

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER: 20

NJSA: 9:3-45 et al
"Paternity -- adoption"

BILL NO:S56 (Substituted for A1637)

SPONSOR(S): Kavanaugh

DATE INTRODUCED: Pre-filed

COMMITTEE:

ASSEMBLY: Senior Issues

SENATE: Women's Issues

AMENDED DURING PASSAGE:Yes

DATE OF PASSAGE:

ASSEMBLY: March 23, 1998

SENATE: March 30, 1998

DATE OF APPROVAL: May 14, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 2nd reprint
(Amendments during passage denoted by superscript numbers)

S56

SPONSORS STATEMENT: *Yes* (Begins on page 11 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: Yes

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *Yes*

LEGISLATIVE FISCAL ESTIMATE: *No*

A1637

SPONSORS STATEMENT: *Yes* (Begins on page 11 of original bill)
(Bill and Sponsors Statement identical to S56)

COMMITTEE STATEMENT:

ASSEMBLY: *Yes* (Identical to Senate Statement for S56)

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

*To check for circulating copies contact New Jersey State Government Publications at
the State Library (609) 278-2640 ext. 102 or refdesk@njstatelib.org*

REPORTS: *No*

HEARINGS: *No*

NEWSPAPER ARTICLES:

"New law protects adoptive parents," 5-15-98, Bridgewater Courer-News, p. A2.

"New law limits late challenges to adoptions," 5-15-98, Asbury Park Press, p. A3.

[Second Reprint]
SENATE, No. 56

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator WALTER KAVANAUGH

District 16 (Morris and Somerset)

Co-Sponsored by:

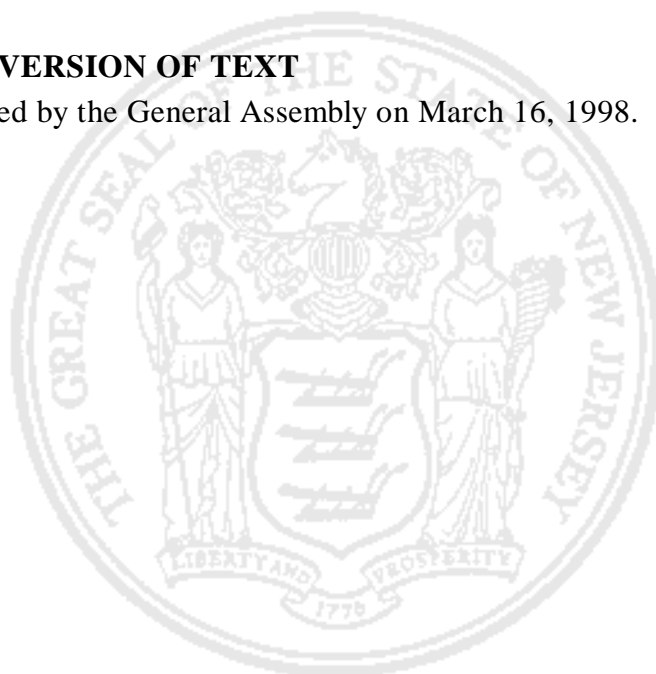
Assemblymen Bateman, Biondi, Bagger and Assemblywoman Heck

SYNOPSIS

Requires certain unmarried parents to acknowledge paternity within 120 days of child's birth or prior to date of preliminary hearing to be entitled to notice of adoption.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 16, 1998.



(Sponsorship Updated As Of: 3/17/1998)

S56 [2R] KAVANAUGH

2

1 AN ACT concerning adoption and amending P.L.1983, c.17
2 ¹[,P.L.1994, c.164]¹ and R.S.26:8-30, and amending and
3 supplementing P.L.1977, c.367.

4

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

7

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

10 9. a. In an adoption proceeding pursuant to P.L.1977, c.367
11 (C.9:3-37 et seq.), notice of the complaint may not be waived and a
12 notice of hearing shall be served in accordance with the Rules of Court
13 on each parent of the child to be adopted. The notice shall inform
14 each parent of the purpose of the action and of the parent's right to file
15 written objections to the adoption within 20 days after notice is given
16 in the case of a resident and 35 days in the case of a nonresident. For
17 purposes of this section, "parent" **[includes]** means (1) the husband of
18 the mother of a child born or conceived during the marriage **[and]** or
19 (2) a putative or alleged **[natural]** biological mother or father of a
20 child.

21 b. Notice pursuant to subsection a. of this section shall not be
22 served on a parent:

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

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

28 (3) Who has, prior to the placement of the child for adoption,
29 received notice of the intention to place the child, which notice shall
30 inform the parent of the purpose of the placement, that failure to
31 respond to the notice will prevent the person receiving the notice from
32 objecting to any future adoption of the child, and that the parent has
33 a right to file with the surrogate in the county in which venue is
34 anticipated to lie, the address of which surrogate shall be included in
35 the notice, written objections to the proposed placement within
36 20 days after notice is given, in the case of a resident, and 35 days in
37 the case of a nonresident; and who has either failed to file written
38 objections or denied paternity or maternity of the child. Failure to
39 respond to this notice and object to the placement of the child for
40 adoption shall constitute a waiver of all notice of any subsequent
41 proceedings with regard to the child including proceedings for

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 ASC committee amendments adopted March 2, 1998.

² Assembly floor amendments adopted March 16, 1998.

1 adoption or termination of parental rights;

2 (4) Who has given the child for adoption to the adopting parent,
3 and the Superior Court, Chancery Division, Family Part, after a
4 hearing at which the surrendering parent was heard as to the
5 voluntariness of the surrender, has determined that the surrender was
6 voluntary and proper; **[or]**

7 (5) Whose child has been made available for adoption in a foreign
8 state or country if the United States Immigration and Naturalization
9 Service has determined that the child has been approved for adoptive
10 placement. The finding of the United States Immigration and
11 Naturalization Service shall be presumed valid and no notice shall be
12 served ; or

13 (6) Who is presumed to be the biological father of the child who
14 is the subject of the adoption proceeding pursuant to paragraph (2) of
15 subsection a. of section 6 of P.L.1983, c.17 (C.9:17-43) but who,
16 ²[prior to or]² within ²[60] 120² days of the birth of the child ²or
17 prior to the date of the preliminary hearing, whichever occurs first²,
18 has not acknowledged paternity by amending the original birth
19 certificate record filed with the local registrar's office in the
20 municipality of birth of the child who is the subject of the adoption
21 proceeding in accordance with birth record amendment procedures, or
22 has not filed an action for paternity in court.

