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ILLINOIS RULES OF DESCENT AND DISTRIBUTION: TIMELESS PRINCIPLES OR TIME FOR CHANGE?

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I. Introduction

Every jurisdiction has statutory rules for the distribution of a decedent's property when the decedent dies without a will that completely disposes of the decedent's property. Known as rules of descent and distribution or intestacy, these statutory rules control the distribution of the decedent's probate property. There is similarity among the states' statutes (with the exception of Louisiana) because of our common law origins, but there are also areas today where many states' rules differ dramatically.

Traditionally, the overarching goal of the states' intestacy statutes was to create a dispositive scheme that would replicate what the average intestate decedent would want. In addition, that objective plan of disposition should be clear, efficient, and reflect good public policy. These goals are individually laudable but, in combination, conflicts can develop. In appraising a statute's effectiveness in achieving these goals, there can be principled disagreements. The statutes are not a one-size fits all. The Uniform Probate Code is one recognized benchmark for comparison. It is concededly an imperfect benchmark as it has been adopted by fewer than 20 jurisdictions, although many states have adopted some of its provisions.

As society has evolved economically, socially, technologically, and politically, these traditional rules are being reexamined. Four questions in particular dominate the discourse. First, who should the presumptive heirs be? Second, if inheritance is a question of status, how can that status be attained? Third, should heirship depend on the heirs' good (or, at least, not bad) behavior? Finally, who should decide these questions; should judges have discretion to change the rules of descent and distribution, and, if so, what standards are to apply?

Intestate statutes can seem irrelevant to estate planners as they are so easily avoided by writing a will or trust. There are two concrete reasons why a jurisdiction's intestate statutes should matter to the professional estate planning community. Some people are not able to execute a will and some people will not execute a will. Consequently, there will always be some people subject to the rules. Secondly, even though the rules of descent and distribution arose for those dying without a will, some of the rules have application beyond intestacy. Several of the Illinois provisions are expressly applicable to non-intestate situations. There is a third reason why the estate planning community should care about these rules; it is our professional responsibility.

II. Presumptive Heirs and Presumptive Amounts

The basic Illinois rules of descent and distribution are found in Article II of the Probate Act of 1975, specifically section 5/2-1. 755 ILCS 5/2-1. There are eight paragraphs delineating

the decedent's presumptive heirs, seven of which revolve around the decedent's family relationships and the eighth provides for escheat if there is no family.

A. Spouse and Descendants: Section 5/2-1(a) – (c)

1. Who and How Much?

Like many intestate statutes in the United States, Illinois first considers the decedent's spouse and descendants. If a decedent is survived by both a spouse and at least one descendant, the estate is split 50% to the surviving spouse and 50% to the descendants per stirpes (section 5/2-1(a)). If there is no surviving spouse, then the estate goes wholly to the descendants per stirpes (section 5/2-1 (b)), and conversely, if there is no descendant, the estate goes wholly to the surviving spouse (section 5/2-1(c)).

Recent revisions to the intestate sections of the Uniform Probate Code (UPC) have taken a different tack. Instead of one section delineating heirs, the UPC has two sections. UPC § 2-102 concerns the share of the surviving spouse and UPC § 2-103 concerns the shares of all other heirs. The clear signal is that the surviving spouse is the primary beneficiary and the others are secondary. Under UPC § 2-102, the surviving spouse will receive the entire estate if:

(i) there is no surviving descendant or parent of the decedent, or
(ii) all the decedent's descendants are also the spouse's descendants and the spouse has no other descendant (i.e., all descendants are common descendants).

If neither condition is met, then the surviving spouse will receive a lump sum amount and a percentage of any balance. The lump sum amount and the percentage depend on who also survives the decedent.

(iii) If no descendant but a parent of the decedent survives, then the surviving spouse receives the first $300,000 and 75% of the balance.
(iv) If the decedent's descendants are all common descendants of the spouse, and the spouse has a non-common descendant, then the spouse is entitled to the first $225,000 and one-half of the balance.
(v) If the decedent has a descendant who is not a descendant of the surviving spouse, then the spouse is entitled to the first $150,000 and one-half of the balance.

Under UPC § 2-103(a)(1), after providing for the surviving spouse's share, or if there is no surviving spouse, whatever remains will pass to the decedent's descendants by representation.

Illinois and the UPC share common ground in only one scenario concerning a decedent's spouse and descendants: if there is no surviving spouse but one or more descendants, then the entire estate to the descendants.

2. Per Stirpes and by Right of Representation

In dividing the estate among the descendants, Illinois provides for a traditional per stirpes division and the UPC by right of representation. The difference in this language shows up most commonly in the distributional share of the descendants of predeceased children.

For example, assume a decedent had three children (A, B, and C), two of whom (B and C) had predeceased the decedent. Further assume that B is survived by one child and C is survived by four children.

In Illinois, the estate is divided into thirds, with A receiving a third, B's child receiving B's third, and C's four children receiving C's third to be divided equally among them (8.33% each).

In the UPC, A would receive a third and the remaining two thirds would be divided equally among all the takers in the second generation, that is, the five grandchildren (13.33% each). The effect is to reduce B's child share from 33.33% to 13.33% and to transfer that 20% to C's four children. "Equally near, equally dear" is the intent-based theory for this change to a traditional per stirpes distribution.

The amount that a descendant will receive under the UPC fluctuates depending on the order of death of ancestors, the number of descendants that predeceased ancestor has, and the number of takers in the same generation. Illinois' traditional approach, on the other hand, promotes a degree of certainty as the distribution is fixed at the child level with each line entitled to the same percentage; no line will ever receive less than another, and only if a line dies out can the other lines increase.

B. Parents and Siblings: Section 5/2-1(d)

In Illinois, if there is neither a surviving spouse nor a descendant of the decedent, the property will go "to the parents, brothers and sisters of the decedent in equal parts, allowing the surviving parent if one is dead a double portion" as well as allowing the descendants of a deceased sibling to take their ancestor's share. Section 5/2-1(d).

Illinois' provision for parents and siblings is unique. Most states provide for the entire estate to pass to the parents before the siblings. In the states that provide for parents and siblings, only Illinois provides "equal parts, allowing the surviving parent if one is dead a double portion."

The following chart shows how the estate is divided in Illinois when there are two surviving parents and when there is only one surviving parent, with varying number of siblings:

	2 Parents	1 Parent	
	Portion To Each Heir	**Parent's Portion**	**Sibling(s)' Portion**
1 Sibling	1/3	2/3	1/3
2 Siblings	1/4	2/4	2/4
3 Siblings	1/5	2/5	3/5
4 Siblings	1/6	2/6	4/6

Some observations about this division. In Illinois, no one sibling will receive more than a parent, but collectively siblings will receive more than a parent when there are three or more siblings. Put another way, a parent or parents receive the most when there is only one sibling, and they share equally if there are two siblings.

Significantly, in Illinois, as in most states and in the UPC, there is no distinction between relatives of the whole blood and of the half blood. Section 5/2-1 (last sentence), UPC § 2-107.

In Illinois, a decedent's siblings – whether of whole blood or half-blood – will be recognized and receive a share of the decedent's estate.

The UPC approach again differs significantly from Illinois. If there is neither a surviving spouse nor a descendant, the estate goes to the parents equally or wholly to the survivor. UPC § 2-103(a)(2). If neither parent is living, the estate goes to the descendants of the parent or of either of them by representation. UPC § 2-103(a)(3).

In the UPC, if the decedent is survived by a parent, the decedent's siblings may not ever participate in the estate. This can occur if, for example, the surviving parent is not the parent of the decedent's siblings. The order of death of the decedent's parents, whether they are married to each other or not, will determine in a UPC jurisdiction whether the different family lines of the decedent's siblings are recognized or not. Although in any particular case it may be that the decedent would not want some or all of the siblings to participate, for a rule of general applicability, it seems better to include than to exclude. This seems especially so when the result depends on something as arbitrary as the order of the deaths of the decedent's parents. If both parents survive, then both lines of siblings have the potential to realize benefit through the parents' inheritance. Similarly, if neither parent survives, then both lines of siblings will be recognized as the heirs. It is only when a single parent survives, that the lines of siblings will be treated differently. As blended and multiple families are common today, the Illinois approach that includes both parents and siblings as heirs seems more in tune with modern families.

C. Beyond Parents and Siblings: Section 5/2-1(e)-(g) -- Laughing Heirs?

In Illinois, if a decedent is not survived by a spouse, a descendant, a parent, or a descendant of a parent, the intestate rules continue to search for an heir by providing for the maternal and paternal grandparents (or the pertinent line's descendants, if there is no living grandparent, or all to the other line if one of the lines has no living member). Section 5/2-1(e). If there is no living grandparent or descendant of a grandparent, the Illinois rules continue to search upward to the decedent's great-grandparents in a similar vein. Section 5/2-1(f). If that

does not yield a living heir, then the estate to the "nearest kindred of the decedent in equal degree (computing by the rules of the civil law) and without representation." Section 5/2-1 (g). Only failing that does the estate escheat to the state. Section 5/2-1(h).

