

9:3-38

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Adoptions--revision)

NJSA: 9:3-38

LAWS OF: 1993 CHAPTER: 345

BILL NO: A1418

SPONSOR(S): Stuhltrager and others

DATE INTRODUCED: May 14, 1992

COMMITTEE: ASSEMBLY: Judiciary; Law & Public Safety

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage
Third reprint enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: February 1, 1993

SENATE: December 16, 1993

DATE OF APPROVAL: December 28, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping--attached:
"Adoption law revision advances," 12-17-93, Bergen Record.

KBG:pp

DEPOSITORY COPY
Do Not Remove From Library

[THIRD REPRINT]
ASSEMBLY, No. 1418

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1992

By Assemblyman STUHLTRAGER, Assemblywoman DERMAN
and Assemblyman R. Brown

1 AN ACT concerning adoption, amending P.L.1979, c.292,
2 amending and supplementing P.L.1977, c.367 and repealing
3 sections 3 and 18 of P.L.1977, c.367.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. Section 2 of P.L.1977, c.367 (C.9:3-38) is amended to read
8 as follows:

9 2. For the purposes of this act:

10 a. "Approved agency" [shall mean] means a nonprofit
11 corporation, association or agency, including any public agency,
12 approved by the Department of Human Services for the purpose
13 of placing children for adoption in New Jersey;

14 b. "Child" [shall mean] means a person under 18 years of age;

15 c. "Custody" [shall mean] means the general right to exercise
16 continuing control over the person of a child derived from court
17 order or otherwise;

18 d. "Guardianship" [shall mean] means the right to exercise
19 continuing control over the person or property or both of a child
20 which includes any specific right of control over an aspect of the
21 child's upbringing derived from court order;

22 e. "Guardian ad litem" [shall mean] means a qualified person,
23 not necessarily an attorney, appointed by the court under the
24 provisions of this act or at the discretion of the court to
25 represent the interests of the child whether or not the child is a
26 named party in the action;

27 f. "Parent" [shall mean] means a ¹[natural] birth¹ parent or
28 ¹[natural]¹ parents, including the ¹[natural] birth¹ father of [the]
29 a child born out of wedlock who has acknowledged the child or to
30 whom the court has ordered notice to be given, or a parent or
31 parents by adoption;

32 g. "Placement for adoption" [shall mean] means the transfer
33 of custody of a child to a person for the purpose of adoption by
34 [such] that person; [and]

35 h. "Plaintiff" [shall mean] means a prospective parent or
36 parents who have filed a complaint for adoption;

37 i. "Legal services" means ¹[any services properly rendered by
38 an attorney-at-law, but shall not include the placement of a child
39 for adoption with a prospective adoptive parent] the provision of
40 counseling or advice related to the law and procedure for
41 adoption of a child, preparation of legal documents, or

EXPLANATION--Matter enclosed in hold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly Act committee amendments adopted November 12, 1992.

² Senate SJD committee amendments adopted March 18, 1993.

³ Senate floor amendments adopted June 10, 1993.

1 representation of any person before a court or administrative
2 agency¹; ¹[and]¹

3 j. "Surrender" means a voluntary relinquishment of all
4 parental rights by a birth parent, previous adoptive parent, or
5 other person or agency authorized to exercise these rights by law,
6 court order or otherwise, for purposes of allowing a child to be
7 adopted;

8 ¹k. "Home study" means an approved agency's formal
9 assessment of the capacity and readiness of prospective adoptive
10 parents to adopt a child, including the agency's written report
11 and recommendations conducted in accordance with rules and
12 regulations promulgated by the Director of the Division of Youth
13 and Family Services; and

14 l. "Intermediary" means any person, firm, partnership,
15 corporation, association or agency, who acts for or between any
16 parent and any prospective parent or acts on behalf of either in
17 connection with a placement for adoption of the parent's child.
18 An intermediary shall not receive money or other valuable
19 consideration in connection with the placement of a child for
20 adoption¹.

21 (cf: P.L.1977, c.367, s.2)

22 2. Section 4 of P.L.1977, c.367 (C.9:3-40) is amended to read
23 as follows:

24 4. The Commissioner of [the Department of] Human Services
25 shall promulgate rules and regulations relating to the
26 qualification of agencies for approval to make placements for
27 adoption in New Jersey. [Such] The rules and regulations shall
28 include, but shall not be limited to standards of professional
29 training and experience of staff and requirements relating to
30 responsibilities of trustees, officers or other persons supervising
31 or conducting the placement for adoption program, adequacy of
32 facilities, maintenance and confidentiality of casework records
33 and furnishing of reports. ¹[No] In the selection of adoptive
34 parents the standard shall be the best interests of the child; and
35 an¹ approved agency shall ¹not¹ discriminate with regard to the
36 selection of adoptive parents for any child on the basis of age,
37 sex, race, national origin, religion or marital status provided,
38 however, that these factors may be considered in determining
39 whether the best interests of a child would be served by a
40 particular placement for adoption or adoption.

41 (cf: P.L.1977, c.367, s.4)

42 3. Section 5 of P.L.1977, c.367 (C.9:3-41) is amended to read
43 as follows:

44 5. a. Surrender of a child to an approved agency for the
45 purpose of adoption, other than a surrender taken in accordance
46 with P.L.1955, c.232 (C.9:2-13 et seq.), shall be by a signed
47 instrument acknowledged by the person executing the [same]
48 instrument before an officer authorized to take acknowledgments
49 or proofs in the State in which the instrument is executed[, such
50 officer first having made known the contents of the instrument to
51 the person making the acknowledgment and having been satisfied
52 as to the identity of the person executing the surrender, which
53 the officer shall certify on the instrument of surrender or on a
54 paper attached thereto. Such]. Prior to the execution of the

1 surrender, the approved agency shall, directly or through its
2 agent, inform the person executing the surrender that the
3 instrument is a surrender of parental rights by the signatory and
4 means the permanent end of the relationship and all contact
5 between the parent and child. ¹[This] The approved agency shall
6 advise the parent that the¹ surrender shall constitute
7 relinquishment of [such] the person's parental rights in or
8 guardianship or custody of the child named therein and consent by
9 [such] the person to adoption of the child. ¹The approved agency
10 shall offer counseling to the parent, prior to the execution of the
11 surrender.¹ [Such] The surrender shall be valid and binding
12 without regard to the age of the person executing the surrender
13 ²and shall be irrevocable except at the discretion of the approved
14 agency taking such surrender or upon order or judgment of a
15 court of competent jurisdiction setting aside such surrender upon
16 proof of fraud, duress or misrepresentation ³[of] by³ the approved
17 agency. The surrender taken pursuant to this section shall be
18 valid whether acknowledged in this State pursuant to section 1 of
19 P.L.1991, c.308 (C.46:14-2.1) or acknowledged in another state or
20 country pursuant to section 1 of P.L.1991, c.308 (C.46:14-6.1)².

21 b. Any approved agency may accept custody of a child by a
22 duly executed instrument of surrender from a parent or guardian
23 of the child or from another approved agency or any agency for
24 the care and protection of children approved by any other state,
25 by the United States or by any foreign country, which has duly
26 obtained the authority to place [such] the child for adoption.

27 c. A surrender executed in another state or foreign country by
28 a domiciliary of that state or country and valid where executed
29 shall be deemed a valid surrender in this State ³if taken more
30 than 72 hours after the birth of the child³.

31 d. At the request of a parent of the child, an approved agency
32 authorized to receive surrenders, may receive that parent's
33 surrender of his child for purposes of having the child adopted by
34 a person specified by the surrendering parent. The agency shall
35 follow all regulations regarding the securing of a surrender and
36 shall cooperate with the prospective parents in the processing of
37 the proposed adoption. An adoption based on a surrender under
38 this subsection shall be deemed one in which the child was
39 received from an approved agency for purposes of section 11 of
40 P.L.1977, c.367 (C.9:3-47).

41 e. A surrender of a child shall not be valid if taken prior to the
42 birth of the child who is the subject of the surrender. A
43 surrender by the ¹[natural mother] birth parent¹ of a child shall
44 not be valid if taken within 72 hours of the birth of the child.
45 The denial of paternity by an alleged father, at any time
46 including prior to the birth of the child, shall be deemed a
47 surrender for purposes of allowing the child to be adopted.