23 c. If personal service of the notice cannot be effected because the
24 whereabouts of a birth parent of the child to be adopted are unknown,
25 the court shall determine that an adequate effort has been made to
26 serve notice upon the parent if the plaintiff immediately prior to or
27 during the placement and not more than nine months prior to the filing
28 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 missing
32 parent among any known relations, friends and current or former
33 employers of the parent;

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

43 d. In any case where, within ²[60] 120² days of the birth of the
44 child ²or prior to the date of the preliminary hearing, whichever occurs
45 first², the identity of a birth parent cannot be determined or where the
46 known parent of a child is unable or refuses to identify the other

1 parent, and the court is unable from other information before the court
2 to identify the other parent, service on that parent shall be waived by
3 the court.

4 e. In conducting the hearing required by paragraph (4) of
5 subsection b. of this section, the court shall determine that the
6 surrender is voluntary and that the birth parent knows (1) that the
7 hearing is to surrender birth rights; (2) that the hearing is to
8 permanently end the relationship and all contact between parent and
9 child; (3) that such action is a relinquishment and termination of
10 parental rights and consent on the part of the birth parent to the
11 adoption; and (4) that no further notice of the adoption proceedings
12 shall be provided to the birth parent if the surrender is accepted by the
13 court.

14 ²[f. If a person has been named as a parent on the original
15 certificate of birth filed with the local registrar of the municipality of
16 birth of the child who is the subject of the adoption proceeding, but
17 that named person has not amended the original certificate of birth of
18 the child filed with the local registrar's office within 60 days of the
19 birth of the child, service on that person shall be waived by the
20 court.]²

21 (cf: P.L.1993, c.345, s.8)

22

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

25 10. a. A person who is entitled to notice pursuant to section 9 of
26 P.L.1977, c.367 (C.9:3-45) shall have the right to object to the
27 adoption of his child within 20 days after the filing of the complaint for
28 adoption for a State resident and 35 days after the filing in the case of
29 a nonresident. Failure to object within that time period constitutes a
30 waiver of the right to object.

31 In a contest between a person who is entitled to notice pursuant to
32 section 9 of P.L.1977, c.367 (C.9:3-45) objecting to the adoption and
33 the prospective adoptive parent, the standard shall be the best interest
34 of the child. The best interest of a child requires that a parent
35 affirmatively assume the duties encompassed by the role of being a
36 parent. In determining whether a parent has affirmatively assumed the
37 duties of a parent, the court shall consider, but is not limited to
38 consideration of, the fulfillment of financial obligations for the birth
39 and care of the child, demonstration of continued interest in the child,
40 demonstration of a genuine effort to maintain communication with the
41 child, and demonstration of the establishment and maintenance of a
42 place of importance in the child's life.

43 A judgment of adoption shall **[not]** be entered over an objection of
44 a **[parent]** person who is entitled to notice pursuant to section 9 of
45 P.L.1977, c.367 (C.9:3-45) communicated to the court by personal
46 appearance or by letter **[unless]** if the court finds, during the six

1 month period prior to the placement of the child for adoption or within
2 ²[60] 120² days after the birth of a child ²or prior to the date of the
3 preliminary hearing, whichever occurs first², in the case of a child
4 placed for adoption as a newborn infant:

5 (1) that the parent has substantially failed to perform the regular
6 and expected parental functions of care and support of the child,
7 although able to do so, or

8 (2) that the parent is unable to perform the regular and expected
9 parental functions of care and support of the child and that the parent's
10 inability to perform those functions is unlikely to change in the
11 immediate future.

12 The regular and expected functions of care and support of a child
13 shall include the following:

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

16 (b) communicating with the child or person having legal custody
17 of the child and visiting the child [unless visitation is impossible
18 because of the parent's confinement in an institution], or unless
19 prevented from so doing by the custodial parent or other custodian of
20 the child or a social service agency over the birth parent's objection;
21 or

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

25 A parent shall be presumed to have failed to perform the regular
26 and expected parental functions of care and support of the child if the
27 court finds that the situation set forth in paragraph (1) or (2) has
28 occurred [for six or more months] during the six month period prior
29 to the placement of the child for adoption, or within ²[60] 120² days
30 after the birth of a child ²or prior to the date of the preliminary
31 hearing, whichever occurs first², in the case of a child placed for
32 adoption as a newborn infant.

33 In the case where the objecting parent is incarcerated during the six
34 month period prior to placement of the child for adoption, relevant
35 factors to be considered in determining whether that incarcerated
36 parent has failed to perform the regular and expected parental
37 functions or is unable to perform the regular and expected parental
38 functions pursuant to this subsection, shall include the extent of the
39 relationship which existed between the parent and child prior to
40 incarceration, including financial support; the efforts made to continue
41 a relationship during the incarceration; the ability to communicate and
42 visit with the child during incarceration; and the effect of the
43 communication and visitation on the child's development in terms of
44 providing nurturing and emotional support.

45 b. The guardian of a child to be adopted who has not executed a
46 surrender pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) and any

1 other person who has provided primary care and supervision in his
2 home for the child for a period of six months or one half of the life of
3 the child, whichever is less, in the two years prior to the complaint
4 shall be given notice of the action and in accordance with the Rules of
5 Court shall have standing to object to the adoption, which objection
6 shall be given due consideration by the court in determining whether
7 the best interests of the child would be promoted by the adoption.

8 (cf: P.L.1993, c.345, s.9)

9

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

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

16 (1) Declare the child to be a ward of the court and declare that the
17 plaintiff shall have custody of the child subject to further order of the
18 court;

19 (2) Appoint an approved agency to make an investigation and
20 submit a written report to the court which shall include:

21 (a) the facts and circumstances surrounding the surrender of
22 custody by the child's parents and the placement of the child in the
23 home of the plaintiff, including the identity of any intermediary who
24 participated in the placement of the child;

25 (b) an evaluation of the child and of the plaintiff and the spouse of
26 the plaintiff if not the child's parent and any other person residing in
27 the prospective home; and

28 (c) any fees, expenses or costs paid by or on behalf of the adopting
29 parent in connection with the adoption.

30 The agency conducting the investigation shall, if it is able to,
31 contact the birth parent and confirm that counseling, if required by
32 section 18 of P.L.1993, c.345 (C.9:3-39.1), has either been provided
33 or waived by the birth parent. If not previously provided, the agency
34 shall advise the parent of the availability of such counseling through
35 the agency and shall provide such counseling if requested by the birth
36 parent or if the birth parent resides out of State or out of the country,
37 such counseling should be made available by or through an agency
38 approved to provide such counseling in the birth parent's state or
39 country of domicile. The agency shall further confirm that the birth
40 parent has been advised that the decision of the birth parent not to
41 place the child for adoption or the return of the child to the birth
42 parent can not be conditioned upon the repayment of expenses by the
43 birth parent to the adoptive parent.

44 All expenses and fees for the investigation and any counseling
45 provided shall be the responsibility of the plaintiff;

46 (3) Direct the plaintiff to cooperate with the approved agency

1 making the investigation and report; and

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

9 Whenever the plaintiff is a stepparent of the child, the court, in its
10 discretion, may dispense with the agency investigation and report and
11 take direct evidence at the preliminary hearing of the facts and
12 circumstances surrounding the filing of the complaint for adoption.