Again, the UPC takes a different approach. After providing for parents and siblings as heirs, UPC § 2-103(a)(4) and (5) includes the maternal and paternal grandparents in a fashion similar to Illinois. If there remains no living heir, UPC § 2-103(b) introduces an entirely new heir: the descendants of the decedent's deceased spouse(s), that is, stepchildren and step-grandchildren. This was added in the 2008 revisions as a "last resort" before escheat and in recognition of the phenomena of a "multiple marriage society" that has resulted in a "significant fraction of the population being married more than once and having stepchildren and children by previous marriages."

The question is how far should the statute go to find heirs? Illinois has retained the traditional approach which places primary importance on the bloodline and includes a desire to forestall escheat, a forfeiture method that was over-used by the sovereign. The UPC has reduced the importance of bloodline by substituting step-descendants for great-grandparents, and has arguably made escheat easier. Those who prefer this more limited inheritance structure will reference the "laughing heir." Laughing heir has been used to describe a distant relative of the decedent who, when unexpectedly receiving the decedent's estate, "laughs all the way to the bank." This is generally not a significant issue in practice. The questions that the laughing heir raise relate to the proper design of the intestate statutes. Is it more compatible with the intent of the average decedent to give property to a remote relative or to the state? Does searching for remote heirs undermine the efficiency of the administration process? John V. Orth, "*The Laughing Heir," What's So Funny*, 48 REAL PROP. TR. & EST. L.J. 321 (2013-14).

III. Fine Tuning the Meaning of Children – Non-Marital, Posthumous, and Adopted

The first section of the Illinois rules on descent and distribution that sets forth the presumptive heirs and their presumptive amounts is immediately followed by three sections that fine tune who will be considered as a child for purposes of inheritance. These sections have undergone substantial changes over the last half century in response to court decisions, societal changes, and technology. *See, e.g.,* Susan Gary, *The Probate Definition of Family: A Proposal for Guided Discretion in Intestacy*, 45 U. MICH. J. L. REFORM 787 (2014).

A. Children Born Out of Wedlock/Non-Marital Child – Section 5/2-2

This section of Article II can be confusing, due to language, scope, and common law history.

The section is captioned "Children born out of wedlock." It was previously known as illegitimate children. Today the preferred term is "non-marital," and a proposal to change the title has been introduced. In addition, the section speaks of a decedent "who was a child born out of wedlock at the time of death." The decedent at the time of death may not be a child at all, is more likely an adult, but for purposes of the section, the decedent's birth status controls.

The section's scope addresses two situations: (i) who inherits from a non-marital child; and (ii) from whom a non-marital child may inherit.

1. History

At common law, a child whose parents were not married was considered a *fillius nullius*, that is, a child of no one. As such, the child was not allowed to inherit. Over time, the child eventually could inherit from the mother and then from the mother's line. Illinois only abrogated the law of *fillius nullius* in the late 1800s. Laws of 1871-72, p. 352, §§ 2, 3. A century later, the United States Supreme Court declared Illinois' mother-only rule of inheritance for children born out of wedlock unconstitutional on equal protection grounds. *Trimble v. Gordon*, 430 U.S. 762 (1977). Consequently, the child was allowed to inherit from the mother and, assuming proof of paternity, the father. Almost 20 years after *Trimble*, the Illinois Supreme Court held that then section 5/2-2 was unconstitutional as it prohibited the father of a child born out of wedlock from inheriting from the child. *Estate of Hicks*, 221 Ill. Dec. 182, 174 Ill. 2d 433, 675 N.E. 2d 89 (1996). As these cases were decided, the statute was amended to conform with the court's decision. In the span of a century and a quarter, Illinois has made the inheritance rights of a non-marital child the equivalent of a marital child, assuming proof of paternity. In addition, the statute now specifically states: "determining the property rights of any person under any instrument, the changes made . . . shall apply to all instruments executed on or after January 1, 1998."

2. Inheriting from a Non-Marital Child

If the non-marital child is married or with descendants, the inheritance rights of the decedent's spouse and descendants is the same as for a marital child under section 5/2-1 (a)-(c). It is only when there is neither a spouse nor a descendant of the decedent, that the non-marital status comes into play. At common law, if this happened, the decedent's property would escheat to the state. That is not the case today.

Illinois expanded the rights of the parents of the non-marital child to inherit *from* the child and has done so incorporating a qualitative test. In order for a parent to inherit from a non-marital child, the parent must establish his or her status as an "eligible parent." For purposes of the section, an eligible parent is a "parent of the decedent who, during the decedent's lifetime, acknowledged the decedent as the parent's child, established a parental relationship with the decedent, and supported the decedent as the parent's child." Section 5/2-2. Consequently, the critical inquiry becomes the status of each parent as an eligible parent. If both parents are held to be eligible parents, the estate is governed by basic section 5/2-1. If neither parent is found to be an eligible parent, the estate is also governed by section 5/2-1, except that both parents shall be treated as "having predeceased the decedent." If only one parent is deemed eligible, then the special rules of section 5/2-2 (a)-(h) control.

Section 5/2-2(a)-(c) are exactly the same as the rules in section 5/2-1(a)-(c). When, however, there is only one eligible parent, the rules make a departure from the rules of section 5/2-1(d). Section 5/2-2(d) provides that the "entire estate to the eligible parent and the eligible parent's descendants, allowing ½ to the eligible parent and ½ to the eligible parent's descendants

per stirpes." In section 5/2-2(d)'s rendition, two things shifted from the basic rules of section 5/2-1(d) and a gap was created.

First, the eligible parent receives one-half of the estate, not an equal portion with the brothers and sisters.

Second, if there is only one eligible parent, then only the siblings (or the descendants of a deceased sibling) from the eligible parent share in the estate, any half-blood siblings from the other parent are excluded. This rule of exclusion seems unduly harsh and arbitrary given that if neither parent is eligible, then both lines of siblings can partake.

As drafted, the statute creates a gap. By mandating ½ to the eligible parent and ½ to his or her descendants, if there is no descendant of the eligible parent, ½ of the intestate estate remains undistributed. Surely that was not the intent of the legislature.

In the UPC, if the parent-child relationship has been established and not terminated the parent is entitled to inherit from the non-marital child. There is no stated distinction between a mother and father for a non-marital child; however, either parent may be barred from inheriting from or through a child depending on the parent's actions. UPC § 2-114.

3. Inheritance Rights of a Non-Marital Child

In Illinois, a non-marital child inherits from and through the maternal side. A non-marital child may also inherit from and through the paternal side if: (i) the decedent acknowledged paternity, (ii) the decedent was adjudged during lifetime to be the father, or (iii) the decedent was adjudged after his death to be the father by clear-and-convincing evidence.

Unlike Illinois, the UPC does not distinguish between a mother and a father. UPC § 2-116 provides that if a parent-child relation exists or is established, the child is a child of the parent for the purpose of intestate succession. UPC § 2-117 specifically states that a parent-child relationship exists "regardless of the parents' marital status."

B. Posthumous Child – Section 5/2-3

A posthumous child is a child born after the death of the parent. At common law, a posthumous child was allowed to inherit from the father's estate as long as the child was born alive within ten lunar months after the father's death. 1 William Blackstone, COMMENTARIES * 126. Limiting posthumous to a father's child was obvious at common law, as a posthumous mother was not a reality.

Illinois now provides that a "posthumous child of a decedent shall receive the same share of an estate as if the child had been born in the decedent's lifetime; provided that such posthumous child shall have been *in utero* at the decedent's death." The Illinois statute presents three noteworthy points.

First, the statute is gender neutral, meaning a mother's posthumous child is treated the same as a father's posthumous child. Advances in technology allow situations where a predeceased mother may be deemed to have a posthumous child.

Second, the Illinois statute only applies to the posthumous child of the decedent; a posthumous grandchild, niece, or nephew would not be covered by the legislation.

Third, as of January 1, 2016, the Illinois legislature amended the section's application to a posthumous child who is "in utero" at the decedent's death. This effectively prevents a posthumously conceived child from participating in the Illinois estate.

The UPC approach is considerably broader. Under UPC § 2-104(a)(2), the reach of the posthumous statute is extended beyond the reach of the decedent's child: "An individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives 120 hours after birth." Other jurisdictions have similarly broadened their coverage. *E.g.*, Cal. Prob. Code § 6407: "Relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent."