48 (cf: P.L.1977, c.367, s.5)

49 4. Section 1 of P.L.1979, c.292 (C.9:3-41.1) is amended to read
50 as follows:

51 1. [Any] a. An approved agency making an investigation of the
52 facts and circumstances surrounding the surrender of a child shall
53 provide a prospective parent with all available information, ₁
54 other than information which would identify or permit the

1 identification of the birth parent of the child, relevant to the
2 child's development, including his developmental and medical
3 history, personality and temperament, the parent's complete
4 medical histories, including conditions or diseases which are
5 believed to be hereditary, any drugs or medications taken during
6 pregnancy and any other conditions of the parent's health which
7 may be a factor influencing the child's present or future health.
8 [Such] This information shall be made available to the prospective
9 parent prior to the actual adoptive placement ²[in the case of a
10 placement made by an approved agency, or] to the extent
11 available and supplemented² upon the completion of an
12 investigation conducted by an approved agency pursuant to
13 section 12 of P.L.1977, c.367 (C.9:3-48).

14 b. The available information required of an approved agency
15 by subsection a. of this section shall be presented to the adoptive
16 parents on standardized forms prepared by the Commissioner of
17 Human Services.

18 (cf: P.L.1979, c.292, s.1)

19 5. Section 6 of P.L.1977, c.367 (C.9:3-42) is amended to read
20 as follows:

21 6. An action for adoption shall be instituted in the Superior
22 Court, Chancery Division, Family Part of the county in which the
23 prospective parent resides, or in the county where the child
24 resided immediately prior to placement for adoption, or if the
25 child is less than three months of age, the county in which the
26 child was born; except that whenever the child to be adopted has
27 been received into the home of a prospective parent from an
28 approved agency, the action may be instituted in the Superior
29 Court, Chancery Division, Family Part of any county in which the
30 approved agency has an office.

31 (cf: P.L.1991, c.91, s.193)

32 6. Section 7 of P.L.1977, c.367 (C.9:3-43) is amended to read
33 as follows:

34 7. a. Any person may institute an action for adoption[,
35 provided, however,] except that a married person may do so only
36 with the written consent of his spouse or jointly with his spouse in
37 the same action or [after having lived] if living separate and
38 apart from his spouse [for a continuous period of at least 18
39 months].

40 b. [Each] A plaintiff, at the time of the institution of the
41 action, shall have attained the age of 18 years and shall be at
42 least 10 years older than the child to be adopted, [provided,
43 however,] except that the court for good cause may waive either
44 requirement, [such] which waiver [to] shall be recited in any
45 judgment of adoption thereafter entered.

46 (cf: P.L.1977, c.367, s.7)

47 7. Section 8 of P.L.1977, c.367 (C.9:3-44) is amended to read
48 as follows:

49 8. Whenever [any] a person [shall receive] receives a child into
50 his home for the purpose of adoption other than from an approved
51 agency, [an action] a complaint for adoption shall be [instituted
52 with reasonable promptness] filed within 45 days after receipt of
53 the child ¹If the person receiving the child has been approved
54 previously for placement for adoption in accordance with the

1 provisions of section 18 of P.L. , c. (C.)(now pending
2 before the Legislature as this bill), the person shall, immediately
3 upon receiving the child, notify the approved agency which
4 granted such approval of the receipt of the child, and that agency
5 shall undertake immediate supervision of the child in accordance
6 with rules and regulations promulgated by the Director of the
7 Division of Youth and Family Services. The cost of such
8 supervision shall be paid by the person receiving the child. If the
9 agency, in the course of supervision shall determine that the child
10 is at risk of harm or that the best interests of the child are not
11 served by the child remaining in the home, the agency may apply
12 to a court for removal of the child from the home.¹ Whenever
13 [any] a person [shall receive] receives a child into his home for
14 purposes other than adoption and it is later determined that an
15 adoption shall be sought, [an action] a complaint for adoption
16 shall be instituted with reasonable promptness following [such]
17 the determination. Failure to [so act] file the complaint in a
18 timely manner shall not be a sole basis for refusal of the adoption
19 but the failure shall require the filing, with the complaint, of an
20 affidavit setting forth the reasons for the delay.

21 (cf: P.L.1977, c.367, s.8)

22 8. Section 9 of P.L.1977, c.367 (C.9:3-45) is amended to read
23 as follows:

24 9. a. In [any] an adoption proceeding pursuant to [this act]
25 P.L.1977, c.367, (C.9:3-37 et seq.), notice of the complaint may
26 not be waived and a notice of hearing shall be served in
27 accordance with the Rules of Court on each parent of the child to
28 be adopted. The notice shall inform each parent of the purpose
29 of the action and of the parent's right to file written objections
30 to the adoption within 20 days after notice is given in the case of
31 a resident and 35 days in the case of a nonresident. ¹[For
32 purposes of this section, "parent" [shall include] includes (1) the
33 husband of the mother of a child born or conceived during the
34 marriage and (2) a putative or alleged natural mother or father of
35 a child.]¹ ²For purposes of this section, "parent" includes (1) the
36 husband of the mother of a child born or conceived during the
37 marriage and (2) a putative or alleged natural mother or father of
38 a child².

39 b. Notice pursuant to subsection a. of this section shall not be
40 served on [any] a parent:

41 (1) Who has executed a valid surrender to an approved agency
42 pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) or P.L.1955,
43 c.232 (C.9:2-13 et seq.);

44 (2) Whose parental rights have been terminated in a separate
45 judicial proceeding by court order;

46 (3) Who has, prior to the placement of the child for adoption,
47 received notice of the intention to place the child, which notice
48 shall inform the parent of the purpose of the placement, that
49 failure to respond to the notice will prevent the person receiving
50 the notice from objecting to any future adoption of the child, and
51 [of the parent's] that the parent has a right to file with the
52 [court, in accordance with the Rules of Court] surrogate in the
53 county in which venue is anticipated to lie, the address of which
54 surrogate shall be included in the notice, written objections to

1 the proposed placement within 20 days after notice is given, in
2 the case of a resident, and 35 days in the case of a nonresident;
3 and who has either failed to file written objections or denied
4 paternity or maternity of the child. Failure to respond to this
5 notice and object to the placement of the child for adoption shall
6 constitute a waiver of all notice of any subsequent proceedings
7 with regard to the child including proceedings for adoption or
8 termination of parental rights;

9 (4) Who has [surrendered] given the child for adoption to the
10 adopting parent [in accordance with the provisions of section 3
11 and the court determines], and ³[a court] the Superior Court,
12 Chancery Division, Family Part³, after a hearing at which the
13 surrendering parent was heard as to the voluntariness of the
14 surrender, has determined that the surrender [is valid] was
15 voluntary and proper; or

16 (5) Whose child has been made available for adoption in a
17 foreign state or country²[. If] if² the United States Immigration
18 and Naturalization Service has determined that the child has been
19 approved for adoptive placement²[, that]. The² finding ²of the
20 United States Immigration and Naturalization Service² shall be
21 [presumptive] presumed valid and no notice ²[as to the
22 availability of the child for adoption]² shall be served.

23 c. If personal service of the notice cannot be effected because
24 the whereabouts of [any] a parent of the child to be adopted are
25 unknown, the court shall determine that an adequate effort has
26 been made to serve notice upon the parent if the plaintiff
27 immediately prior to or during the placement and not more than
28 [9] nine months prior to the filing of a complaint has:

29 (1) Sent the notice by regular mail and by certified mail return
30 receipt requested, to the parent's last known address;

31 (2) Made a discreet inquiry as to the whereabouts of the
32 missing parent among any known relations, friends and current or
33 former employers of the parent;

34 (3) Unless otherwise restricted by law, made direct inquiries,
35 using the party's name and last known or suspected address, to
36 the local post office, the Division of Motor Vehicles, county
37 welfare [office] agency, the municipal police department, the
38 Division of State Police, the county probation office, the
39 Department of Corrections, and any social service and law
40 enforcement agencies known to have had contact with the party,
41 or the equivalents in other states, territories or countries.
42 Failure to receive a response to the inquiries within 45 days shall
43 be a negative response.

44 d. In any case where the identity of a parent cannot be
45 determined or where the known parent of a child is unable or
46 refuses to identify the other parent, and the court is unable from
47 other information before the court to identify the other parent,
48 service on that parent shall be waived by the court.