13 Whenever a plaintiff is a brother, sister, grandparent, aunt, uncle,
14 or birth father of the child, the order may limit the investigation to an
15 inquiry concerning the status of the parents of the child and an
16 evaluation of the plaintiff. At least 10 days prior to the day fixed for
17 the preliminary hearing the approved agency shall file its report with
18 the court and serve a copy on the plaintiff.

19 b. The preliminary hearing shall be in camera and shall have for its
20 purpose the determination of the circumstances under which the child
21 was relinquished by his parents and received into the home of the
22 plaintiff, the status of the parental rights of the parents, the fitness of
23 the child for adoption and the fitness of the plaintiff to adopt the child
24 and to provide a suitable home. If the report of the approved agency
25 pursuant to subsection a. of this section contains material findings or
26 recommendations adverse to the plaintiff, the presence of a
27 representative of the approved agency who has personal knowledge of
28 the investigation shall be required at the preliminary hearing. If in the
29 course of the preliminary hearing the court determines that there is
30 lack of jurisdiction, lack of qualification on the part of the plaintiff or
31 that the best interests of the child would not be promoted by the
32 adoption, the court shall deny the adoption and make such further
33 order concerning the custody and guardianship of the child as may be
34 deemed proper in the circumstances.

35 c. If upon completion of the preliminary hearing the court finds
36 that:

37 (1) The parents of the child do not have rights as to custody of the
38 child by reason of their rights previously having been terminated by
39 court order; or, **[as provided in] the parents' objection has been**
40 **contravened pursuant to subsection a. of section 10 of P.L.1977, c.367**
41 **(C.9:3-46) [their failure to make timely objection to the adoption, or**
42 **their substantial failure to perform the regular and expected parental**
43 **functions of care and support of the child, although able to do so, or**
44 **their inability to perform these functions which is unlikely to change**
45 **in the immediate future];**

46 (2) The guardian, if any, should have no further control or

1 authority over the child;

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

3 (4) The plaintiff is fit to adopt the child, the court shall: (a) issue
4 an order stating its findings, declaring that no parent or guardian of the
5 child has a right to custody or guardianship of the child; (b) terminate
6 the parental rights of that person, which order shall be a final order;
7 (c) fix a date for final hearing not less than six nor more than nine
8 months from the date of the preliminary hearing; and (d) appoint an
9 approved agency to supervise and evaluate the continuing placement
10 in accordance with subsection d. of this section. If the plaintiff is a
11 brother, sister, grandparent, aunt, uncle, birth father, stepparent or
12 foster parent of the child, or if the child has been in the home of the
13 plaintiff for at least two years immediately preceding the
14 commencement of the adoption action, and if the court is satisfied that
15 the best interests of the child would be promoted by the adoption, the
16 court may dispense with this evaluation and final hearing and enter a
17 judgment of adoption immediately upon completion of the preliminary
18 hearing.

19 d. The approved agency appointed pursuant to subsection c. of this
20 section shall from time to time visit the home of the plaintiff and make
21 such further inquiry as may be necessary to observe and evaluate the
22 care being received by the child and the adjustment of the child and the
23 plaintiff as members of a family. At least 15 days prior to the final
24 hearing the approved agency shall file with the court a written report
25 of its findings, including a recommendation concerning the adoption,
26 and shall mail a copy of the report to the plaintiff.

27 If at any time following the preliminary hearing the approved
28 agency concludes that the best interests of the child would not be
29 promoted by the adoption, the court shall appoint a guardian ad litem
30 for the child and after a hearing held upon the application of the
31 approved agency and upon notice to the plaintiff, may modify or
32 revoke any order entered in the action and make such further order
33 concerning the custody and guardianship of the child as may be
34 deemed proper in the circumstances.

35 e. At the final hearing the court shall proceed in camera; except
36 that if the approved agency in its report pursuant to subsection d. of
37 this section has recommended that the adoption be granted, the final
38 hearing may be dispensed with and, if the court is satisfied that the
39 best interests of the child would be promoted by the adoption, a
40 judgment of adoption may be entered immediately.

41 The appearance of the approved agency at the final hearing shall not
42 be required unless its recommendations are adverse to the plaintiff or
43 unless ordered by the court. If its appearance is required, the
44 approved agency shall be entitled to present testimony and to
45 cross-examine witnesses and shall be subject to cross-examination with
46 respect to its report and recommendations in the matter.

1 f. If, based upon the report and the evidence presented, the court
2 is satisfied that the best interests of the child would be promoted by
3 the adoption, the court shall enter a judgment of adoption. If, based
4 upon the evidence, the court is not satisfied that the best interests of
5 the child would be promoted by the adoption, the court shall deny the
6 adoption and make such further order concerning the custody and
7 guardianship of the child as may be deemed proper in the
8 circumstances.

9 (cf: P.L.1993, c.345, s.11)

10
11 4. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read as
12 follows:

13 6. a. A man is presumed to be the **[natural]** biological father of a
14 child if:

15 (1) He and the child's **[natural]** biological mother are or have been
16 married to each other and the child is born during the marriage, or
17 within 300 days after the marriage is terminated by death, annulment
18 or divorce;

19 (2) Before the child's birth, he and the child's **[natural]** biological
20 mother have attempted to marry each other by a marriage solemnized
21 in apparent compliance with law, although the attempted marriage is
22 or could be declared invalid, and:

23 (a) if the attempted marriage could be declared invalid only by a
24 court, the child is born during the attempted marriage, or within 300
25 days after its termination by death, annulment or divorce; or

26 (b) if the attempted marriage is invalid without a court order, the
27 child is born within 300 days after the termination of cohabitation;

28 (3) After the child's birth, he and the child's **[natural]** biological
29 mother have married, or attempted to marry, each other by a marriage
30 solemnized in apparent compliance with law, although the attempted
31 marriage is or could be declared invalid, and:

32 (a) he has acknowledged his paternity of the child in writing filed
33 with the local registrar of vital statistics;

34 (b) he has sought to have his name placed on the child's birth
35 certificate as the child's father, pursuant to R.S.26:8-40; or

36 (c) he openly holds out the child as his natural child; or

37 (d) he is obligated to support the child under a written voluntary
38 agreement or court order;

39 (4) While the child is under the age of majority, he receives the
40 child into his home and openly holds out the child as his natural child;

41 (5) While the child is under the age of majority, he provides
42 support for the child and openly holds out the child as his natural
43 child; or

44 (6) He acknowledges his paternity of the child in a writing filed
45 with the local registrar of vital statistics, which shall promptly inform
46 the mother of the filing of the acknowledgment, and she does not

1 dispute the acknowledgment within a reasonable time after being
2 informed thereof, in a writing filed with the local registrar. If another
3 man is presumed under this section to be the child's father,
4 acknowledgment may be effected only with the written consent of the
5 presumed father **【or after the presumption has been rebutted】**. Each
6 attempted acknowledgment, whether or not effective, shall be kept on
7 file by the local registrar of vital statistics and shall entitle the person
8 who filed it to notice of all proceedings concerning parentage and
9 adoption of the child, as provided in section 10 of **【this act】** P.L.1983,
10 c.17 (C.9:17-47) and pursuant to section 9 of P.L.1977, c.367
11 (C.9:3-45).