As for posthumous conception, UPC section 2-116 provides two requirements for a posthumously-conceived child to be considered a child of the decedent. The deceased parent must have "consented to assisted reproduction by the birth mother with intent to treated as the other parent." In addition, the child must be "in utero no later than 36 months after the individual's death [, or] born not later than 45 months after the individual's death." Other jurisdictions have similarly addressed posthumous conception. Cal. Prob. Code § 249.5 directs: "a child of the decedent conceived after the death of the decedent shall be deemed to have been born in the lifetime of the decedent" if there is clear and convincing evidence that (a) the decedent consented in a signed and dated writing, (b) within 4 months of the decedent's death, notice of the possibility of posthumous conception is served upon the person with power to control the disposition of the decedent's property, and (c) the child was "in utero" within two years of the death and the child is not a clone of the decedent. New York EPTL § 4-1.3 (2014) adopts an approach generally similar to California.

The state's choice of what to do creates ramifications beyond intestacy issues. In *Astrue v. Capato*, 132 S. Ct. 2021 (2012), the United States Supreme Court upheld a Social Security Administration rule that governed the eligibility of posthumously conceived children to receive survivor benefits. The test for receiving benefits was whether the child would be considered a child of the predeceased parent under local intestate statutes. Because the local law did not allow posthumously-conceived children as heirs, the child was not entitled to receive survivor benefits.

The recent Illinois amendment that was added as part of the new Illinois Parentage Act of 2015 limiting the posthumous child statute to those children *in utero* would create the same result in Illinois. As assisted reproduction becomes more common, the Illinois posthumous child statute seems out of step.

C. Adopted Children – Section 5/2-4

Legal adoption did not exist at common law, although it did exist in the civil law tradition dating back to Roman times. Instead the English developed a system of guardians and wards, most especially for those wards who inherited property. For non-propertied children, the laws were virtually nonexistent, and it was not until 1926 that Parliament passed the Adoption of Children Act, 16 & 17 Geo.5 c.29 (Eng). In the United States, by the mid-1800s, states began to provide for a system of legal adoption. In addition, states provided for the inheritance rights of the adopted child. At first, the adopted child became the heir of the adopting parent, but not the heir of the adopting parent's ancestral or collateral relatives. This "stranger to the adoption rule" was the norm for generations. As society has evolved, the adoption statutes have tried to keep up.

In the last 60-plus years, three dates stand out in Illinois' evolving attitudes on adopted children and inheritance rights. First is 1955, when the legislature provided that for instruments executed on or after September 1, 1955, "an adopted child is deemed a child born to the adopting person unless a contrary intent is demonstrated by the terms of the instrument by clear and convincing evidence." Section 5/2-4(e). *See* Austin Fleming, *Inheritance Rights of Adopted Children*, 43 CHI. BAR. REC. 221 (1954). Second is 1989, when the legislative presumption of inclusion was extended to instruments executed before September 1, 1955, unless one or more specified conditions applied. Section 5/2-4(f). Third is 1998, when Illinois amended the adoption statute effective January 1, 1998, to address adult adoptions and to address certain rights of natural parents. Section 5/2-4 (a) and (d).

1. Adult Adoptions

Illinois today generally embraces a norm of equality for adopted children. Section 5/2-4(a) provides that an adopted child is "a descendant of the adopting parent for purposes of inheritance from the adopting parent and from the lineal and collateral kindred of the adopting parent" as well as for determining property rights "of any person under any instrument." The adopted child will not take from the adopting parent's lineal and collateral relatives, however, if the child was adopted "after attaining the age of 18 years and never resided with the adopting parent before attaining the age of 18 years." Consequently, for adult adoptions, there is a return to the 19th century's stranger to the adoption rule. *Cf.*, *Dixon v. Weitke-Diller*, 979 N.E.2d 98 (Ill. App. 2012) where court determined that the adoption by a 94-year-old man of his new spouse's three grown daughters was a subterfuge, and the adoption was disregarded in the disposition of ancestral trusts, even though the adoption occurred before the statute was amended. The UPC approach is similar to the Illinois statute for adult adoptions. UPC § 2-705(f) (2008). *See* Richard C. Ausness, *Planned Parenthood: Adult Adoption and the Right of Adoptees to Inherit*, 41 ACTEC L.J. 241 (2016).

2. Rights of Natural Parents

In general today, the adoption of a child severs that child's legal relationship with the natural parents for inheritance purposes, both for inheriting from the adopted child and for the adopted child's inheritance from the natural family. There are two unusual provisions however.

The first is a rather old notion, that of ancestral property. If an adopted child had received property from or through the natural family "by gift, by will or under intestate laws," upon the adopted child's death intestate, that property is inherited by the natural family and not by the adopting family. Section 5/2-4(b).

A more troubling, and presumably unintended, provision is found in section 5/2-4(d). The general rule is that an adopted child is not a descendant of a natural parent or of any lineal or collateral kindred of a natural parent for purposes of inheriting from or through the natural parent. This rule is subject to exceptions. If the adoption is an adoption by a stepparent or an adoption by a member of the child's extended natural family, then the natural family connection remains. If, however, a non-spousal partner or friend of a natural parent adopts the child of the natural parent, that adoption cuts off the natural parent's inheritance rights as well as the rights of the adopted child to inherit from that natural parent and kindred. This was a particular issue in same sex relationships before marriage equality, and continues to exist in adoptions by a partner or friend. *See* Danaya C. Wright, *Inheritance Equity: Reforming the Inheritance Penalties Facing Children in Non-Traditional Families*, 25 CORNELL J. L. & PUB. POL. 1 (2015).

3. Equitable Adoption

Because legal adoption did not exist at common law, alternative arrangements for the care of orphan or abandoned children developed. These arrangements were sometime based in contract and sometimes in equity. In general, inheritance laws were hostile to equitable adoptions. Illinois has recently joined the ranks of states to validate equitable adoptions for inheritance purposes.

In *DeHart v. DeHart*, 2013 IL 114137, Justice Thomas wrote for a unanimous Illinois Supreme Court upholding a cause of action for inheritance under a theory of equitable adoption if there is clear and convincing evidence. Given this ruling, those written instruments that define adoption by reference to "legal adoption" merit reconsideration.

The UPC takes a neutral position. Section 2-122 states that "the doctrine of equitable adoption" is not affected by its provisions.

IV. Impact of Heirs Conduct on Inheritance – Killing the Decedent, Neglecting a Child, and Exploiting an Elder

One of the hallmarks of the rules of descent and distribution is that they are rules; as such, they are meant to be followed. In the absence of a special statute addressing the precise concern, it was generally accepted that there was no alternative but to apply the rules as written. When a 16-year-old grandson-heir poisoned his grandfather over his inheritance in 1882 (*Riggs v. Palmer*, 115 N.Y. 506 (1889)), the tension between rules of law and principles of equity was clear. The *Riggs* case began an ongoing philosophical debate about whether an heir's conduct matters for purposes of the rules of inheritance. Illinois is at the forefront of states in enacting statutes that bar an individual from receiving property based on certain conduct. *See* Anne-Marie Rhodes, *Consequences of Heirs' Misconduct: Moving from Rules to Discretion*, 33 OHIO

N. U. L REV. 975 (2007); Anne-Marie Rhodes, *Blood and Behavior*, 36 ACTEC L.J. 143 (2010-11).

A. Slayer Statute – Section 5/2-6

Like the vast majority of states, Illinois has a slayer statute. The current version is applicable to deaths on or after September 9, 1983. The statute bars a person who "intentionally and unjustifiably causes the death of another" from receiving any property, benefit, or other interest by reason of the death of the decedent. Section 5/2-6. Illinois' prior version of the slayer statute had required a murder conviction in order to bar the killer from participating in the decedent's estate. *See Dougherty v. Cole*, 401 Ill. App. 3d 341 (4th Dist. 2010). The general theory behind the slayer statute is equitable: a wrongdoer should not profit by his wrongful act. This general rule has spawned a number of cascading concerns. Three of them are: what actions implicate the statute; are there exceptions; and who receives the property?

1. Actions That Implicate the Slayer Statute

Illinois uses the standard of "intentionally and unjustifiably causes the death of another" to bar the slayer from receiving any benefit by reason of the decedent's death. UPC § 2-803(b) bars a person "who feloniously and intentionally kills the decedent" from rights to the decedent's estate. In both Illinois and the UPC, a conviction in a criminal case is dispositive. An acquittal, however, does not mean that the person may inherit. A hearing may be had in a civil proceeding to determine if the person met the probate code's standard. The burden of persuasion is lower than "beyond a reasonable doubt," it is generally the "preponderance of evidence" standard.

Some states require a conviction in order to bar the slayer. The conviction standard tends to be found in statutes that have not been amended since adoption. This standard is too restrictive because when there is a murder-suicide, there can be no conviction of a deceased killer.