49 ³e. In conducting the hearing required by paragraph (4) of
50 subsection b. of this section, the court shall determine that the
51 surrender is voluntary and that the birth parent knows (1) that the
52 hearing is to surrender birth rights; (2) that the hearing is to
53 permanently end the relationship and all contact between parent
54 and child; (3) that such action is a relinquishment and termination

1 of parental rights and consent on the part of the birth parent to
2 the adoption; and (4) that no further notice of the adoption
3 proceedings shall be provided to the birth parent if the surrender
4 is accepted by the court.³

5 (cf: P.L.1982, c.105, s.1)

6 9. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read
7 as follows:

8 10. a. [Any parent who has not executed a surrender pursuant
9 to section 5 and whose parental rights have not been terminated
10 by court order] A person who is entitled to notice pursuant to
11 section 9 of P.L.1977, c.367 (C.9:3-45) shall have the right to
12 object to the adoption of his child. [No] A judgment of adoption
13 shall not be entered over an objection of [such] a parent
14 communicated to the court by personal appearance or by letter
15 unless the court finds:

16 (1) that [such] the parent has substantially failed to perform
17 the regular and expected parental functions of care and support
18 of the child, [which shall include maintenance of an emotional
19 relationship with the child] although able to do so, or

20 (2) that the parent is unable to perform the regular and
21 expected parental functions of care and support of the child and
22 that the parent's inability to perform those functions is unlikely
23 to change in the immediate future.

24 The regular and expected functions of care and support of a
25 child shall include the following:

26 (a) the maintenance of a relationship with the child such that
27 the child perceives the person as his parent;

28 (b) communicating with the child or person having legal
29 custody of the child and visiting the child unless visitation is
30 impossible because of the parent's confinement in an institution,
31 or unless prevented from so doing by the custodial parent or other
32 custodian of the child or a social service agency over the birth
33 parent's objection; or

34 (c) providing financial support for the child unless prevented
35 from doing so by the custodial parent or other custodian of the
36 child or a social service agency.

37 A parent shall be presumed to have failed to perform the
38 regular and expected parental functions of care and support of
39 the child if the court finds that the situation set forth in
40 paragraph (1) or (2) has occurred for six or more months.

41 b. [Any] The guardian of a child to be adopted who has not
42 executed a surrender pursuant to section 5 of P.L.1977, c.367
43 (C.9:3-41) and any other person [standing in loco parentis of such
44 child] who has provided care and supervision in his home for the
45 child for a period of six months or one half of the life of the
46 child, whichever is less, in the two years prior to the complaint
47 shall be given notice of the action and in accordance with the
48 Rules of Court shall have standing to object to the adoption,
49 which objection shall be given due consideration by the court in
50 determining whether the best interests of the child would be
51 promoted by the adoption.

52 (cf: P.L.1977, c.367, s.10)

53 10. Section 11 of P.L.1977, c.367 (C.9:3-47) is amended to
54 read as follows:

1 11. a. When the child to be adopted has been received from an
2 approved agency, the prospective parent shall file with the court
3 a complaint for adoption after the child has been in the home of
4 [such] the prospective parent for at least [6] six months. In the
5 discretion of the approved agency, a complaint may be filed prior
6 to that time and the court may schedule a hearing to resolve all
7 matters except finalization of the adoption. The adoption shall
8 not be finalized under this section unless the child has been in the
9 home of the adoptive parent for at least six months. The
10 complaint shall be accompanied by a consent to the plaintiff's
11 adoption of the child signed and acknowledged by an authorized
12 officer or representative of the approved agency; [provided,
13 however,] except that failure or refusal on the part of [such] the
14 approved agency to give [such] consent, or withdrawal of consent
15 on the part of [such] the approved agency, shall not preclude an
16 action for adoption.

17 b. Upon the filing of the complaint, the court shall set a date
18 for the adoption hearing not less than 10 nor more than 30 days
19 from the date of institution of the action unless a longer period
20 shall be required in order to obtain service of notice upon one or
21 more of the [parents] people entitled thereto and shall order the
22 approved agency concerned to file at least [5] five days prior to
23 the hearing a [two-part] written report[, part one of] which shall
24 describe the circumstances surrounding the surrender of the child
25 [to the agency] and [part two of which] shall set forth the results
26 of the agency's evaluation of the child [and of], the plaintiff and
27 [his spouse, if any, and] any other person residing in the proposed
28 adoptive home; ³and³ the agency's assessment of the care being
29 received by the child and the adjustment of the child and the
30 plaintiff as members of a family³; and a criminal history record
31 background check and check for any records which might reveal a
32 history of child abuse or neglect by the proposed adoptive parent
33 or member of the parent's household 18 years of age or older]³.

34 ³[(1) The Commissioner of Human Services shall adopt rules,
35 regulations and procedures regarding criminal history record
36 background information which would disqualify a person from
37 becoming an adoptive parent.

38 (2) The proposed adoptive parent and any member of the
39 parent's household 18 years of age or older shall submit to the
40 commissioner his name, address and fingerprints taken on
41 standard fingerprint cards by a State or municipal law
42 enforcement agency. The commissioner is authorized to
43 exchange fingerprint data and receive criminal history record
44 information from the Federal Bureau of Investigation and the
45 Division of the State Police for use in making the determinations
46 provided for in this subsection.

47 (3) The Department of Human Services shall act as a
48 clearinghouse for the collection and dissemination of information
49 obtained by the Federal Bureau of Investigation and the Division
50 of the State Police as a result of conducting a criminal history
51 record background check. The department shall advise the
52 approved agency of the information received from the Federal
53 Bureau of Investigation and the State Police concerning the
54 proposed adoptive parent or member of the parent's household.

1 (4) The commissioner shall require that the cost of all criminal
2 history record background checks conducted on the proposed
3 adoptive parent or member of the parent's household shall be
4 paid by that person at the time that written consent is given.

5 (5) At the request of an approved agency, the commissioner or
6 his designee shall conduct a search of the records of the Division
7 of Youth and Family Services regarding referrals of dispositions
8 of child abuse or neglect matters as to the proposed adoptive
9 parent and any member of the parent's household 18 years of age
10 or older, and, if there is information that would raise a question
11 of the suitability of the proposed adoptive parent or member of
12 the parent's household to have guardianship of a child, shall
13 provide that information to the approved agency for its
14 consideration. Information provided to the approved agency
15 pursuant to this paragraph shall be confidential. The
16 commissioner shall establish penalties for disclosure of this
17 confidential information.]³

18 If the agency's report contains any material findings or
19 recommendations adverse to the plaintiff the agency shall serve a
20 copy of that part [two] of its report upon the plaintiff at least [5]
21 five days prior to the hearing and the court shall appoint a
22 guardian ad litem for the child in the adoption proceeding if the
23 court determines that [such] a guardian is necessary to represent
24 the best interest of the child. If the approved agency that placed
25 the child with the plaintiff has not consented to the adoption, the
26 court may appoint another approved agency to conduct an
27 investigation and make recommendations in the matter. [Such]
28 The appointment shall not deprive the placing agency of standing
29 to appear at the hearing and contest the adoption. Personal
30 appearance at the hearing by a representative of the approved
31 agency conducting the investigation may be dispensed with by the
32 court if the agency's report favors the adoption. If [such] an
33 appearance is required, the approved agency shall be entitled to
34 present testimony and to cross-examine witnesses and shall be
35 subject to cross-examination with respect to its report and
36 recommendations in the matter. The appearance of the child to
37 be adopted shall not be required unless ordered by the court or
38 unless the inquiry pursuant to section 13 of P.L.1977, c.367
39 (C.9:3-49) indicates that the child is opposed to the adoption.

40 c. The adoption hearing shall be held in camera. If a parent of
41 the child has made an objection to the adoption, in accordance
42 with section 10 of P.L.1977, c.367 (C.9:3-46), the court shall take
43 evidence relating to [such] the objection. If the court finds
44 against the objecting parent in accordance with subsection [(a)] a.
45 of section 10 of P.L.1977, c.367 (C.9:3-46), it shall make an order
46 terminating the parental rights of [such] the parent and proceed
47 with the hearing.

48 d. If, based upon the approved agency's report and the
49 evidence presented at the hearing, the court is satisfied that the
50 best interests of the child would be promoted by the adoption, the
51 court shall enter a judgment of adoption. If, based upon the
52 approved agency's report and the evidence presented at the
53 hearing, the court is not satisfied that the best interests of the

1 child would be promoted by the adoption, the court shall deny the
2 adoption and make such further order concerning the custody and
3 guardianship of the child as may be deemed proper in the
4 circumstances.