12 b. A presumption under this section may be rebutted in an
13 appropriate action only by clear and convincing evidence. If two or
14 more presumptions arise which conflict with each other, the
15 presumption which on the facts is founded on the weightier
16 considerations of policy and logic controls. The presumption is
17 rebutted by a court order terminating the presumed father's paternal
18 rights or by establishing that another man is the child's**【natural】**
19 biological or adoptive father.

20 c. Notwithstanding the provisions of this section to the contrary,
21 in an action brought under this act against the legal representative or
22 the estate of a deceased alleged father, the criteria in paragraphs (4)
23 and (5) of subsection a. of this section shall not constitute
24 presumptions but shall be considered by the court together with all of
25 the evidence submitted. The decision of the court shall be based on a
26 preponderance of the evidence.

27 d. In the absence of a presumption, the court shall decide whether
28 the parent and child relationship exists, based upon a preponderance
29 of the evidence.

30 ²e. There is a rebuttable presumption that a man has knowledge of
31 his paternity and the birth of a child if he had sexual intercourse with
32 the biological mother within 300 days of the child's birth. This
33 presumption may be rebutted only by clear and convincing evidence in
34 an appropriate action based on fraud, duress, or misrepresentation by
35 the biological mother concerning the paternity or birth of the child.
36 This claim of fraud, duress, or misrepresentation must be asserted
37 prior to the finalization of the adoption.²

38 (cf: P.L.1983, c.17, s.6)

39

40 5. R.S.26:8-30 is amended to read as follows:

41 26:8-30. The attending physician, midwife or person acting as the
42 agent of the physician or midwife, who was in attendance upon the
43 birth shall be responsible for the proper execution and return of a
44 certificate of birth, which certificate shall be upon the form provided
45 or approved by the State department, and for making available to the
46 mother and**【natural】** biological father a Certificate of Parentage along

1 with related information as required by the State IV-D agency. It shall
2 be the responsibility of personnel at the hospital or birthing facility to
3 offer an opportunity to the child's ~~biological~~ biological father to execute
4 a Certificate of Parentage. Failure of the ~~biological~~ biological father or
5 mother to execute the Certificate of Parentage and the date of the
6 request shall be noted on the Certificate of Parentage. The Certificate
7 of Parentage shall be filed with the State IV-D agency or its designee.
8 ~~【The provision of services related to paternity acknowledgment】~~
9 Establishment and enforcement of child support matters shall not be
10 ~~【required】~~ permitted¹ when a legal action is pending in the case, such
11 as adoption, or State law prohibits such intervention.

12 For the purposes of this section, "State IV-D agency" means the
13 agency in the Department of Human Services designated to administer
14 the Title IV-D Child Support Program.

15 (cf: P.L.1994, c.164, s.4)

16

17 6. (New Section) The Department of Human Services, in
18 consultation with the Department of Health and Senior Services,
19 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
20 (C.52:14B-1 et seq.), shall adopt rules and regulations to implement
21 the provisions of this act and to publicize throughout the State the
22 necessity for a father, ~~2【prior to or】2~~ within ~~2【60】~~ 120² days of the
23 birth of a child ~~2or prior to the date of the preliminary hearing,~~
24 whichever occurs first², to acknowledge paternity by amending the
25 original birth certificate record with the local registrar's office in the
26 municipality of birth of the child who is the subject of the adoption or
27 by filing a paternity action in court in order to be entitled to notice of
28 an adoption pursuant to section 9 of P.L.1977, c.367 (C.9:3-45).

29

30 7. This act shall take effect 120 days after enactment.

SENATE, No. 56

STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator WALTER KAVANAUGH

District 16 (Morris and Somerset)

SYNOPSIS

Requires certain unmarried parents to acknowledge paternity prior to or within 60 days of child's birth to be entitled to notice of adoption.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S56 KAVANAUGH

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

10 9. a. In an adoption proceeding pursuant to P.L.1977, c.367
11 (C.9:3-37 et seq.), notice of the complaint may not be waived and a
12 notice of hearing shall be served in accordance with the Rules of Court
13 on each parent of the child to be adopted. The notice shall inform
14 each parent of the purpose of the action and of the parent's right to file
15 written objections to the adoption within 20 days after notice is given
16 in the case of a resident and 35 days in the case of a nonresident. For
17 purposes of this section, "parent" **[includes]** means (1) the husband of
18 the mother of a child born or conceived during the marriage **[and]** or
19 (2) a putative or alleged **[natural]** biological mother or father of a
20 child.

21 b. Notice pursuant to subsection a. of this section shall not be
22 served on a parent:

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

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

28 (3) Who has, prior to the placement of the child for adoption,
29 received notice of the intention to place the child, which notice shall
30 inform the parent of the purpose of the placement, that failure to
31 respond to the notice will prevent the person receiving the notice from
32 objecting to any future adoption of the child, and that the parent has
33 a right to file with the surrogate in the county in which venue is
34 anticipated to lie, the address of which surrogate shall be included in
35 the notice, written objections to the proposed placement within 20
36 days after notice is given, in the case of a resident, and 35 days in the
37 case of a nonresident; and who has either failed to file written
38 objections or denied paternity or maternity of the child. Failure to
39 respond to this notice and object to the placement of the child for
40 adoption shall constitute a waiver of all notice of any subsequent
41 proceedings with regard to the child including proceedings for
42 adoption or termination of parental rights;

43 (4) Who has given the child for adoption to the adopting parent,

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

Matter underlined thus is new matter.

1 and the Superior Court, Chancery Division, Family Part, after a
2 hearing at which the surrendering parent was heard as to the
3 voluntariness of the surrender, has determined that the surrender was
4 voluntary and proper; **[or]**

5 (5) Whose child has been made available for adoption in a foreign
6 state or country if the United States Immigration and Naturalization
7 Service has determined that the child has been approved for adoptive
8 placement. The finding of the United States Immigration and
9 Naturalization Service shall be presumed valid and no notice shall be
10 served or

11 (6) Who is presumed to be the biological father of the child who
12 is the subject of the adoption proceeding pursuant to paragraph (2) of
13 subsection a. of section 6 of P.L.1983, c.17 (C.9:17-43) but who,
14 prior to or within 60 days of the birth of the child, has not
15 acknowledged paternity by amending the original birth certificate
16 record filed with the local registrar's office in the municipality of birth
17 of the child who is the subject of the adoption proceeding in
18 accordance with birth record amendment procedures, or has not filed
19 an action for paternity in court.

