and referral.
- 2) Families who adopt children for whom the Department did not have legal responsibility prior to adoption. These families are eligible for the services described in subsection (b)(1), adoption preservation services, if sufficient financial resources exist after adoption preservation services are provided to children for whom the Department of Children and Family Services had been legally responsible, and subsection (b)(4) information and referral.
- 3) Biological families of children adopted through the Department. These families are eligible for the services described in subsection (b)(3), search and ongoing sharing of information, and (b)(4) information and referral.

- 4) *The Department shall establish and maintain a toll-free number to respond to requests from the public about its post-placement and post-adoption support services and shall staff the toll-free number so that calls are answered on a timely basis, but in no event more than one business day from the receipt of a request. The Department shall post the number on its website.*
- 5) *The Department shall provide the information, including the Illinois Post Adoption and Guardianship Services booklet, to prospective adoptive parents and guardians as part of its adoption and guardianship training and at the time they are presented with the Permanency Commitment form; and it shall include, in each annual notification letter mailed to adoptive parents and guardians, a short, 2-sided flier or news bulletin in plain language that describes access to post-placement and post-adoption services, how to access Medicaid and Individual Care Grant or Family Support Program services, the webpage address to Illinois' Post Adoption and Guardianship Services booklet, information on how to request that a copy of the booklet be mailed, and a sticker or magnet that includes the toll-free number to access the Department's post-placement and post-adoption support services.*
- 6) *The Department shall review and update annually all information relating to its post-placement and post-adoption support services, including its Post Adoption and Guardianship Services booklet, to include updated information on Individual Care Group or Family Support Program services eligibility and the post-placement and post-adoption support services that are available through the Medicaid program or any other State program for mental health services. The Department and the Department of Healthcare and Family Services shall coordinate their efforts in the development of resources described in this subsection.*

IV. QUESTIONS

Questions regarding this Policy Guide may be directed to the Office of Child and Family Policy at 217-524-1983 or via Outlook at the “DCFS.Policy” – Mailbox. Non-Outlook users may e-mail questions to cfpolicy@illinois.gov.

V. FILING INSTRUCTIONS

File this Policy Guide immediately following Rule 309.