In addition, the slayer statutes include not only "an actor or direct perpetrator, but also an accomplice or co-conspirator." UPC, Comments (1993) to § 2-803.

2. Exceptions

(a) Opt Out – Mercy Killing

Neither Illinois nor the UPC has any stated exception to the slayer statute, but at least two states do. Wisconsin provides that the slayer statute may not be applicable if "the decedent's wishes would best be carried out" by not applying the rule. Similarly, if the decedent's will specifically mentions the statute and provides that it is not to apply. Wis. Stat. § 854.14(6)(b) (2012). What is the lawyer's professional responsibility if a client asks to have the slayer statute not apply?

Louisiana provides that its slayer statute may not apply if the slayer can prove "reconciliation with or forgiveness by the decedent." La. Civ. Code arts. 941, 943, 945 (2012). *See* Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. CIN. L. REV. 803 (1993).

(b) Insanity Defense

An acquittal by reason of insanity raises a question as to the applicability of the slayer statute. There is not uniformity in position. In *Dougherty v. Cole*, 401 Ill. App. 3d 341 (4th Dist. 2010), the court determined that the defendant's temporary insanity defense did not invalidate the slayer statute. The killing remained intentional and unjustified. The individual "was insane for criminal purposes but nevertheless cognizant he was killing a person, the slayer statute will prevent him from benefitting."

The UPC provides that the court's determination of the "felonious and intentional killing," on a preponderance of the evidence standard, is whether the person would be found "criminally accountable" for the killing. UPC § 2-803(g). The common law norm is that insanity renders the person not criminally liable.

3. Recipients of the Property

If the slayer is barred from receiving the property, the next recipient of the property must be determined. The common provision, and used in Illinois, is that the property should pass as if the slayer had predeceased the decedent. Section 5/2-6. UPC § 2-803(b) provides the property is treated as if the killer had disclaimed the property; and under UPC §2-1106(b)(3)(B), disclaimed property passes as if the disclaimant had "died immediately before" the decedent.

If the substitute takers are related to the killer, should that have an impact? In answering this question, Illinois courts have used a theme of indirect benefit.

In *In re Estate of Mueller*, 655 N.E.2d 1040 (Ill. App. 1995), the decedent's will provided that 60% of his estate would pass to his second wife, or if she predeceased him to her children by a prior marriage. The wife hired a hit man to kill her husband. The court determined that the alternative takers would not take because there was a distinct possibility that the decedent's assets would be made available to the killer. This possibility of an indirect benefit was not consistent with the equitable maxim that "a wrongdoer should not profit by the wrongful act." That the alternative takers were not also the decedent's children certainly played a role in the decision.

In *In re Estate of Opalinska*, 45 N.E.3d 687 (Ill. App. 2015), the decedent was killed by her son-in-law. The victim's daughter, who was the killer's wife, lied to the police in the course of the investigation. The court held that the victim's daughter was allowed to inherit because there was no evidence that she participated in the killing. Moreover, it was not clear that the killer would receive an indirect benefit.

UPC § 2-803(f) provides that an open-ended equitable norm is to apply: "A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from his [or her] wrong."

B. Parent Neglecting Child – Section 5/2-6.5

Since September 9, 1994, Illinois is one of at least 11 jurisdictions that consider a parent's conduct in distributing the property of a deceased child. Section 5/2-6.5. The process is a two tier process that requires the judge to determine if the parent's conduct fits the statutory requirements, and then to determine the impact of that conduct on the child. *See Estate of Jackson*, 334 Ill. App. 3d 835 (1st Dist. 2002); Anne-Marie Rhodes, *Abandoning Parents Under Intestacy: Where We Are, Where We Need To Go*, 27 Ind. L. Rev. 517 (1994).

For this purpose, there are three possible actions and two time frames to consider. If for a period of one year or more immediately before the death of the minor or dependent child, a parent has either willfully neglected the child or failed to perform any duty of support owed to the child, that conduct may affect the parent's status as a presumptive heir. Additionally, if a parent for a period of one year or more has willfully deserted the minor or dependent child, that may impact the parent's status as heir.

If the requisite conduct for the requisite time frame has occurred, the statute provides that the parent "shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, survivor, appointee, or in any other capacity . . . unless and until a court . . . makes a determination as to the effect on the deceased child" of that conduct. The statute gives the judge discretion ("as the interests of justice require") to assess the impact of the conduct on the child, subject to two caveats. The reduction cannot be less than the amount of child support owed at the time of the child's death. The judge also must consider (i) the child's loss of opportunity due to the parent's conduct, (ii) the effect of that conduct on the child's overall quality of life, and (iii) the ability of the parent to have avoided that conduct.

UPC § 2-114 (2008) also provides that a parent may be barred from inheriting from the child. The standard recognizes that parent whose parental rights have been terminated is no longer a parent and therefore cannot inherit from or through the child. It also provides that for a child who dies before reaching the age of majority, if "there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated" under the laws of the state on the basis of "nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child" the parent is similarly barred from inheriting from or through the child. This section replaced UPC §2-114 (1990) that had provided a parent would not inherit "unless the parent has openly treated the child as his [or hers], and has not refused to support the child."

C. Two Statutes:

Financial Exploitation, Abuse, or Neglect of Elderly or Person with a Disability – Section 5/2-6.2

Person Convicted of or Found Liable for Certain Offenses Against the Elderly or a Person with a Disability – Section 5/2-6.6

Illinois is in the vanguard in addressing by statute the impact of a person's exploitation of an elderly person or a person with a disability on the person's ability to receive property from the victim's estate. If there is the requisite action, the statute provides that the person "may not receive" any property by reason of the decedent's death, while allowing the possibility of some transfer of property. Both of these statutes were added to Article II in January 2004. There is tremendous overlap in the two sections. It is unclear if Illinois needs both sections and a consolidation of the sections would be welcome.

There are aspects to these sections that demonstrate the legislature's difficulty in determining whether the decedent's intentions or public policy should be primary. The same concerns that were addressed under the slayer statute are equally relevant here. First is to consider what actions implicate the statute. Second is whether those actions can be forgiven or overlooked, and by whom. Third is to determine where the property should go. Because there is overlap in the two sections, the discussion will focus only on section 5/2-6.6.

There is no UPC equivalent.

1. Actions that Implicate the Statute

Unlike Illinois' other unworthy heir statutes, this section requires the person be criminally convicted (of neglect, financial exploitation or abuse) or found civilly liable (of financial exploitation) of an elderly person or of a person with a disability. A civil action against the person for financial exploitation can be brought before or after the death of the victim. The statute specifies the sections of the Illinois Criminal Code under which the person must be convicted, while the civil liability for financial exploitation is more open ended. In *In re Estate of Ostern*, 2014 Ill. App. (2d) 131236, one of many issues in the case was whether a daughter who was convicted in Pennsylvania of 16 criminal counts, including stealing from her mother, was subject to the statute. Because the matter was a petition to vacate a prior order due to lack of notice, no decision on this issue was made, although dicta from the court's opinion suggests that the conduct was equivalent.

2. Can the Actions Be Overlooked

If the requisite conviction or civil liability occurs, the first sentence of section 5/2-6.6(a) provides the person "may not receive" any property by reason of the decedent's death. The third sentence begins "Notwithstanding the foregoing." Both sentences signal the tentativeness of the prohibition. They also have antecedents in other jurisdictions' slayer statutes.

The person who was convicted or found civilly liable "shall be entitled to receive property" if it is established "by clear and convincing evidence that the victim of that offense knew" of the conviction or civil liability and subsequent to that "expressed or ratified his or her intent to transfer property" to the person.

Moreover, paragraph (f) provides another basis for transferring property to the person. It provides that the court "may, in its discretion, consider such facts and circumstances as it deems appropriate" to allow the person to receive a reduction in interest or benefit "rather than no interest or benefit" as otherwise provided in paragraph (a) of the section. The court's discretion under this section is wide ranging, unlike the guided discretion given to the judge in the parent-neglecting-child statute.

3. Recipients of the Property

Like the slayer statute, this financial exploitation statute states that the property "shall pass as if the person died before the decedent." Section 5/2-6.6(a). In the only case reported under the section (*In re Estate of Ostern*, *supra*), the arguments on this point were similar to those under the slayer statute. In *Ostern*, the petitioners were the children of the person who was convicted in another state of stealing from her mother. The petitioners were the adult grandchildren of the victim, and there was no allegation that they participated in the criminal conduct. There was also no evidence to suggest that their mother would indirectly benefit if the property were to be distributed to them.