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

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

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

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

40 d. In any case where, within 60 days of the birth of the child, the
41 identity of a birth parent cannot be determined or where the known
42 parent of a child is unable or refuses to identify the other parent, and
43 the court is unable from other information before the court to identify
44 the other parent, service on that parent shall be waived by the court.

45 e. In conducting the hearing required by paragraph (4) of
46 subsection b. of this section, the court shall determine that the

1 surrender is voluntary and that the birth parent knows (1) that the
2 hearing is to surrender birth rights; (2) that the hearing is to
3 permanently end the relationship and all contact between parent and
4 child; (3) that such action is a relinquishment and termination of
5 parental rights and consent on the part of the birth parent to the
6 adoption; and (4) that no further notice of the adoption proceedings
7 shall be provided to the birth parent if the surrender is accepted by the
8 court.

9 f. If a person has been named as a parent on the original certificate
10 of birth filed with the local registrar of the municipality of birth of the
11 child who is the subject of the adoption proceeding, but that named
12 person has not amended the original certificate of birth of the child
13 filed with the local registrar's office within 60 days of the birth of the
14 child, service on that person shall be waived by the court.

15 (cf: P.L.1993, c.345, s.8)

16
17 2. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read as
18 follows:

19 10. a. A person who is entitled to notice pursuant to section 9 of
20 P.L.1977, c.367 (C.9:3-45) shall have the right to object to the
21 adoption of his child within 20 days after the filing of the complaint for
22 adoption for a State resident and 35 days after the filing in the case of
23 a nonresident. Failure to object within that time period constitutes a
24 waiver of the right to object.

25 In a contest between a person who is entitled to notice pursuant to
26 section 9 of P.L.1977, c.367 (C.9:3-45) objecting to the adoption and
27 the prospective adoptive parent, the standard shall be the best interest
28 of the child. The best interest of a child requires that a parent
29 affirmatively assume the duties encompassed by the role of being a
30 parent. In determining whether a parent has affirmatively assumed the
31 duties of a parent, the court shall consider, but is not limited to
32 consideration of, the fulfillment of financial obligations for the birth
33 and care of the child, demonstration of continued interest in the child,
34 demonstration of a genuine effort to maintain communication with the
35 child, and demonstration of the establishment and maintenance of a
36 place of importance in the child's life.

37 A judgment of adoption shall **[not]** be entered over an objection of
38 a **[parent]** person who is entitled to notice pursuant to section 9 of
39 P.L.1977, c.367 (C.9:3-45) communicated to the court by personal
40 appearance or by letter **[unless]** if the court finds, during the six
41 month period prior to the placement of the child for adoption or within
42 60 days after the birth of a child, in the case of a child placed for
43 adoption as a newborn infant:

44 (1) that the parent has substantially failed to perform the regular
45 and expected parental functions of care and support of the child,
46 although able to do so, or

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

5 The regular and expected functions of care and support of a child
6 shall include the following:

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

9 (b) communicating with the child or person having legal custody
10 of the child and visiting the child [unless visitation is impossible
11 because of the parent's confinement in an institution], or unless
12 prevented from so doing by the custodial parent or other custodian of
13 the child or a social service agency over the birth parent's objection;
14 or

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

18 A parent shall be presumed to have failed to perform the regular
19 and expected parental functions of care and support of the child if the
20 court finds that the situation set forth in paragraph (1) or (2) has
21 occurred [for six or more months] during the six month period prior
22 to the placement of the child for adoption, or within 60 days after the
23 birth of a child, in the case of a child placed for adoption as a newborn
24 infant.

25 In the case where the objecting parent is incarcerated during the six
26 month period prior to placement of the child for adoption, relevant
27 factors to be considered in determining whether that incarcerated
28 parent has failed to perform the regular and expected parental
29 functions or is unable to perform the regular and expected parental
30 functions pursuant to this subsection, shall include the extent of the
31 relationship which existed between the parent and child prior to
32 incarceration, including financial support; the efforts made to continue
33 a relationship during the incarceration; the ability to communicate and
34 visit with the child during incarceration; and the effect of the
35 communication and visitation on the child's development in terms of
36 providing nurturing and emotional support.

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

46 (cf: P.L.1993, c.345, s.9)

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

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

7 (1) Declare the child to be a ward of the court and declare that the
8 plaintiff shall have custody of the child subject to further order of the
9 court;

10 (2) Appoint an approved agency to make an investigation and
11 submit a written report to the court which shall include:

12 (a) the facts and circumstances surrounding the surrender of
13 custody by the child's parents and the placement of the child in the
14 home of the plaintiff, including the identity of any intermediary who
15 participated in the placement of the child;

16 (b) an evaluation of the child and of the plaintiff and the spouse of
17 the plaintiff if not the child's parent and any other person residing in
18 the prospective home; and

19 (c) any fees, expenses or costs paid by or on behalf of the adopting
20 parent in connection with the adoption.

21 The agency conducting the investigation shall, if it is able to,
22 contact the birth parent and confirm that counseling, if required by
23 section 18 of P.L.1993, c.345 (C.9:3-39.1), has either been provided
24 or waived by the birth parent. If not previously provided, the agency
25 shall advise the parent of the availability of such counseling through
26 the agency and shall provide such counseling if requested by the birth
27 parent or if the birth parent resides out of State or out of the country,
28 such counseling should be made available by or through an agency
29 approved to provide such counseling in the birth parent's state or
30 country of domicile. The agency shall further confirm that the birth
31 parent has been advised that the decision of the birth parent not to
32 place the child for adoption or the return of the child to the birth
33 parent can not be conditioned upon the repayment of expenses by the
34 birth parent to the adoptive parent.

35 All expenses and fees for the investigation and any counseling
36 provided shall be the responsibility of the plaintiff;

37 (3) Direct the plaintiff to cooperate with the approved agency
38 making the investigation and report; and

39 (4) Fix a day for preliminary hearing not less than two or more
40 than three months from the date of the filing of the complaint; except
41 that the hearing may be accelerated upon the application of the
42 approved agency and upon notice to the plaintiff if the agency
43 determines that removal of the child from the plaintiff's home is
44 required, in which case the court shall appoint a guardian ad litem to
45 represent the child at all future proceedings regarding the adoption.

46 Whenever the plaintiff is a stepparent of the child, the court, in its

1 discretion, may dispense with the agency investigation and report and
2 take direct evidence at the preliminary hearing of the facts and
3 circumstances surrounding the filing of the complaint for adoption.

4 Whenever a plaintiff is a brother, sister, grandparent, aunt, uncle,
5 or birth father of the child, the order may limit the investigation to an
6 inquiry concerning the status of the parents of the child and an
7 evaluation of the plaintiff. At least 10 days prior to the day fixed for
8 the preliminary hearing the approved agency shall file its report with
9 the court and serve a copy on the plaintiff.