5 (cf: P.L.1977, c.367, s.11)

6 11. Section 12 of P.L.1977, c.367 (C.9:3-48) is amended to
7 read as follows:

8 12. a. When the child to be adopted has not been received
9 from an approved agency, the prospective parent shall file with
10 the court a complaint for adoption. Upon receipt of the
11 complaint, the court shall by its order:

12 (1) Declare the child to be a ward of the court and declare
13 that the plaintiff shall have custody of [such] the child subject to
14 further order of the court;

15 (2) Appoint an approved agency to make an investigation and
16 submit a written report to the court ¹[concerning] which shall
17 include¹:

18 (a) the facts and circumstances surrounding the surrender of
19 custody by the child's parents [and] ¹[, including the identity of
20 any intermediary who participated in the placement of the child;

21 (b)] and¹ the placement of the child in the home of the
22 plaintiff [and] ², including the identity of any intermediary who
23 participated in the placement of the child²;

24 ¹[(c)] (b)¹ an evaluation of the child and of the plaintiff and
25 the spouse of the plaintiff if not the child's parent ¹and any
26 other person residing in the prospective home¹ ; ¹[and]¹ [if not a
27 party to the action, provided, however, that whenever the
28 plaintiff is a stepparent of the child, the court may dispense with
29 the agency investigation and report and take direct evidence at
30 the preliminary hearing of the facts and circumstances
31 surrounding the adoption] ³and³

32 ¹(c) any fees, expenses or costs paid by or on behalf of the
33 adopting parent in connection with the adoption³[; and¹

34 (d) a criminal history record background check and check for
35 any records which might reveal a history of child abuse or neglect
36 by the prospective adoptive parent or any member of the
37 parent's household 18 years of age or older]³.

38 ²[¹The agency conducting the investigation shall, if it is able
39 to, contact the birth parent, notify the birth parent of the
40 availability of counseling with regard to the decision to surrender
41 the child and shall provide such counseling unless refused by the
42 birth parent.¹] The agency conducting the investigation shall, if it
43 is able to, contact the birth parent and confirm that ³[the]³
44 counseling ³,if³ required by section 18 of this act ³,³ has either
45 been provided or waived by the birth parent. If not previously
46 provided, the agency shall advise the parent of the availability of
47 such counseling through the agency and shall provide such
48 counseling if requested by the birth parent ³or if the birth parent
49 resides out of State or out of the country, such counseling should
50 be made available by or through an agency approved to provide
51 such counseling in the birth parent's state or country of
52 domicile³. The agency shall further confirm that the birth parent
53 has been advised that ³the decision of the birth parent not to
54 place the child for adoption or³ the return of the child to the
55 birth parent can not be conditioned upon the repayment of

1 expenses by the birth parent to the adoptive parent.²

2 All expenses and fees for the investigation¹and any counseling
3 provided¹ shall be the responsibility of the plaintiff;

4 (3) Direct the plaintiff to cooperate with the approved agency
5 making [such] the investigation and report; and

6 (4) Fix a day for preliminary hearing not less than [2] two or
7 more than [3] three months from the date of the [institution of
8 the action] filing of the complaint; [provided, however,] except
9 that [such] the hearing may be accelerated upon the application
10 of the approved agency and upon notice to the plaintiff [where] if
11 the agency determines that removal of the child from the
12 plaintiff's home is required, in which case the court shall appoint
13 a guardian ad litem to represent the child at all future
14 proceedings regarding the adoption.

15 Whenever the plaintiff is a stepparent of the child, the court,
16 in its discretion, may dispense with the agency investigation and
17 report and take direct evidence at the preliminary hearing of the
18 facts and circumstances surrounding the filing of the complaint
19 for adoption.

20 Whenever a plaintiff is a brother, sister, grandparent, aunt,
21 uncle, or ¹[natural] birth¹ father [or stepparent] of the child, the
22 order may limit the investigation to an inquiry concerning the
23 status of the parents of the child and an evaluation of the
24 plaintiff. At least 10 days prior to the day fixed for the
25 preliminary hearing the approved agency shall file its report with
26 the court and serve a copy [thereof] on the plaintiff.

27 b. The preliminary hearing shall be in camera and shall have
28 for its purpose the determination of the circumstances under
29 which the child was relinquished by his parents and received into
30 the home of the plaintiff, the status of the parental rights of the
31 parents, the fitness of the child for adoption and the fitness of
32 the plaintiff to adopt the child and to provide a suitable home. If
33 the report of the approved agency pursuant to subsection a. of
34 this section contains [any] material findings or recommendations
35 adverse to the plaintiff, the presence of a representative of the
36 approved agency who has personal knowledge of the investigation
37 shall be required at the preliminary hearing. If in the course of
38 the preliminary hearing the court [shall determine] determines
39 that there is lack of jurisdiction [or that there is], lack of
40 qualification on the part of the plaintiff[, the action shall be
41 dismissed forthwith. If in the course of the preliminary hearing
42 the court shall determine] or that the best interests of the child
43 would not be promoted by the adoption, the court shall deny the
44 adoption and make such further order concerning the custody and
45 guardianship of the child as may be deemed proper in the
46 circumstances.

47 c. If upon completion of the preliminary hearing the court
48 finds that:

49 (1) The parents of the child do not have rights as to custody of
50 the child by reason of their rights previously having been
51 terminated by court order[.]; or, as provided in section 10 of
52 P.L.1977, c.367 (C.9:3-46) their failure to make timely objection
53 to the adoption [pursuant to section 10] or [intentional
54 abandonment or very substantial neglect of parental duties

1 without a reasonable expectation of a reversal of that conduct in
2 the future] their substantial failure to perform the regular and
3 expected parental functions of care and support of the child,
4 although able to do so, or their inability to perform these
5 functions which is unlikely to change in the immediate future;

6 (2) The guardian, if any, should have no further control or
7 authority over the child;

8 (3) The child is fit for adoption; and

9 (4) The plaintiff is fit to adopt the child, [it] the court shall
10 1;(a)¹ issue an order stating its findings, declaring that no parent
11 or guardian of the child has [any] a right to custody or
12 guardianship of the child ¹[, terminating] ;(b) terminate¹ the
13 parental rights of [such] that person ², which order shall be a
14 final order² ¹[, fixing] ;(c) fix¹ a date for final hearing not less
15 than [6] six nor more than [9] nine months from the date of the
16 preliminary hearing ^{1,1} and ¹[appointing] (d) appoint¹ an approved
17 agency to supervise and evaluate the continuing placement in
18 accordance with subsection d. of this section. If the plaintiff is a
19 brother, sister, grandparent, aunt, uncle, ¹[natural] birth¹ father,
20 stepparent or foster parent of the child, or if the child has been
21 in the home of the plaintiff for at least [2] two years immediately
22 preceding the commencement of the adoption action, and if the
23 court is satisfied that the best interests of the child would be
24 promoted by the adoption, the court may dispense with [such] this
25 evaluation and final hearing and enter a judgment of adoption
26 immediately upon completion of the preliminary hearing.

27 d. The approved agency appointed pursuant to subsection c. of
28 this section shall from time to time visit the home of the
29 plaintiff and make such further inquiry as may be necessary to
30 observe and evaluate the care being received by the child and the
31 adjustment of the child and the plaintiff as members of a family.
32 At least 15 days prior to the final hearing [such] the approved
33 agency shall file with the court a written report of its findings,
34 including a recommendation concerning the adoption, and shall
35 mail a copy of the report to the plaintiff.

36 If at any time following the preliminary hearing [such] the
37 approved agency [shall conclude] concludes that the best interests
38 of the child would not be promoted by the adoption, the court[,]
39 shall appoint a guardian ad litem for the child and after a hearing
40 held upon the application of [such] the approved agency and upon
41 notice to the plaintiff, may modify or revoke any order entered in
42 the action and make such further order concerning the custody
43 and guardianship of the child as may be deemed proper in the
44 circumstances.

45 e. At the final hearing the court shall proceed in camera;
46 [provided, however,] except that if the approved agency in its
47 report pursuant to subsection d. of this section has recommended
48 that the adoption be granted, the final hearing may be dispensed
49 with and, if the court is satisfied that the best interests of the
50 child would be promoted by the adoption, a judgment of adoption
51 may be entered [forthwith] immediately.