ILLINOIS PROBATE CODE
Article II
Descent and Distribution

755 ILCS 5/Art. II

(755 ILCS 5/2-1) (from Ch. 110 1/2, par. 2-1)

Sec. 2-1. Rules of descent and distribution. The intestate real and personal estate of a resident decedent and the intestate real estate in this State of a nonresident decedent, after all just claims against his estate are fully paid, descends and shall be distributed as follows:

(a) If there is a surviving spouse and also a descendant of the decedent: 1/2 of the entire estate to the surviving spouse and 1/2 to the decedent's descendants per stirpes.

(b) If there is no surviving spouse but a descendant of the decedent: the entire estate to the decedent's descendants per stirpes.

(c) If there is a surviving spouse but no descendant of the decedent: the entire estate to the surviving spouse.

(d) If there is no surviving spouse or descendant but a parent, brother, sister or descendant of a brother or sister of the decedent: the entire estate to the parents, brothers and sisters of the decedent in equal parts, allowing to the surviving parent if one is dead a double portion and to the descendants of a deceased brother or sister per stirpes the portion which the deceased brother or sister would have taken if living.

(e) If there is no surviving spouse, descendant, parent, brother, sister or descendant of a brother or sister of the decedent but a grandparent or descendant of a grandparent of the decedent: (1) 1/2 of the entire estate to the decedent's maternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes, and (2) 1/2 of the entire estate to the decedent's paternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving paternal grandparent or descendant of a paternal grandparent, but a maternal grandparent or descendant of a maternal grandparent of the decedent: the entire estate to the decedent's maternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving maternal grandparent or descendant of a maternal grandparent, but a paternal grandparent or descendant of a paternal grandparent of the decedent: the entire estate to the decedent's paternal grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes.

(f) If there is no surviving spouse, descendant, parent, brother, sister, descendant of a brother or sister or grandparent or descendant of a grandparent of the decedent: (1) 1/2 of the entire estate to the decedent's maternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes, and (2) 1/2 of the entire estate to the decedent's paternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving paternal great-grandparent or descendant of a paternal great-grandparent, but a maternal great-grandparent or descendant of a maternal great-grandparent of the decedent: the entire estate to the decedent's maternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes. If there is no surviving maternal great-grandparent or descendant of a maternal great-grandparent, but a paternal great-grandparent or descendant of a paternal great-grandparent of the decedent: the entire estate to the

decedent's paternal great-grandparents in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes.

(g) If there is no surviving spouse, descendant, parent, brother, sister, descendant of a brother or sister, grandparent, descendant of a grandparent, great-grandparent or descendant of a great-grandparent of the decedent: the entire estate in equal parts to the nearest kindred of the decedent in equal degree (computing by the rules of the civil law) and without representation.

(h) If there is no surviving spouse and no known kindred of the decedent: the real estate escheats to the county in which it is located; the personal estate physically located within this State and the personal estate physically located or held outside this State which is the subject of ancillary administration of an estate being administered within this State escheats to the county of which the decedent was a resident, or, if the decedent was not a resident of this State, to the county in which it is located; all other personal property of the decedent of every class and character, wherever situate, or the proceeds thereof, shall escheat to this State and be delivered to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act.

In no case is there any distinction between the kindred of the whole and the half blood.
(Source: P.A. 91-16, eff. 7-1-99.)

(755 ILCS 5/2-2) (from Ch. 110 1/2, par. 2-2)

Sec. 2-2. Children born out of wedlock. The intestate real and personal estate of a resident decedent who was a child born out of wedlock at the time of death and the intestate real estate in this State of a nonresident decedent who was a child born out of wedlock at the time of death, after all just claims against his estate are fully paid, descends and shall be distributed as provided in Section 2-1, subject to Section 2-6.5 of this Act, if both parents are eligible parents. As used in this Section, "eligible parent" means a parent of the decedent who, during the decedent's lifetime, acknowledged the decedent as the parent's child, established a parental relationship with the decedent, and supported the decedent as the parent's child. "Eligible parents" who are in arrears of in excess of one year's child support obligations shall not receive any property benefit or other interest of the decedent unless and until a court of competent jurisdiction makes a determination as to the effect on the deceased of the arrearage and allows a reduced benefit. In no event shall the reduction of the benefit or other interest be less than the amount of child support owed for the support of the decedent at the time of death. The court's considerations shall include but are not limited to the considerations in subsections (1) through (3) of Section 2-6.5 of this Act.

If neither parent is an eligible parent, the intestate real and personal estate of a resident decedent who was a child born out of wedlock at the time of death and the intestate real estate in this State of a nonresident decedent who was a child born out of wedlock at the time of death, after all just claims against his or her estate are fully paid, descends and shall be distributed as provided in Section 2-1, but the parents of the decedent shall be treated as having predeceased the decedent.

If only one parent is an eligible parent, the intestate real and personal estate of a resident decedent who was a child born out of wedlock at the time of death and the intestate real estate in this State of a nonresident decedent who was a child born out of wedlock at the time of death, after all just claims against his or her estate are fully paid, subject to Section 2-6.5 of this Act, descends and shall be distributed as follows:

(a) If there is a surviving spouse and also a descendant of the decedent: 1/2 of the entire estate to the surviving spouse and 1/2 to the decedent's descendants per stirpes.

(b) If there is no surviving spouse but a descendant of the decedent: the entire estate to the

decedent's descendants per stirpes.

(c) If there is a surviving spouse but no descendant of the decedent: the entire estate to the surviving spouse.

(d) If there is no surviving spouse or descendant but the eligible parent or a descendant of the eligible parent of the decedent: the entire estate to the eligible parent and the eligible parent's descendants, allowing 1/2 to the eligible parent and 1/2 to the eligible parent's descendants per stirpes.

(e) If there is no surviving spouse, descendant, eligible parent, or descendant of the eligible parent of the decedent, but a grandparent on the eligible parent's side of the family or descendant of such grandparent of the decedent: the entire estate to the decedent's grandparents on the eligible parent's side of the family in equal parts, or to the survivor of them, or if there is none surviving, to their descendants per stirpes.

(f) If there is no surviving spouse, descendant, eligible parent, descendant of the eligible parent, grandparent on the eligible parent's side of the family, or descendant of such grandparent of the decedent: the entire estate to the decedent's great-grandparents on the eligible parent's side of the family in equal parts or to the survivor of them, or if there is none surviving, to their descendants per stirpes.

(g) If there is no surviving spouse, descendant, eligible parent, descendant of the eligible parent, grandparent on the eligible parent's side of the family, descendant of such grandparent, great-grandparent on the eligible parent's side of the family, or descendant of such great-grandparent of the decedent: the entire estate in equal parts to the nearest kindred of the eligible parent of the decedent in equal degree (computing by the rules of the civil law) and without representation.

(h) If there is no surviving spouse, descendant, or eligible parent of the decedent and no known kindred of the eligible parent of the decedent: the real estate escheats to the county in which it is located; the personal estate physically located within this State and the personal estate physically located or held outside this State which is the subject of ancillary administration within this State escheats to the county of which the decedent was a resident or, if the decedent was not a resident of this State, to the county in which it is located; all other personal property of the decedent of every class and character, wherever situate, or the proceeds thereof, shall escheat to this State and be delivered to the State Treasurer of this State pursuant to the Uniform Disposition of Unclaimed Property Act.

For purposes of inheritance, the changes made by this amendatory Act of 1998 apply to all decedents who die on or after the effective date of this amendatory Act of 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1998 apply to all instruments executed on or after the effective date of this amendatory Act of 1998.

A child born out of wedlock is heir of his mother and of any maternal ancestor and of any person from whom his mother might have inherited, if living; and the descendants of a person who was a child born out of wedlock shall represent such person and take by descent any estate which the parent would have taken, if living. If a decedent has acknowledged paternity of a child born out of wedlock or if during his lifetime or after his death a decedent has been adjudged to be the father of a child born out of wedlock, that person is heir of his father and of any paternal ancestor and of any person from whom his father might have inherited, if living; and the descendants of a person who was a child born out of wedlock shall represent that person and take by descent any estate which the parent would have taken, if living. If during his lifetime the decedent was adjudged to be the father of a child born out of wedlock by a court of competent jurisdiction, an authenticated copy of the judgment

is sufficient proof of the paternity; but in all other cases paternity must be proved by clear and convincing evidence. A person who was a child born out of wedlock whose parents intermarry and who is acknowledged by the father as the father's child is a lawful child of the father. After a child born out of wedlock is adopted, that person's relationship to his or her adopting and natural parents shall be governed by Section 2-4 of this Act. For purposes of inheritance, the changes made by this amendatory Act of 1997 apply to all decedents who die on or after January 1, 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1997 apply to all instruments executed on or after January 1, 1998.
(Source: P.A. 94-229, eff. 1-1-06.)

(755 ILCS 5/2-3) (from Ch. 110 1/2, par. 2-3)

Sec. 2-3. Posthumous child. A posthumous child of a decedent shall receive the same share of an estate as if the child had been born in the decedent's lifetime; provided that such posthumous child shall have been in utero at the decedent's death.
(Source: P.A. 99-85, eff. 1-1-16.)