10 b. The preliminary hearing shall be in camera and shall have for its
11 purpose the determination of the circumstances under which the child
12 was relinquished by his parents and received into the home of the
13 plaintiff, the status of the parental rights of the parents, the fitness of
14 the child for adoption and the fitness of the plaintiff to adopt the child
15 and to provide a suitable home. If the report of the approved agency
16 pursuant to subsection a. of this section contains material findings or
17 recommendations adverse to the plaintiff, the presence of a
18 representative of the approved agency who has personal knowledge of
19 the investigation shall be required at the preliminary hearing. If in the
20 course of the preliminary hearing the court determines that there is
21 lack of jurisdiction, lack of qualification on the part of the plaintiff or
22 that the best interests of the child would not be promoted by the
23 adoption, the court shall deny the adoption and make such further
24 order concerning the custody and guardianship of the child as may be
25 deemed proper in the circumstances.

26 c. If upon completion of the preliminary hearing the court finds
27 that:

28 (1) The parents of the child do not have rights as to custody of the
29 child by reason of their rights previously having been terminated by
30 court order; or, as provided in the parents' objection has been
31 contravened pursuant to subsection a. of section 10 of P.L.1977, c.367
32 (C.9:3-46) [their failure to make timely objection to the adoption, or
33 their substantial failure to perform the regular and expected parental
34 functions of care and support of the child, although able to do so, or
35 their inability to perform these functions which is unlikely to change
36 in the immediate future];

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

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

40 (4) The plaintiff is fit to adopt the child, the court shall: (a) issue
41 an order stating its findings, declaring that no parent or guardian of the
42 child has a right to custody or guardianship of the child; (b) terminate
43 the parental rights of that person, which order shall be a final order;
44 (c) fix a date for final hearing not less than six nor more than nine
45 months from the date of the preliminary hearing; and (d) appoint an
46 approved agency to supervise and evaluate the continuing placement

1 in accordance with subsection d. of this section. If the plaintiff is a
2 brother, sister, grandparent, aunt, uncle, birth father, stepparent or
3 foster parent of the child, or if the child has been in the home of the
4 plaintiff for at least two years immediately preceding the
5 commencement of the adoption action, and if the court is satisfied that
6 the best interests of the child would be promoted by the adoption, the
7 court may dispense with this evaluation and final hearing and enter a
8 judgment of adoption immediately upon completion of the preliminary
9 hearing.

10 d. The approved agency appointed pursuant to subsection c. of this
11 section shall from time to time visit the home of the plaintiff and make
12 such further inquiry as may be necessary to observe and evaluate the
13 care being received by the child and the adjustment of the child and the
14 plaintiff as members of a family. At least 15 days prior to the final
15 hearing the approved agency shall file with the court a written report
16 of its findings, including a recommendation concerning the adoption,
17 and shall mail a copy of the report to the plaintiff.

18 If at any time following the preliminary hearing the approved
19 agency concludes that the best interests of the child would not be
20 promoted by the adoption, the court shall appoint a guardian ad litem
21 for the child and after a hearing held upon the application of the
22 approved agency and upon notice to the plaintiff, may modify or
23 revoke any order entered in the action and make such further order
24 concerning the custody and guardianship of the child as may be
25 deemed proper in the circumstances.

26 e. At the final hearing the court shall proceed in camera; except
27 that if the approved agency in its report pursuant to subsection d. of
28 this section has recommended that the adoption be granted, the final
29 hearing may be dispensed with and, if the court is satisfied that the
30 best interests of the child would be promoted by the adoption, a
31 judgment of adoption may be entered immediately.

32 The appearance of the approved agency at the final hearing shall not
33 be required unless its recommendations are adverse to the plaintiff or
34 unless ordered by the court. If its appearance is required, the
35 approved agency shall be entitled to present testimony and to
36 cross-examine witnesses and shall be subject to cross-examination with
37 respect to its report and recommendations in the matter.

38 f. If, based upon the report and the evidence presented, the court
39 is satisfied that the best interests of the child would be promoted by
40 the adoption, the court shall enter a judgment of adoption. If, based
41 upon the evidence, the court is not satisfied that the best interests of
42 the child would be promoted by the adoption, the court shall deny the
43 adoption and make such further order concerning the custody and
44 guardianship of the child as may be deemed proper in the
45 circumstances.

46 (cf: P.L.1993, c.345, s.11)

1 4. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read as
2 follows:

3 6. a. A man is presumed to be the **【natural】** biological father of a
4 child if:

5 (1) He and the child's **【natural】** biological mother are or have been
6 married to each other and the child is born during the marriage, or
7 within 300 days after the marriage is terminated by death, annulment
8 or divorce;

9 (2) Before the child's birth, he and the child's **【natural】** biological
10 mother have attempted to marry each other by a marriage solemnized
11 in apparent compliance with law, although the attempted marriage is
12 or could be declared invalid, and:

13 (a) if the attempted marriage could be declared invalid only by a
14 court, the child is born during the attempted marriage, or within 300
15 days after its termination by death, annulment or divorce; or

16 (b) if the attempted marriage is invalid without a court order, the
17 child is born within 300 days after the termination of cohabitation;

18 (3) After the child's birth, he and the child's **【natural】** biological
19 mother have married, or attempted to marry, each other by a marriage
20 solemnized in apparent compliance with law, although the attempted
21 marriage is or could be declared invalid, and:

22 (a) he has acknowledged his paternity of the child in writing filed
23 with the local registrar of vital statistics;

24 (b) he has sought to have his name placed on the child's birth
25 certificate as the child's father, pursuant to R.S.26:8-40; or

26 (c) he openly holds out the child as his natural child; or

27 (d) he is obligated to support the child under a written voluntary
28 agreement or court order;

29 (4) While the child is under the age of majority, he receives the
30 child into his home and openly holds out the child as his natural child;

31 (5) While the child is under the age of majority, he provides
32 support for the child and openly holds out the child as his natural
33 child; or

34 (6) He acknowledges his paternity of the child in a writing filed
35 with the local registrar of vital statistics, which shall promptly inform
36 the mother of the filing of the acknowledgment, and she does not
37 dispute the acknowledgment within a reasonable time after being
38 informed thereof, in a writing filed with the local registrar. If another
39 man is presumed under this section to be the child's father,
40 acknowledgment may be effected only with the written consent of the
41 presumed father **【or after the presumption has been rebutted】**. Each
42 attempted acknowledgment, whether or not effective, shall be kept on
43 file by the local registrar of vital statistics and shall entitle the person
44 who filed it to notice of all proceedings concerning parentage and
45 adoption of the child, as provided in section 10 of **【this act】** P.L.1983,

1 c.17 (C.9:17-47) and pursuant to section 9 of P.L.1977, c.367 (C.
2 9:3-45).