52 The appearance of the approved agency at the final hearing
53 shall not be required unless its recommendations are adverse to

1 the plaintiff or unless ordered by the court. If [such] its
2 appearance is required, the approved agency shall be entitled to
3 present testimony and to cross-examine witnesses and shall be
4 subject to cross-examination with respect to its report and
5 recommendations in the matter.

6 f. If, based upon the report and the evidence presented, the
7 court is satisfied that the best interests of the child would be
8 promoted by the adoption, the court shall enter a judgment of
9 adoption. If, based upon [such] the evidence, the court is not
10 satisfied that the best interests of the child would be promoted
11 by the adoption, the court shall deny the adoption and make such
12 further order concerning the custody and guardianship of the
13 child as may be deemed proper in the circumstances.

14 (cf: P.L.1977, c.367, s.12)

15 12. Section 13 of P.L.1977, c.367 (C.9:3-49) is amended to
16 read as follows:

17 13. If the child sought to be adopted is of the age of 10 years
18 or over, the appearance of [such] the child shall be required at
19 the final adoption hearing, unless waived by the court for good
20 cause shown, and the child's wishes concerning the adoption shall
21 be solicited by the court and given consideration if the child is of
22 sufficient capacity to form an intelligent preference regarding
23 the adoption.

24 (cf: P.L.1977, c.367, s.13)

25 13. Section 14 of P.L.1977, c.367 (C.9:3-50) is amended to
26 read as follows:

27 14. a. [The entry of a judgment of adoption shall terminate all
28 relationships between the adopted child and his parents and all
29 rights, duties and obligations of any person that are founded upon
30 such relationships, including rights of inheritance under the
31 intestate laws of this State, except such rights as may have
32 vested prior to entry of the judgment of adoption; provided,
33 however, that when the plaintiff is a stepfather or stepmother of
34 the adopted child and the adoption is consummated with the
35 consent and approval of the mother or father, respectively, such
36 adoption shall not affect or terminate any relationship between
37 the child and such mother or father or any rights, duties or
38 obligations based thereupon. For good cause, the court may in
39 the judgment provide that the rights of inheritance from or
40 through a deceased parent will not be affected or terminated by
41 the adoption.] (Deleted by amendment, P.L. c.).

42 b. The entry of a judgment of adoption shall establish the same
43 relationships, rights, [duties and obligations] and responsibilities
44 between the child and the adopting parent as if [such] the child
45 were born to [such] the adopting parent in lawful wedlock. For
46 good cause, the court may direct the entry of judgment nunc pro
47 tunc as of the date the action was instituted. In applying the
48 intestate laws of this State, an adopted child shall have the same
49 rights of inheritance as if born to the adopting parent in lawful
50 wedlock. [In the construction of any testamentary or other
51 document executed subsequent to the effective date of this act,
52 an adopted child shall be deemed lawful issue of the adopting
53 parents unless such document shall otherwise provide.]

54 c. The entry of a judgment of adoption shall:

1 (1) terminate all parental rights and responsibilities of the
2 parent towards the adoptive child except for a parent who is the
3 spouse of the petitioner and except those rights that have vested
4 prior to entry of the judgment of adoption;

5 (2) terminate all rights of inheritance under intestacy from or
6 through the parent unless that parent is the spouse of the
7 petitioner or that parent or other relative had died prior to the
8 judgment of adoption; and

9 (3) terminate all rights of inheritance under intestacy from or
10 through the child which existed prior to the adoption.

11 ²[d. With the consent of the adopting parent the court may
12 provide in the adoption order for visitation or other type of
13 communication with the child after the adoption by any person
14 who had a relationship with or was biologically related to the
15 adopted child. This provision may be modified by the court,
16 subsequent to the adoption on petition of the adoptive parent for
17 good cause shown.]²

18 ¹d. The court may order counseling for the adopting parents.¹
19 (cf: P.L.1977, c.367, s.14)

20 14. Section 15 of P.L.1977, c.367 (C.9:3-51) is amended to
21 read as follows:

22 15. The clerk of the Superior Court, Chancery Division, Family
23 Part shall promptly file all judgments of adoption and shall
24 maintain an alphabetical index of all judgments of adoption
25 entered each year pursuant to [this act] P.L.1977, c.367 (C.9:3-37
26 et seq.), all of which records shall be sealed and thereafter shall
27 be made accessible only by court order.

28 (cf: P.L.1991, c.91, s.194)

29 15. Section 16 of P.L.1977, c.367 (C.9:3-52) is amended to
30 read as follows:

31 16. a. All records of proceedings relating to adoption,
32 including the complaint, judgment and all petitions, affidavits,
33 testimony, reports, briefs, orders and other relevant documents,
34 shall be filed under seal by the clerk of the court and shall at no
35 time be open to inspection or copying unless the court, upon good
36 cause shown, shall otherwise order. An index to all adoption
37 proceedings shall be maintained by the clerk of the court, but no
38 index of adoption proceedings shall be open to inspection or
39 copying or be made public except upon order of the court.

40 b. Upon entry of a judgment of adoption, the clerk of the court
41 shall certify to the State [Bureau of Vital Statistics] Registrar,
42 any successor agency or any similar agency in the State or
43 country of the child's birth, the date of entry of the judgment,
44 the names of the adopting parent or parents, the name of the
45 child, the date and place of birth of the child and the new name
46 of the child if changed by the judgment of adoption.

47 (cf: P.L.1977, c.367, s.16)

48 16. Section 17 of P.L.1977, c.367 (C.9:3-53) is amended to
49 read as follows:

50 17. The costs of all proceedings pursuant to [this act]
51 P.L.1977, c.367 (C.9:3-37 et seq.) shall be borne by the plaintiff,
52 including the costs incurred by an approved agency acting
53 pursuant to an order of the court; [provided, however,] except
54 that [such] the approved agency may waive part [of] or all [such]

1 costs. Payment of costs [hereunder] shall not be a condition
 2 precedent to entry of judgment. [Such] The costs shall not
 3 include the provision of counsel for any person, other than the
 4 plaintiff, entitled to the appointment of counsel [hereunder]
 5 pursuant to P.L.1977, c.367 (C.9:3-37 et seq.).

6 (cf: P.L.1977, c.367, s.17)

7 17. Section 19 of P.L.1977, c.367 (C.9:3-55) is amended to
 8 read as follows:

9 19. a. [Any] A prospective parent who is not a brother, sister,
 10 aunt, uncle, grandparent, foster parent, ¹[natural] birth¹ father
 11 or stepparent of the child to be adopted shall file before the
 12 complaint is heard, in accordance with court rules, a detailed
 13 report which shall be signed and verified by each [such]
 14 prospective parent and shall disclose all sums of money or other
 15 valuable consideration paid, given or agreed to be given to any
 16 person, firm, partnership, corporation, association or agency by
 17 or on behalf of the prospective parent in connection with the
 18 adoption, and the names and addresses of each [such] person,
 19 firm, partnership, corporation, association or agency to whom
 20 [such] the consideration was given or promised. The report, a
 21 copy of which shall be provided to the approved agency
 22 [appointed] pursuant to section 11 or 12 of P.L.1977, c.367
 23 (C.9:3-47 or C.9:3-48) ²[and the Division of Youth and Family
 24 Services,]² shall include but [shall] not be limited to [any]
 25 expenses incurred or to be incurred by or on behalf of [such] a
 26 prospective parent in connection with:

27 (1) The birth of the child;

28 (2) The placement for adoption of the child with the
 29 prospective parent;

30 (3) Medical or hospital care received by the mother or the
 31 child during the mother's pre- and postnatal period; and

32 (4) Services relating to the adoption or to the placement for
 33 adoption, including legal services, which were rendered or are to
 34 be rendered to or for the benefit of the prospective parent, either
 35 parent of the child or any other person or agency.

36 b. Whenever based upon a report filed pursuant to this section
 37 it [shall appear] appears to the court ²[or to the Division of Youth
 38 and Family Services]² that any person may have violated
 39 [sections 3 or 18 hereof] section 18 of P.L. ,c. (C.) (now
 40 pending before the Legislature as this bill) the court or the
 41 division may refer the matter to the appropriate county
 42 prosecutor.