(755 ILCS 5/2-4) (from Ch. 110 1/2, par. 2-4)

Sec. 2-4. Adopted child.

(a) An adopted child is a descendant of the adopting parent for purposes of inheritance from the adopting parent and from the lineal and collateral kindred of the adopting parent and for the purpose of determining the property rights of any person under any instrument, unless the adopted child is adopted after attaining the age of 18 years and the child never resided with the adopting parent before attaining the age of 18 years, in which case the adopted child is a child of the adopting parent but is not a descendant of the adopting parent for the purposes of inheriting from the lineal or collateral kindred of the adopting parent. An adopted child and the descendants of the child who is related to a decedent through more than one line of relationship shall be entitled only to the share based on the relationship which entitles the child or descendant to the largest share. The share to which the child or descendant is not entitled shall be distributed in the same manner as if the child or descendant never existed. For purposes of inheritance, the changes made by this amendatory Act of 1997 apply to all decedents who die on or after January 1, 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1997 apply to all instruments executed on or after January 1, 1998.

(b) An adopting parent and the lineal and collateral kindred of the adopting parent shall inherit property from an adopted child to the exclusion of the natural parent and the lineal and collateral kindred of the natural parent in the same manner as though the adopted child were a natural child of the adopting parent, except that the natural parent and the lineal or collateral kindred of the natural parent shall take from the child and the child's kindred the property that the child has taken from or through the natural parent or the lineal or collateral kindred of the natural parent by gift, by will or under intestate laws.

(c) For purposes of inheritance from the child and his or her kindred (1) the person who at the time of the adoption is the spouse of an adopting parent is an adopting parent and (2) a child is adopted when the child has been or is declared by any court to have been adopted or has been or is declared or assumed to be the adopted child of the testator or grantor in any instrument bequeathing or giving property to the child.

(d) For purposes of inheritance from or through a natural parent and for determining the property rights of any person under any instrument, an adopted child is not a child of a natural parent, nor is the child a descendant of a natural parent or of any lineal or collateral kindred of a natural parent, unless one or more of the following conditions apply:

(1) The child is adopted by a descendant or a spouse of a descendant of a great-grandparent of the child, in which case the adopted child is a child of both natural parents.

(2) A natural parent of the adopted child died before the child was adopted, in which case the adopted child is a child of that deceased parent and an heir of the lineal and collateral kindred of that deceased parent.

(3) The contrary intent is demonstrated by the terms of the instrument by clear and convincing evidence.

An heir of an adopted child who, by reason of this subsection (d), is not a child of a natural parent is also not an heir of that natural parent or of the lineal or collateral kindred of that natural parent. A fiduciary who has actual knowledge that a person has been adopted, but who has no actual knowledge that any of paragraphs (1), (2), or (3) of this subsection apply to the adoption, shall have no liability for any action taken or omitted in good faith on the assumption that the person is not a descendant or heir of the natural parent. The preceding sentence is intended to affect only the liability of the fiduciary and shall not affect the property rights of any person.

For purposes of inheritance, the changes made by this amendatory Act of 1997 apply to all decedents who die on or after January 1, 1998. For the purpose of determining the property rights of any person under any instrument, the changes made by this amendatory Act of 1997 apply to all instruments executed on or after January 1, 1998.

(e) For the purpose of determining the property rights of any person under any instrument executed on or after September 1, 1955, an adopted child is deemed a child born to the adopting parent unless the contrary intent is demonstrated by the terms of the instrument by clear and convincing evidence.

(f) After September 30, 1989, a child adopted at any time before or after that date is deemed a child born to the adopting parent for the purpose of determining the property rights of any person under any instrument executed before September 1, 1955, unless one or more of the following conditions applies:

(1) The intent to exclude such child is demonstrated by the terms of the instrument by clear and convincing evidence.

(2) An adopting parent of an adopted child, in the belief that the adopted child would not take property under an instrument executed before September 1, 1955, acted to substantially benefit such adopted child when compared to the benefits conferred by such parent on the child or children born to the adopting parent. For purposes of this paragraph:

(i) "Acted" means that the adopting parent made one or more gifts during life requiring the filing of a federal gift tax return or at death (including gifts which take effect at death), or exercised or failed to exercise powers of appointment or other legal rights, or acted or failed to act in any other way.

(ii) Any action which substantially benefits the adopted child shall be presumed to have been made in such a belief unless a contrary intent is demonstrated by clear and convincing evidence.

(g) No fiduciary or other person shall be liable to any other person for any action taken or benefit received prior to October 1, 1989, under any instrument executed before September 1, 1955, that was

based on a good faith interpretation of Illinois law regarding the right of adopted children to take property under such an instrument.

(h) No fiduciary under any instrument executed before September 1, 1955, shall have any obligation to determine whether any adopted child has become a taker under such instrument due to the application of subsection (f) unless such fiduciary has received, on or before the "notice date", as defined herein, written evidence that such adopted child has become a taker of property. A fiduciary who has received such written evidence shall determine in good faith whether or not any of the conditions specified in subsection (f) exists but shall have no obligation to inquire further into whether such adopted child is a taker of property pursuant to such subsection. Such written evidence shall include a sworn statement by the adopted child or his or her parent or guardian that such child is adopted and to the best of the knowledge and belief of such adopted child or such parent or guardian, none of the conditions specified in such subsection exists. The "notice date" shall be the later of February 1, 1990, or the expiration of 90 days after the date on which the adopted child becomes a taker of property pursuant to the terms of any instrument executed before September 1, 1955.

(i) A fiduciary shall advise all persons known to him or her to be subject to these provisions of the existence of the right to commence a judicial proceeding to prevent the adopted child from being a taker of property under the instrument.

(Source: P.A. 90-237, eff. 1-1-98.)

(755 ILCS 5/2-5) (from Ch. 110 1/2, par. 2-5)

Sec. 2-5. Advancements.) (a) In the division and distribution of the estate of an intestate decedent, real or personal estate given by him in his lifetime as an advancement to a descendant is considered as part of the decedent's estate to be applied on the share of the person to whom the advancement was made or, if he died before the decedent, on the share of the descendants of the person to whom the advancement was made. A gift is not an advancement unless so expressed in writing by the decedent or unless so acknowledged in writing by the person to whom the gift was made.

(b) If the value of the advancement is expressed in the writing made by the decedent or, if not so expressed, in the written acknowledgment by the person to whom the advancement was made, it shall be considered as of that value; otherwise it shall be considered as of the value when given. The person to whom the advancement was made shall not be required to refund any part of it, although it exceeds his share in the entire estate.

(Source: P.A. 79-328.)

(755 ILCS 5/2-6) (from Ch. 110 1/2, par. 2-6)

Sec. 2-6. Person causing death. A person who intentionally and unjustifiably causes the death of another shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, joint tenant, survivor, appointee or in any other capacity and whether the property, benefit, or other interest passes pursuant to any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. The property, benefit, or other interest shall pass as if the person causing the death died before the decedent, provided that with respect to joint tenancy property the interest possessed prior to the death by the person causing the death shall not be diminished by the application of this Section. A determination under this Section may be made by any court of competent jurisdiction separate and apart from any criminal proceeding arising from the death, provided that no such civil proceeding shall proceed to trial nor

shall the person be required to submit to discovery in such civil proceeding until such time as any criminal proceeding has been finally determined by the trial court or, in the event no criminal charge has been brought, prior to one year after the date of death. A person convicted of first degree murder or second degree murder of the decedent is conclusively presumed to have caused the death intentionally and unjustifiably for purposes of this Section.

The holder of any property subject to the provisions of this Section shall not be liable for distributing or releasing said property to the person causing the death if such distribution or release occurs prior to a determination made under this Section.

If the holder of any property subject to the provisions of this Section knows or has reason to know that a potential beneficiary caused the death of a person within the scope of this Section, the holder shall fully cooperate with law enforcement authorities and judicial officers in connection with any investigation of such death.

(Source: P.A. 86-749.)

(755 ILCS 5/2-6.2)

Sec. 2-6.2. Financial exploitation, abuse, or neglect of an elderly person or a person with a disability.

(a) In this Section:

"Abuse" means any offense described in Section 12-21 or subsection (b) of Section 12-4.4a of the Criminal Code of 1961 or the Criminal Code of 2012.

"Financial exploitation" means any offense or act described or defined in Section 16-1.3 or 17-56 of the Criminal Code of 1961 or the Criminal Code of 2012, and, in the context of civil proceedings, the taking, use, or other misappropriation of the assets or resources of an elderly person or a person with a disability contrary to law, including, but not limited to, misappropriation of assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, and conversion.