3 b. A presumption under this section may be rebutted in an
4 appropriate action only by clear and convincing evidence. If two or
5 more presumptions arise which conflict with each other, the
6 presumption which on the facts is founded on the weightier
7 considerations of policy and logic controls. The presumption is
8 rebutted by a court order terminating the presumed father's paternal
9 rights or by establishing that another man is the child's[natural]
10 biological or adoptive father.

11 c. Notwithstanding the provisions of this section to the contrary,
12 in an action brought under this act against the legal representative or
13 the estate of a deceased alleged father, the criteria in paragraphs (4)
14 and (5) of subsection a. of this section shall not constitute
15 presumptions but shall be considered by the court together with all of
16 the evidence submitted. The decision of the court shall be based on a
17 preponderance of the evidence.

18 d. In the absence of a presumption, the court shall decide whether
19 the parent and child relationship exists, based upon a preponderance
20 of the evidence.

21 (cf: P.L.1983, c.17, s.6)

22

23 5. R.S.26:8-30 is amended to read as follows:

24 26:8-30. The attending physician, midwife or person acting as the
25 agent of the physician or midwife, who was in attendance upon the
26 birth shall be responsible for the proper execution and return of a
27 certificate of birth, which certificate shall be upon the form provided
28 or approved by the State department, and for making available to the
29 mother and[natural] biological father a Certificate of Parentage along
30 with related information as required by the State IV-D agency. It shall
31 be the responsibility of personnel at the hospital or birthing facility to
32 offer an opportunity to the child's[natural] biological father to execute
33 a Certificate of Parentage. Failure of the[natural] biological father or
34 mother to execute the Certificate of Parentage and the date of the
35 request shall be noted on the Certificate of Parentage. The Certificate
36 of Parentage shall be filed with the State IV-D agency or its designee.
37 **[The provision of services related to paternity acknowledgment]**
38 Establishment and enforcement of child support matters shall not be
39 required when a legal action is pending in the case, such as adoption,
40 or State law prohibits such intervention.

41 For the purposes of this section, "State IV-D agency" means the
42 agency in the Department of Human Services designated to administer
43 the Title IV-D Child Support Program.

44 (cf: P.L.1994, c.164, s.4)

45

46 6. (New Section) The Department of Human Services, in

1 consultation with the Department of Health and Senior Service,
2 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
3 (C.52:14B-1 et seq.), shall adopt rules and regulations to implement
4 the provisions of this act and to publicize throughout the State the
5 necessity for a father, prior to or within 60 days of the birth of a child,
6 to acknowledge paternity by amending the original birth certificate
7 record with the local registrar's office in the municipality of birth of
8 the child who is the subject of the adoption or by filing a paternity
9 action in court in order to be entitled to notice of an adoption pursuant
10 to section 9 of P.L.1977, c.367 (C.9:3-45).

11

12 7. This act shall take effect 120 days after enactment.

13

14

15

STATEMENT

16

17 The purpose of this bill is to secure permanence in adoption
18 placements by requiring certain unmarried parents to acknowledge
19 paternity of a child in order to be entitled to notice of adoption.
20 Because the law provides that those who are entitled to notice may
21 object to an adoption, objections should occur at an early point in the
22 child's life. If there is an objection, the bill provides that the standard
23 to be used in resolving the dispute shall be the best interest of the
24 child, which requires a parent to affirmatively assume the role of
25 parent. In addition, to provide notice to the public of the new
26 requirement to acknowledge paternity, the bill requires publicizing the
27 requirement throughout the State.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES
COMMITTEE

STATEMENT TO

SENATE, No. 56

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 2, 1998

The Assembly Senior Issues and Community Services Committee favorably reports Senate Bill No. 56.

As amended by committee, the purpose of this bill is to secure permanence in adoption placements by requiring certain unmarried parents to acknowledge paternity of a child in order to be entitled to notice of adoption. Because the law provides that those who are entitled to notice may object to an adoption, objections should occur at an early point in the child's life. If there is an objection, the bill provides that the standard to be used in resolving the dispute shall be the best interest of the child, which requires a parent to affirmatively assume the role of parent. In addition, to provide notice to the public of the new requirement to acknowledge paternity, the bill requires publicizing the requirement throughout the State.

The committee amended section 5 of the bill to prohibit the establishment and enforcement of child support matters when a legal action is pending in the case, such as adoption, or State law prohibits such intervention. Additionally, a technical change was made in the title of the bill.

This bill is identical to Assembly Bill No. 1637 Aca (Bateman/Biondi) which was amended and released by this committee on this date.

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 56

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1998

The Senate Women's Issues, Children and Family Services Committee favorably reports Senate Bill No. 56.

The purpose of this bill is to secure permanence in adoption placements by requiring certain unmarried parents to acknowledge paternity of a child in order to be entitled to notice of adoption. Because the law provides that those who are entitled to notice may object to an adoption, objections should occur at an early point in the child's life. If there is an objection, the bill provides that the standard to be used in resolving the dispute shall be the best interest of the child, which requires a parent to affirmatively assume the role of parent. In addition, to provide notice to the public of the new requirement to acknowledge paternity, the bill requires publicizing the requirement throughout the State.

This bill was prefiled for introduction in the 1998-1999 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

STATEMENT TO

[First Reprint]

SENATE, No. 56

with Assembly Floor Amendments
(Proposed By Assemblyman BATEMAN)

ADOPTED: MARCH 16, 1998

These floor amendments extend the time period within which a person who is entitled to notice of the complaint in an adoption proceeding, pursuant to P.L.1977, c.367 (C.9:3-37 et seq.), has the right to object to the adoption, from 60 days to 120 days or prior to the date of the preliminary hearing, whichever occurs first.

The amendments additionally delete the provision of the bill which waived the requirement of notice of the complaint in an adoption proceeding in the case where a person has been named as a parent on the original certificate of birth, but the named person has not amended the original certificate of birth of the child within 60 days of the birth of the child.

In regard to the presumption that a man is the biological father of a child, pursuant to section 6 of P.L.1983, c.17 (C.9:17-43), the amendments add a rebuttable presumption that a man has knowledge of his paternity and the birth of a child if he had sexual intercourse with the biological mother within 300 days of the child's birth. This presumption may be rebutted only by clear and convincing evidence in an appropriate action based on fraud, duress, or misrepresentation by the biological mother concerning the paternity or birth of the child. This claim of fraud, duress, or misrepresentation must be asserted prior to the finalization of the adoption.