43 (cf: P.L.1977, c.367, s.19)

44 18. (New section) a. A person, firm, partnership, corporation,
 45 association or agency shall not place, offer to place or materially
 46 assist in the placement of any child for adoption in New Jersey
 47 unless:

48 (1) the person is the parent or guardian of the child, or

49 (2) the firm, partnership, corporation, association or agency is
 50 an approved agency ¹to act as agent, finder or to otherwise
 51 materially assist in the placement of any child for adoption in
 52 this State¹, or

53 (3) the placement for adoption is with a brother, sister, aunt,
 54 uncle, grandparent, ¹[natural] birth¹ father or stepparent of the

1 child, or

2 (4) ¹the placement is through an intermediary and ¹ ²(a)² the
3 person with whom the child is to be placed has been approved for
4 placement for adoption by an approved agency home study which
5 consists of the agency's formal ¹written¹ assessment of the
6 capacity and readiness of the prospective adoptive parents to
7 adopt a child, ¹[including the agency's written report and
8 recommendations]¹ conducted in accordance with rules and
9 regulations promulgated by the Director of the Division of Youth
10 and Family Services ²;

11 (b) The birth parent, except one who can not be identified or
12 located prior to the placement of the child for adoption, shall be
13 offered counseling as to his or her options other than placement
14 of the child for adoption. Such counseling shall be made available
15 by or through an approved licensed agency in New Jersey or in
16 the birth parent's state or country of residence. The fact that
17 counseling has been made available, and the name, address and
18 telephone number of the agency through which the counseling is
19 available, shall be confirmed in a written document signed by the
20 birth parent and acknowledged in this State pursuant to section 1
21 of P.L.1991, c.308 (C.46:14-2.1) or acknowledged in another state
22 or country pursuant to section 1 of P.L.1991, c.308 (C.46:14-6.1)
23 a copy of which shall be provided to the birth parent and the
24 ³[named]³ agency ³conducting the adoption complaint
25 investigation pursuant to section 12 of P.L.1977, c.367 (C.9:3-48)
26 and shall be filed with the court prior to termination of parental
27 rights³; and

28 (c) Written notice shall be given to the birth parent, except
29 one who can not be identified or located prior to the placement
30 of the child for adoption, and ³the³ adoptive parent that ³the
31 decision not to place the child for adoption or³ the return of the
32 child to the birth parent can not be conditioned upon
33 reimbursement of expenses by the birth parent to the adoptive
34 parent, and that payments by the adoptive parent are
35 non-refundable. Provision of such notice shall be confirmed in a
36 written document signed by the birth parent and adoptive parent
37 in separate documents which shall be acknowledged in this State
38 pursuant to section 1 of P.L.1991, c.308 (C.46:14-2.1) or
39 acknowledged in another state or country pursuant to section 1 of
40 P.L.1991, c.308 (C.46:14-6.1), a copy of which shall be provided
41 to the birth parent ³[and adoptive parent²], and the agency
42 conducting the adoption complaint investigation pursuant to
43 section 12 of P.L.1977, c.367 (C.9:3-48), and shall be filed with
44 the court prior to termination of parental rights³.

45 ¹[For the purposes of this section, material assistance in the
46 placement for adoption of any child shall include, but not be
47 limited to, acting as an agent, finder or intermediary for or
48 between any parent and any prospective parent or person acting
49 on behalf of either in connection with a placement for adoption
50 of the parent's child. The provision of legal services by an
51 attorney licensed to practice law, in connection with the
52 placement of a child for adoption or an adoption shall not
53 constitute material assistance under this section.]¹

54 ³b.³ The Superior Court in an action by the Commissioner of

1 Human Services may enjoin any party found by the court to have
2 violated this section from any further violation of this section.

3 ³[b.] c.³ A person, firm, partnership, corporation, association,
4 or agency violating subsection a. of this section shall be guilty of
5 a crime of the third degree.

6 ³[c.] d.³ A person, firm, partnership, corporation, association
7 ³,intermediary³ or agency other than an approved agency which
8 pays, seeks to pay, receives, or seeks to receive money or other
9 valuable consideration in connection with ¹[a] the¹ placement
10 ¹[or materially assists in the placement]¹ of a child for adoption
11 shall be guilty of a crime of the second degree. ¹[This subsection
12 does not apply to the payment of a fee for legal services provided
13 by an attorney in connection with an adoption.]¹

14 ³[d.] e.³ It shall not be a violation of ³[subsection c.]subsection
15 d.³ of this section ¹:(1)¹ to pay, provide or reimburse to a parent
16 of the child, or for a parent of the child to receive payment,
17 provision or reimbursement for ¹:

18 (1) Medical ¹ medical¹, hospital, counseling or other similar
19 expenses incurred in connection with the birth or any illness of
20 the child, or

21 ¹[(2) The the¹ reasonable living expenses of the mother of the
22 child during her pregnancy including payments for reasonable
23 food, clothing, medical expenses ¹[and] ¹ shelter ¹,and religious,
24 psychological, vocational, or similar counseling services¹ during
25 the period of the pregnancy and for a period not to exceed ¹[one
26 week] four weeks¹ after the termination of the pregnancy by
27 birth or otherwise. These payments may be made directly to the
28 birth mother or on the mother's behalf to the supplier of the
29 goods or services, or

30 ¹[(3) The (2) where the child is from a foreign country,¹
31 reasonable and customary fees and expenses of a foreign agency
32 or attorney for the care or representation of the child during
33 ¹[the] any¹ period of foster or institutional care in the child's
34 country of origin, or

35 ¹[(4) The reasonable, customary and necessary attorney fees
36 and costs for services related to the placement of the child for
37 adoption including fees and costs payable for providing legal
38 advice and counseling to or representation before a court of any
39 party to the adoption action including a birth parent, but shall not
40 include any fees or costs for placing or participating in the
41 placement of the child for adoption] (3) reasonable attorney fees
42 and costs for legal services¹.

43 ³[Written notice shall be given to the birth mother and the
44 adoptive parents that payment by the adoptive parents of costs
45 for the birth mother are not refundable if the birth mother
46 changes her decision to place the child for adoption.¹]³

47 19. (New section) The Commissioner of Human Services shall,
48 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
49 (C.52:14B-1 et seq.), adopt rules and regulations necessary to
50 implement the provisions of this act.

51 20. Sections 3 and 18 of P.L.1977, c.367 (C.9:3-39 and
52 C.9:3-54) are repealed.

53 ³21. (New section) a. (1) In addition to meeting the other
54 requirements established by the Department of Human Services,

1 a home study completed by an approved agency shall include a
2 recommendation regarding the suitability of the home for the
3 placement of a child based upon the results of State and federal
4 criminal history record checks for each prospective adoptive
5 parent and each adult residing in the home.

6 (2) Each prospective adoptive parent and each member of the
7 prospective adoptive parent's household, age 18 or older, shall
8 submit to the approved agency standard fingerprint cards
9 containing his name, address and fingerprints taken by a State or
10 municipal law enforcement agency.

11 (3) The cost of all criminal history record checks conducted
12 pursuant to this section shall be paid by the prospective adoptive
13 parent or household member at the time the fingerprint cards are
14 submitted.

15 (4) The approved agency shall forward the fingerprint cards and
16 payment to the Commissioner.

17 (5) The Commissioner is authorized to exchange fingerprint
18 data and receive criminal history record information from the
19 Federal Bureau of Investigation and the Division of State Police
20 for use in making the recommendations provided for in this
21 section.

22 (6) The department shall advise the approved agency of
23 information received from State and federal criminal history
24 record checks based upon the fingerprints submitted by the
25 agency. Information provided to the approved agency shall be
26 confidential and not disclosed by the approved agency to any
27 individual or entity without the written permission of the person
28 who is the subject of the record check.

29 (7) The Commissioner shall adopt regulations for the use of
30 criminal history record information by approved agencies when
31 determining the suitability of a home for the placement of a child
32 for the purposes of adoption.

33 b. (1) Beginning one year after the effective date of this act, a
34 home study completed by an approved agency shall include a
35 recommendation regarding the suitability of the home for the
36 placement of the child based upon a check for any records which
37 might reveal a history of child abuse or neglect by the proposed
38 adoptive parent or member of the parent's household who is 18
39 years of age or older.