"Neglect" means any offense described in Section 12-19 or subsection (a) of Section 12-4.4a of the Criminal Code of 1961 or the Criminal Code of 2012.

(b) Persons convicted of financial exploitation, abuse, or neglect of an elderly person or a person with a disability or persons who have been found by a preponderance of the evidence to be civilly liable for financial exploitation shall not receive any property, benefit, or other interest by reason of the death of that elderly person or person with a disability, whether as heir, legatee, beneficiary, survivor, appointee, claimant under Section 18-1.1, or in any other capacity and whether the property, benefit, or other interest passes pursuant to any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. Except as provided in subsection (f) of this Section, the property, benefit, or other interest shall pass as if the person convicted of the financial exploitation, abuse, or neglect or person found civilly liable for financial exploitation died before the decedent, provided that with respect to joint tenancy property the interest possessed prior to the death by the person convicted of the financial exploitation, abuse, or neglect shall not be diminished by the application of this Section. Notwithstanding the foregoing, a person convicted of financial exploitation, abuse, or neglect of an elderly person or a person with a disability or a person who has been found by a preponderance of the evidence to be civilly liable for financial exploitation shall be entitled to receive property, a benefit, or an interest in any capacity and under any circumstances described in this subsection (b) if it is demonstrated by clear and convincing evidence that the victim of that offense knew of the conviction or finding of civil liability and subsequent to the conviction or finding of civil liability expressed or ratified his or her intent to

transfer the property, benefit, or interest to the person convicted of financial exploitation, abuse, or neglect of an elderly person or a person with a disability or the person found by a preponderance of the evidence to be civilly liable for financial exploitation in any manner contemplated by this subsection (b).

(c)(1) The holder of any property subject to the provisions of this Section shall not be liable for distributing or releasing the property to the person convicted of financial exploitation, abuse, or neglect of an elderly person or a person with a disability or the person who has been found by a preponderance of the evidence to be civilly liable for financial exploitation if the distribution or release occurs prior to the conviction or finding of civil liability.

(2) If the holder is a financial institution, trust company, trustee, or similar entity or person, the holder shall not be liable for any distribution or release of the property, benefit, or other interest to the person convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or the person who has been found by a preponderance of the evidence to be civilly liable for financial exploitation unless the holder knowingly distributes or releases the property, benefit, or other interest to the person so convicted or found civilly liable after first having received actual written notice of the conviction in sufficient time to act upon the notice.

(d) If the holder of any property subject to the provisions of this Section knows that a potential beneficiary has been convicted of financial exploitation, abuse, or neglect of an elderly person or a person with a disability or has been found by a preponderance of the evidence to be civilly liable for financial exploitation within the scope of this Section, the holder shall fully cooperate with law enforcement authorities and judicial officers in connection with any investigation of the financial exploitation, abuse, or neglect. If the holder is a person or entity that is subject to regulation by a regulatory agency pursuant to the laws of this or any other state or pursuant to the laws of the United States, including but not limited to the business of a financial institution, corporate fiduciary, or insurance company, then such person or entity shall not be deemed to be in violation of this Section to the extent that privacy laws and regulations applicable to such person or entity prevent it from voluntarily providing law enforcement authorities or judicial officers with information.

(e) A civil action against a person for financial exploitation may be brought by an interested person, pursuant to this Section, after the death of the victim or during the lifetime of the victim if the victim is adjudicated a person with a disability. A guardian is under no duty to bring a civil action under this subsection during the ward's lifetime, but may do so if the guardian believes it is in the best interests of the ward.

(f) The court may, in its discretion, consider such facts and circumstances as it deems appropriate to allow the person found civilly liable for financial exploitation to receive a reduction in interest or benefit rather than no interest or benefit as stated under subsection (b) of this Section.

(Source: P.A. 98-833, eff. 8-1-14; 99-143, eff. 7-27-15.)

(755 ILCS 5/2-6.5)

Sec. 2-6.5. Parent neglecting child. A parent who, for a period of one year or more immediately before the death of the parent's minor or dependent child, has willfully neglected or failed to perform any duty of support owed to the minor or dependent child or who, for a period of one year or more, has willfully deserted the minor or dependent child shall not receive any property, benefit, or other interest by reason of the death, whether as heir, legatee, beneficiary, survivor, appointee, or in any other capacity (other than joint tenant) and whether the property, benefit, or other interest passes

pursuant to any form of title registration (other than joint tenancy), testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance, unless and until a court of competent jurisdiction makes a determination as to the effect on the deceased minor or dependent child of the parent's neglect, failure to perform any duty of support owed to the minor or dependent child, or willful desertion of the minor or dependent child and allows a reduced benefit or other interest that the parent was to receive by virtue of the death of the minor or dependent child, as the interests of justice require. In no event shall the reduction of the benefit or other interest be less than the amount of child support owed to the minor or dependent child at the time of the death of the minor or dependent child. The court's considerations in determining the amount to be deducted from the parent's award shall include, but not be limited to:

(1) the deceased minor's or dependent child's loss of opportunity as a result of the parent's willful neglect, failure to perform any duty of support owed to the minor or dependent child, or willful desertion of the minor or dependent child;

(2) the effect of the parent's willful neglect, failure to perform any duty of support owed to the minor or dependent child, or willful desertion of the minor or dependent child on the deceased minor's or dependent child's overall quality of life; and

(3) the ability of the parent to avoid the willful neglect, failure to perform any duty of support owed to the minor or dependent child, or willful desertion of the minor or dependent child.

A determination under this Section may be made by any court of competent jurisdiction separate and apart from any civil or criminal proceeding arising from the duty of support owed to or desertion of the minor or dependent child. A petition for adjudication of an allegation under this Section must be filed within 6 months after the date of the death of the minor or dependent child.

The holder of any property subject to the provisions of this Section shall not be liable for distributing, releasing, or transferring the property to the person who neglected, failed to perform any duty of support owed to the minor or dependent child, or willfully deserted the minor or dependent child if the distribution or release occurs before a determination has been made under this Section or if the holder of the property has not received written notification of the determination before the distribution or release, accompanied by a certified copy of the determination.

If the property in question is an interest in real property, that interest may be distributed, released, or transferred at any time by a holder of property, the parent, or any other person or entity before a determination is made under this Section and a certified copy of that determination is recorded in the office of the recorder in the county in which the real property is located. The document to be recorded must include the title of the action or proceeding, the parties to the action or proceeding, the court in which the action or proceeding was brought, the date of the determination, and the legal description, permanent index number, and common address of the real property. If a certified copy of the determination is not recorded within 6 months of the date of the determination, any subsequent recording of a certified copy of the determination does not act to prevent the distribution, release, or transfer of real property to any person or entity, including the neglectful parent.
(Source: P.A. 88-631, eff. 9-9-94.)

(755 ILCS 5/2-6.6)

Sec. 2-6.6. Person convicted of or found civilly liable for certain offenses against the elderly or a person with a disability.

(a) A person who is convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or a person who has been found by a preponderance of the evidence to be civilly liable for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, may not receive any property, benefit, or other interest by reason of the death of the victim of that offense, whether as heir, legatee, beneficiary, joint tenant, tenant by the entirety, survivor, appointee, or in any other capacity and whether the property, benefit, or other interest passes pursuant to any form of title registration, testamentary or nontestamentary instrument, intestacy, renunciation, or any other circumstance. Except as provided in subsection (f) of this Section, the property, benefit, or other interest shall pass as if the person convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or the person found by a preponderance of the evidence to be civilly liable for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, died before the decedent; provided that with respect to joint tenancy property or property held in tenancy by the entirety, the interest possessed prior to the death by the person convicted or found civilly liable may not be diminished by the application of this Section. Notwithstanding the foregoing, a person convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or a person who has been found by a preponderance of the evidence to be civilly liable for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, shall be entitled to receive property, a benefit, or an interest in any capacity and under any circumstances described in this Section if it is demonstrated by clear and convincing evidence that the victim of that offense knew of the conviction or finding of civil liability and subsequent to the conviction or finding of civil liability expressed or ratified his or her intent to transfer the property, benefit, or interest to the person convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or the person found by a preponderance of the evidence to be civilly liable for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, in any manner contemplated by this Section.

(b) The holder of any property subject to the provisions of this Section is not liable for distributing or releasing the property to the person convicted of violating Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or to the person found by a preponderance of the evidence to be civilly liable for financial exploitation as defined in subsection (a) of Section 2-6.2 of this Act.

(c) If the holder is a financial institution, trust company, trustee, or similar entity or person, the holder shall not be liable for any distribution or release of the property, benefit, or other interest to the person convicted of a violation of Section 12-19, 12-21, 16-1.3, or 17-56, or subsection (a) or (b) of Section 12-4.4a, of the Criminal Code of 1961 or the Criminal Code of 2012 or person found by a preponderance of the evidence to be civilly liable for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, unless the holder knowingly distributes or releases the property, benefit, or other interest to the person so convicted or found civilly liable after first having received actual written notice of the conviction or finding of civil liability in sufficient time to act upon the notice.