40 (2) Beginning one year after the effective date, at the request
41 of an approved agency, the Commissioner or his designee shall
42 conduct a search of the records of the Division of Youth and
43 Family Services regarding referrals of dispositions of child abuse
44 or neglect matters as to the proposed adoptive parent and any
45 member of the parent's household 18 years of age or older, and,
46 if there is information that would raise a question of the
47 suitability of the proposed adoptive parent or member of the
48 parent's household to have guardianship of a child, shall provide
49 that information to the approved agency for its consideration.
50 Information provided to the approved agency pursuant to this
51 paragraph shall be confidential. The Commissioner shall establish
52 penalties for disclosure of this confidential information.³

53 ³22. (New section) One year after the effective date of this
54 act, the Division of Youth and Family Services shall report to the

1 Governor and the Legislature on the effectiveness of the use of
2 intermediaries in facilitating the adoption of children which
3 report shall include any recommendations for changes necessary
4 to improve the adoption process.³

5 ³[21.] 23.³ This act shall take effect ¹[immediately] on the
6 ³[90th] 120th³ day after enactment and shall apply to any
7 complaint for adoption filed on or after the effective date¹.

8
9
10
11
12 _____
Revises and updates the law concerning adoption.

1 pregnancy and for a period not to exceed one week after the
2 termination of the pregnancy by birth or otherwise. These
3 payments may be made directly to the birth mother or on the
4 mother's behalf to the supplier of the goods or services, or

5 (3) The reasonable and customary fees and expenses of a
6 foreign agency or attorney for the care or representation of the
7 child during the period of foster or institutional care in the
8 child's country of origin, or

9 (4) The reasonable, customary and necessary attorney fees and
10 costs for services related to the placement of the child for
11 adoption including fees and costs payable for providing legal
12 advice and counseling to or representation before a court of any
13 party to the adoption action including a birth parent, but shall not
14 include any fees or costs for placing or participating in the
15 placement of the child for adoption.

16 19. (New section) The Commissioner of Human Services shall,
17 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
18 (C.52:14B-1 et seq.), adopt rules and regulations necessary to
19 implement the provisions of this act.

20 20. Sections 3 and 18 of P.L.1977, c.367 (C.9:3-39 and
21 C.9:3-54) are repealed.

22 21. This act shall take effect immediately.

23

24

25 SPONSORS' STATEMENT

26

27 This bill revises and updates P.L.1977, c.367 (C.9:3-37 et seq.),
28 the law concerning adoption.

29

The amendatory sections of the bill:

30

• Provide that before a surrender of a child is executed, the
31 adoption agency must make known to the person surrendering the
32 child that the surrender is a surrender of parental rights and
33 means the permanent end of the relationship between the parent
34 and child. The bill provides that a surrender of a child for
35 adoption is valid in this State if valid in the state or country
36 where it was executed. Additionally, a parent may surrender a
37 child to be adopted by a person specified by the parent. The bill
38 provides, however, that a surrender is not valid if taken before
39 the birth of the child or within 72 hours of the birth of the child.

40

• Clarify that an action for adoption may be instituted in
41 either the county (1) where the child resides prior to placement,
42 (2) where the child was born, if under three months of age or (3)
43 where the approved agency has an office if the child has already
44 been placed with a prospective parent.

45

• Provide that if a child is received into a prospective parent's
46 home other than from an approved agency, a complaint for
47 adoption must be filed within 45 days after receipt of the child.
48 The bill prohibits a refusal of adoption based on the failure to
49 timely file a complaint, but requires an affidavit setting forth the
50 reasons for the delay to be filed with the delayed complaint.

51

• Clarify that failure to respond to a notice of intention to
52 place a child and object to the placement shall constitute a
53 waiver of all notice to any subsequent proceedings with respect
54 to the child including proceedings for adoption or termination of

c
c

1 parental rights.

2 • Provide that a judgment of adoption shall not be entered over
3 the objection of a parent unless the court finds that (1) the parent
4 has substantially failed to perform the regular and expected
5 parental functions of care and support of the child, although able
6 to do so, or (2) that the parent is unable to perform the regular
7 and expected parental functions of care and support of the child
8 and that the parent's inability to perform those functions is
9 unlikely to change in the immediate future.

10 • Clarify that if a child to be adopted has been received by a
11 prospective parent from an approved agency, a complaint may be
12 filed and a hearing scheduled to resolve all matters except
13 finalization of the adoption without waiting the required six
14 months. However, the adoption shall not be final until the child
15 has been in the adoptive parent's home for at least six months.

16 • Provide that the report required to be filed by the approved
17 agency prior to the adoption hearing must include a criminal
18 history record background check of the proposed adoptive parent
19 and any member of the parent's household 18 years of age or
20 older. All costs associated with the background check shall be
21 borne by the person checked.

22 • Clarify that the judgment of adoption shall terminate all
23 parental rights of the former parent, all rights of inheritance
24 through the parent and all rights of inheritance through the child.

25 • Provides that the order for adoption may provide for
26 visitation or other communication with the child after the
27 adoption by a person who had a relationship or was related to the
28 child, with the consent of the adopting parent.

29 The new section of the bill:

30 • Authorizes the private placement of a child for adoption as
31 long as the adoptive parent has been approved for placement by
32 an approved agency home study. The home study shall consist of
33 the agency's formal assessment of the capacity and readiness of
34 the prospective adoptive parents to adopt a child, including the
35 agency's written report and recommendations conducted in
36 accordance with rules and regulations promulgated by the
37 Director of the Division of Youth and Family Services; and

38 • Permits a parent of the child to be adopted to receive
39 medical, hospital or similar expenses; reasonable living expenses
40 of the mother of the child during pregnancy; reasonable fees and
41 expenses for any foster or institutional care of the child in its
42 country of origin; or reasonable attorney fees and costs related to
43 the placement of the child for adoption.

44 Finally, the bill repeals sections 3 and 18 of P.L.1977, c.367
45 (C.9:3-39 and C.9:3-54) regarding persons authorized to place
46 children for adoption and payments for expenses of adoption. The
47 provisions contained in these sections were incorporated in the
48 new section 18 of the bill.

49

50

51

52

53 Revises and updates the law concerning adoption.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1418

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 23, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 1418.

This bill primarily revises and updates P.L.1977, c.367 (C.9:3-37 et seq.), the law concerning adoption.

The amendatory sections of the bill:

- Provide that before a surrender of a child is executed, the adoption agency must make known to the person surrendering the child that the surrender is a surrender of parental rights and means the permanent end of the relationship between the parent and child. The bill provides that a surrender of a child for adoption is valid in this State if valid in the state or country where it was executed. Additionally, a parent may surrender a child to be adopted by a person specified by the parent. The bill provides, however, that a surrender is not valid if taken before the birth of the child or, within 72 hours of the birth of the child.

- Clarify that an action for adoption may be instituted in either the county (1) where the child resides prior to placement, (2) where the child was born, if under three months of age or (3) where the approved agency has an office if the child has already been placed with a prospective parent.

- Provide that if a child is received into a prospective parent's home other than from an approved agency, a complaint for adoption must be filed within 45 days after receipt of the child. The bill prohibits a refusal of adoption based on the failure to timely file a complaint, but requires an affidavit setting forth the reasons for the delay to be filed with the delayed complaint.

- Clarify that failure to respond to a notice of intention to place a child and object to the placement shall constitute a waiver of all notice to any subsequent proceedings with respect to the child including proceedings for adoption or termination of parental rights.

- Provide that a judgment of adoption shall not be entered over the objection of a parent unless the court finds that (1) the parent has substantially failed to perform the regular and expected parental functions of care and support of the child, although able to do so, or (2) that the parent is unable to perform the regular and expected parental functions of care and support of the child and that the parent's inability to perform those functions is unlikely to change in the immediate future.

- Clarify that if a child to be adopted has been received by a prospective parent from an approved agency, a complaint may be filed and a hearing scheduled to resolve all matters except finalization of the adoption without waiting the required six months. However, the adoption shall not be final until the child has been in the adoptive parent's home for at least six months.

• Provide that the report required to be filed by the approved agency prior to the adoption hearing must include a criminal history record background check of the proposed adoptive parent and any member of the parent's household 18 years of age or older. All costs associated with the background check shall be borne by the person checked.

COMMITTEE AMENDMENTS:

Section 1. The amendments make changes in the definitional section. The definition of "legal services" is amended and definitions for "home study" and "intermediary" are included. Throughout the bill references to "natural parent" are changed to "birth parent".