(d) The Department of State Police shall have access to State of Illinois databases containing information that may help in the identification or location of persons convicted of or found civilly liable for the offenses enumerated in this Section. Interagency agreements shall be implemented, consistent with security and procedures established by the State agency and consistent with the laws governing the confidentiality of the information in the databases. Information shall be used only for

administration of this Section.

(e) A civil action against a person for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, may be brought by an interested person, pursuant to this Section, after the death of the victim or during the lifetime of the victim if the victim is adjudicated a person with a disability. A guardian is under no duty to bring a civil action under this subsection during the ward's lifetime, but may do so if the guardian believes it is in the best interests of the ward.

(f) The court may, in its discretion, consider such facts and circumstances as it deems appropriate to allow the person convicted or found civilly liable for financial exploitation, as defined in subsection (a) of Section 2-6.2 of this Act, to receive a reduction in interest or benefit rather than no interest or benefit as stated under subsection (a) of this Section.

(Source: P.A. 98-833, eff. 8-1-14; 99-143, eff. 7-27-15.)

(755 ILCS 5/2-7) (from Ch. 110 1/2, par. 2-7)

Sec. 2-7. Disclaimer. (a) Right to Disclaim Interest in Property. A person to whom any property or interest therein passes, by whatever means, may disclaim the property or interest in whole or in part by delivering or filing a written disclaimer as hereinafter provided. A disclaimer may be of a fractional share or undivided interest, a specifically identifiable asset, portion or amount, any limited interest or estate or any property or interest derived through right of survivorship. A power (as defined in "An Act Concerning Termination of Powers", approved May 25, 1943, as amended) with respect to property shall be deemed to be an interest in such property.

The representative of a decedent or ward may disclaim on behalf of the decedent or ward with leave of court. The court may approve the disclaimer by a representative of a decedent if it finds that the disclaimer benefits the estate as a whole and those interested in the estate generally even if the disclaimer alters the distribution of the property, part or interest disclaimed. The court may approve the disclaimer by a representative of a ward if it finds that it benefits those interested in the estate generally and is not materially detrimental to the interests of the ward. A disclaimer by a representative of a decedent or ward may be made without leave of court if a will or other instrument signed by the decedent or ward designating the representative specifically authorizes the representative to disclaim without court approval.

The right to disclaim granted by this Section exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

(b) Form of Disclaimer. The disclaimer shall (1) describe the property or part or interest disclaimed, (2) be signed by the disclaimant or his representative and (3) declare the disclaimer and the extent thereof.

(c) Delivery of Disclaimer. The disclaimer shall be delivered to the transferor or donor or his representative, or to the trustee or other person who has legal title to the property, part or interest disclaimed, or, if none of the foregoing is readily determinable, shall be either delivered to a person having possession of the property, part or interest or who is entitled thereto by reason of the disclaimer, or filed or recorded as hereinafter provided. In the case of an interest passing by reason of the death of any person, an executed counterpart of the disclaimer may be filed with the clerk of the circuit court in the county in which the estate of the decedent is administered, or, if administration has not been commenced, in which it could be commenced. If an interest in real property is disclaimed, an executed counterpart of the disclaimer may be recorded in the office of the recorder in the county in which the real estate lies, or, if the title to the real estate is registered under "An Act concerning land titles", approved May 1, 1897, as amended, may be filed in the office of the registrar

of titles of such county.

(d) Effect of Disclaimer. Unless expressly provided otherwise in an instrument transferring the property or creating the interest disclaimed, the property, part or interest disclaimed shall descend or be distributed (1) if a present interest (a) in the case of a transfer by reason of the death of any person, as if the disclaimant had predeceased the decedent; (b) in the case of a transfer by revocable instrument or contract, as if the disclaimant had predeceased the date the maker no longer has the power to transfer to himself or another the entire legal and equitable ownership of the property or interest; or (c) in the case of any other inter vivos transfer, as if the disclaimant had predeceased the date of the transfer; and (2) if a future interest, as if the disclaimant had predeceased the event which determines that the taker of the property or interest has become finally ascertained and his interest has become indefeasibly fixed both in quality and quantity; and in each case the disclaimer shall relate back to such date for all purposes.

A disclaimer of property or an interest in property shall not preclude any disclaimant from receiving the same property in another capacity or from receiving other interests in the property to which the disclaimer relates.

Unless expressly provided otherwise in an instrument transferring the property or creating the interest disclaimed, a future interest limited to take effect at or after the termination of the estate or interest disclaimed shall accelerate and take effect in possession and enjoyment to the same extent as if the disclaimant had died before the date to which the disclaimer relates back.

A disclaimer made pursuant to this Section shall be irrevocable and shall be binding upon the disclaimant and all persons claiming by, through or under the disclaimant.

(e) Waiver and Bar. The right to disclaim property or a part thereof or an interest therein shall be barred by (1) a judicial sale of the property, part or interest before the disclaimer is effected; (2) an assignment, conveyance, encumbrance, pledge, sale or other transfer of the property, part or interest, or a contract therefor, by the disclaimant or his representative; (3) a written waiver of the right to disclaim; or (4) an acceptance of the property, part or interest by the disclaimant or his representative. Any person may presume, in the absence of actual knowledge to the contrary, that a disclaimer delivered or filed as provided in this Section is a valid disclaimer which is not barred by the preceding provisions of this paragraph.

A written waiver of the right to disclaim may be made by any person or his representative and an executed counterpart of a waiver of the right to disclaim may be recorded or filed, all in the same manner as provided in this Section with respect to a disclaimer.

In every case, acceptance must be affirmatively proved in order to constitute a bar to a disclaimer. An acceptance of property or an interest in property shall include the taking of possession, the acceptance of delivery or the receipt of benefits of the property or interest; except that (1) in the case of an interest in joint tenancy with right of survivorship such acceptance shall extend only to the fractional share of such property or interest determined by dividing the number one by the number of joint tenants, and (2) in the case of a ward, such acceptance shall extend only to property actually received by or on behalf of the ward or his representative during his minority or incapacity. The mere lapse of time or creation of an interest, in joint tenancy with right of survivorship or otherwise, with or without knowledge of the interest on the part of the disclaimant, shall not constitute acceptance for purposes of this Section.

This Section does not abridge the right of any person to assign, convey, release, renounce or disclaim any property or interest therein arising under any other statute or which arose under prior law.

Any interest in real or personal property which exists on or after the effective date of this Section

may be disclaimed after that date in the manner provided herein, but no interest which has arisen prior to that date in any person other than the disclaimant shall be destroyed or diminished by any action of the disclaimant taken pursuant to this Section.
(Source: P.A. 83-1362.)

(755 ILCS 5/2-8) (from Ch. 110 1/2, par. 2-8)

Sec. 2-8. Renunciation of will by spouse.)

(a) If a will is renounced by the testator's surviving spouse, whether or not the will contains any provision for the benefit of the surviving spouse, the surviving spouse is entitled to the following share of the testator's estate after payment of all just claims: 1/3 of the entire estate if the testator leaves a descendant or 1/2 of the entire estate if the testator leaves no descendant.

(b) In order to renounce a will, the testator's surviving spouse must file in the court in which the will was admitted to probate a written instrument signed by the surviving spouse and declaring the renunciation. The time of filing the instrument is: (1) within 7 months after the admission of the will to probate or (2) within such further time as may be allowed by the court if, within 7 months after the admission of the will to probate or before the expiration of any extended period, the surviving spouse files a petition therefor setting forth that litigation is pending that affects the share of the surviving spouse in the estate. The filing of the instrument is a complete bar to any claim of the surviving spouse under the will.

(c) If a will is renounced in the manner provided by this Section, any future interest which is to take effect in possession or enjoyment at or after the termination of an estate or other interest given by the will to the surviving spouse takes effect as though the surviving spouse had predeceased the testator, unless the will expressly provides that in case of renunciation the future interest shall not be accelerated.

(d) If a surviving spouse of the testator renounces the will and the legacies to other persons are thereby diminished or increased in value, the court, upon settlement of the estate, shall abate from or add to the legacies in such a manner as to apportion the loss or advantage among the legatees in proportion to the amount and value of their legacies.
(Source: P.A. 79-328.)

(755 ILCS 5/2-9) (from Ch. 110 1/2, par. 2-9)

Sec. 2-9. Dower and Curtesy.) There is no estate of dower or curtesy. All inchoate rights to elect to take dower existing on January 1, 1972, are extinguished.
(Source: P.A. 80-808.)