Section 2. The language is amended to read the same as section 2 of Senate Bill No. 685 of 1992.

Section 3. Requires approved agencies to offer counseling to a parent prior to surrender and for the approved agency to advise the parent that surrender constitutes a relinquishment of rights.

Section 7. Adds language concerning a person receiving a child who has previously been approved for such placement notifying the agency which granted such approval.

Section 8. Deletes statutory language at the last sentence of subsection a. of N.J.S.A. 9:3-45.

Section 11. Makes changes in what information is included in the written report submitted to the court when the child to be adopted has not been received from an approved agency, including information on fees paid and an evaluation of any other person residing in the prospective home.

Section 13. Provides that the court may order counseling for the adopting parents.

Section 17. Changes "natural" father to "birth" father.

Section 18. Makes several changes in this new section including adding the costs of religious, psychological, vocational or similar counseling services for the birth mother during the pregnancy and four weeks thereafter. The permitted payments include:

(1) medical, hospital, counseling or other similar expenses incurred in connection with the birth or any illness of the child, or the reasonable living expenses of the mother of the child during her pregnancy or

(2) where the child is from a foreign country, reasonable and customary fees and expenses of a foreign agency or attorney for the care or representation of the child during any period of foster or institutional care in the child's country of origin, or

(3) reasonable attorney fees and costs for legal services.

Provides that written notice shall be given to the birth mother and the adoptive parents that payment by the adoptive parents of costs for the birth mother are not refundable if the birth mother changes her decision to place the child for adoption.

Section 21. Delays the effective date to permit time for rule-making.

[CORRECTED COPY]
SENATE JUDICIARY COMMITTEE

STATEMENT TO

[FIRST REPRINT]
ASSEMBLY, No. 1418

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 1993

The Senate Judiciary Committee reports favorably and with committee amendments Assembly No. 1418 (1R).

This bill proposes to revise and update New Jersey's present laws governing adoption (P.L.1971, c.367 (C.9:3-37 et seq.)). The bill would authorize the private placement of a child for adoption as long as the adoptive parent has been approved for placement by an approved agency home study. Under present New Jersey law, only approved agencies may place children for adoption. In order to facilitate private adoptions, the bill would permit intermediaries to act for and between prospective parents and the parent of a child. Intermediaries could not receive payment for their services as intermediaries.

This bill would also permit a parent of the child to be adopted to receive medical, hospital or similar expenses; reasonable living expenses of the mother of the child during pregnancy; reasonable fees and expenses for any foster or institutional care of the child in its country of origin; and reasonable attorney fees and the costs of legal services related to the placement of the child for adoption. The bill would also allow for the reimbursement for the costs of religious, psychological, vocational or similar counseling services. In addition, the bill provides that expenses could be provided to the child's mother during the course of the pregnancy and up to four weeks after the child's birth. Present New Jersey law generally prohibits the giving or receiving of consideration in connection with an adoption except for the fees charged by the approved agency. Present law does, however, permit the mother to be reimbursed for medical expenses.

Other provisions of the bill would:

1. Provide that before a surrender of a child is executed, the adoption agency must make known to the person surrendering the child that the surrender is a surrender of parental rights and means the permanent end of the relationship between the parent and child. The bill provides that a surrender of a child for adoption is valid in this State if valid in the state or country where it was executed. Additionally, a parent may surrender a child to be adopted by a person specified by the parent. The bill provides, however, that a surrender is not valid if taken before the birth of the child or within 72 hours of the birth of the child.

2. Clarify that an action for adoption may be instituted in either the county (1) where the child resides prior to placement, (2) where the child was born, if under three months of age or (3) where the approved agency has an office if the child has already been placed with a prospective parent.

3. Provide that if a child is received into a prospective parent's home other than from an approved agency, a complaint for adoption must be filed within 45 days after receipt of the child. The bill prohibits a refusal of adoption based on the failure to timely file a complaint, but requires an affidavit setting forth the reasons for the delay to be filed with the delayed complaint.

4. Clarify that failure to respond to a notice of intention to place a child and object to the placement shall constitute a waiver of all notice to any subsequent proceedings with respect to the child including proceedings for adoption or termination of parental rights.

5. Provide that a judgment of adoption shall not be entered over the objection of a parent unless the court finds that (1) the parent has substantially failed to perform the regular and expected parental functions of care and support of the child, although able to do so, or 2) that the parent is unable to perform the regular and expected parental functions of care and support of the child and that the parent's inability to perform those functions is unlikely to change in the immediate future.

6. Clarify that if a child to be adopted has been received by a prospective parent from an approved agency, a complaint may be filed and a hearing scheduled to resolve all matters except finalization of the adoption without waiting the required six months. However, the adoption shall not be final until the child has been in the adoptive parent's home for at least six months.

7. Provide that the report required to be filed by the approved agency prior to the adoption hearing must include a criminal history record background check of the proposed adoptive parent and any member of the parent's household 18 years of age or older. All costs associated with the background check shall be borne by the person checked.

8. Repeal N.J.S.A.9:3-39 (limiting adoption placements to approved agencies) and N.J.S.A.9:3-54 (regulates the payment of consideration in connection with adoption).

COMMITTEE AMENDMENTS:

The amendments adopted by the committee:

1. Add language indicating that the surrender of a child for adoption may be revoked on proof of fraud, duress or misrepresentation by the adoption agency.

2. Clarify that the bill's provisions dealing with surrender of a child apply to both birth parents.

3. Add language that information concerning the child provided to the adoptive parents at the time of the adoption may be supplemented if new information becomes available to the adoption agency.

4. Restore language requiring that in an adoption proceeding notification be given to the birth mother's husband and the alleged father of the child.

5. Clarify that in the case of a foreign adoption, approval by federal immigration authorities is sufficient to waive notice upon birth parents.

6. Restore language requiring that in an adoption proceeding the identity of any intermediary be disclosed to the court.

7. Add language requiring pre-placement counseling in a private adoptions as well as agency placements.

8. Add language requiring written notice be given to a birth mother indicating that payment by the adoptive parents of costs to the birth mother are not refundable if the birth mother changes her decision with regard to the adoption.

In addition, the amendments delete language which would have allowed a court to provide, in an adoption order, a visitation schedule or other type of communication between the birth parent and the adopted child. While it is not the intent of the committee in deleting this language to discourage open adoptions, it was felt that the issue of open adoption represents a significant policy issue which should be addressed in separate legislation.

proposed by Senator
O'Connor

(2) Beginning one year after the effective date, at the request of an approved agency, the Commissioner or his designee shall conduct a search of the records of the Division of Youth and Family Services regarding referrals of dispositions of child abuse or neglect matters as to the proposed adoptive parent and any member of the parent's household 18 years of age or older, and, if there is information that would raise a question of the suitability of the proposed adoptive parent or member of the parent's household to have guardianship of a child, shall provide that information to the approved agency for its consideration. Information provided to the approved agency pursuant to this paragraph shall be confidential. The Commissioner shall establish penalties for disclosure of this confidential information.³

MSK
22

REPLACE SECTION 21 TO READ:

³[21.] 23.³ This act shall take effect ¹[immediately] on the ³[90th] 120th³ day after enactment and shall apply to any complaint for adoption filed on or after the effective date¹.

STATEMENT

A-1418 (2R) would revise the laws governing adoption. These amendments would clarify the provisions of the bill as follows:

1. Clarifies that any out/state surrender of a child would only be deemed valid if the surrender occurred more than 72 hours after the birth of the child.
2. Clarify that a court, in conducting a hearing on whether the surrender of a child was voluntary, shall determine that the birth parent is aware that surrender permanently ends the relationship between the parent and the child and that no further notice of the adoption proceedings would be provided to the birth parent.
3. Clarify that the counseling required by the bill for birth parents may be provided in the case of out of state or foreign adoptions by an agency approved to provide counseling where the birth parent resides.
4. Clarify the decision of a birth parent not to place the child for adoption cannot be conditional upon repayment of expenses by the birth parent to the adopting parent.
5. Requires DYFS to conduct a study of the use of intermediaries in facilitating adoptions.
6. Clarify that pre-adoption investigations must include a criminal history check and, beginning one year after the bill's enactment, a check of records for child abuse.
7. Provide that the bill shall take effect 120 days rather than 90 days after enactment.