ASSEMBLY, No. 1637

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED FEBRUARY 10, 1998

Sponsored by:

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman PETER J. BIONDI

District 16 (Morris and Somerset)

Co-Sponsored by:

Assemblyman Bagger

SYNOPSIS

Requires certain unmarried parents acknowledge paternity prior to or within 60 days of child's birth to be entitled to notice of adoption.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/20/1998)

A1637 BATEMAN, BIONDI

2

1 AN ACT concerning adoption and amending P.L.1983, c.17 and
2 R.S.26:8-30, and amending and supplementing P.L.1977, c.367.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 9 of P.L.1977, c. 367 (C.9:3-45) is amended to read as
8 follows:

9 9. a. In an adoption proceeding pursuant to P.L.1977, c.367
10 (C.9:3-37 et seq.), notice of the complaint may not be waived and a
11 notice of hearing shall be served in accordance with the Rules of Court
12 on each parent of the child to be adopted. The notice shall inform
13 each parent of the purpose of the action and of the parent's right to file
14 written objections to the adoption within 20 days after notice is given
15 in the case of a resident and 35 days in the case of a nonresident. For
16 purposes of this section, "parent" **[includes]** means (1) the husband of
17 the mother of a child born or conceived during the marriage **[and]** or
18 (2) a putative or alleged **[natural]** biological mother or father of a
19 child.

20 b. Notice pursuant to subsection a. of this section shall not be
21 served on a parent:

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

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

27 (3) Who has, prior to the placement of the child for adoption,
28 received notice of the intention to place the child, which notice shall
29 inform the parent of the purpose of the placement, that failure to
30 respond to the notice will prevent the person receiving the notice from
31 objecting to any future adoption of the child, and that the parent has
32 a right to file with the surrogate in the county in which venue is
33 anticipated to lie, the address of which surrogate shall be included in
34 the notice, written objections to the proposed placement within 20
35 days after notice is given, in the case of a resident, and 35 days in the
36 case of a nonresident; and who has either failed to file written
37 objections or denied paternity or maternity of the child. Failure to
38 respond to this notice and object to the placement of the child for
39 adoption shall constitute a waiver of all notice of any subsequent
40 proceedings with regard to the child including proceedings for
41 adoption or termination of parental rights;

42 (4) Who has given the child for adoption to the adopting parent,
43 and the Superior Court, Chancery Division, Family Part, after a

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

Matter underlined thus is new matter.

1 hearing at which the surrendering parent was heard as to the
2 voluntariness of the surrender, has determined that the surrender was
3 voluntary and proper; **[or]**

4 (5) Whose child has been made available for adoption in a foreign
5 state or country if the United States Immigration and Naturalization
6 Service has determined that the child has been approved for adoptive
7 placement. The finding of the United States Immigration and
8 Naturalization Service shall be presumed valid and no notice shall be
9 served ;or

10 (6) Who is presumed to be the biological father of the child who
11 is the subject of the adoption proceeding pursuant to paragraph (2) of
12 subsection a. of section 6 of P.L.1983, c.17 (C.9:17-43) but who,
13 prior to or within 60 days of the birth of the child, has not
14 acknowledged paternity by amending the original birth certificate
15 record filed with the local registrar's office in the municipality of birth
16 of the child who is the subject of the adoption proceeding in
17 accordance with birth record amendment procedures, or has not filed
18 an action for paternity in court.

19 c. If personal service of the notice cannot be effected because the
20 whereabouts of a birth parent of the child to be adopted are unknown,
21 the court shall determine that an adequate effort has been made to
22 serve notice upon the parent if the plaintiff immediately prior to or
23 during the placement and not more than nine months prior to the filing
24 of a complaint has:

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

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

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

39 d. In any case where, within 60 days of the birth of the child, the
40 identity of a birth parent cannot be determined or where the known
41 parent of a child is unable or refuses to identify the other parent, and
42 the court is unable from other information before the court to identify
43 the other parent, service on that parent shall be waived by the court.

44 e. In conducting the hearing required by paragraph (4) of
45 subsection b. of this section, the court shall determine that the
46 surrender is voluntary and that the birth parent knows (1) that the

1 hearing is to surrender birth rights; (2) that the hearing is to
2 permanently end the relationship and all contact between parent and
3 child; (3) that such action is a relinquishment and termination of
4 parental rights and consent on the part of the birth parent to the
5 adoption; and (4) that no further notice of the adoption proceedings
6 shall be provided to the birth parent if the surrender is accepted by the
7 court.

8 f. If a person has been named as a parent on the original certificate
9 of birth filed with the local registrar of the municipality of birth of the
10 child who is the subject of the adoption proceeding, but that named
11 person has not amended the original certificate of birth of the child
12 filed with the local registrar's office within 60 days of the birth of the
13 child, service on that person shall be waived by the court.

14 (cf: P.L.1993, c.345, s.8)

15
16 2. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read as
17 follows:

18 10. a. A person who is entitled to notice pursuant to section 9 of
19 P.L.1977, c.367 (C.9:3-45) shall have the right to object to the
20 adoption of his child within 20 days after the filing of the complaint for
21 adoption for a State resident and 35 days after the filing in the case of
22 a nonresident. Failure to object within that time period constitutes a
23 waiver of the right to object.

24 In a contest between a person who is entitled to notice pursuant to
25 section 9 of P.L.1977, c.367 (C.9:3-45) objecting to the adoption and
26 the prospective adoptive parent, the standard shall be the best interest
27 of the child. The best interest of a child requires that a parent
28 affirmatively assume the duties encompassed by the role of being a
29 parent. In determining whether a parent has affirmatively assumed the
30 duties of a parent, the court shall consider, but is not limited to
31 consideration of, the fulfillment of financial obligations for the birth
32 and care of the child, demonstration of continued interest in the child,
33 demonstration of a genuine effort to maintain communication with the
34 child, and demonstration of the establishment and maintenance of a
35 place of importance in the child's life.

36 A judgment of adoption shall **[not]** be entered over an objection of
37 a **[parent]**person who is entitled to notice pursuant to section 9 of
38 P.L.1977, c.367 (C.9:3-45) communicated to the court by personal
39 appearance or by letter **[unless]** if the court finds, during the six
40 month period prior to the placement of the child for adoption or within
41 60 days after the birth of a child, in the case of a child placed for
42 adoption as a newborn infant:

43 (1) that the parent has substantially failed to perform the regular
44 and expected parental functions of care and support of the child,
45 although able to do so, or

46 (2) that the parent is unable to perform the regular and expected

1 parental functions of care and support of the child and that the parent's
2 inability to perform those functions is unlikely to change in the
3 immediate future.

4 The regular and expected functions of care and support of a child
5 shall include the following:

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

8 (b) communicating with the child or person having legal custody
9 of the child and visiting the child [unless visitation is impossible
10 because of the parent's confinement in an institution], or unless
11 prevented from so doing by the custodial parent or other custodian of
12 the child or a social service agency over the birth parent's objection;
13 or

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

17 A parent shall be presumed to have failed to perform the regular
18 and expected parental functions of care and support of the child if the
19 court finds that the situation set forth in paragraph (1) or (2) has
20 occurred [for six or more months] during the six month period prior
21 to the placement of the child for adoption, or within 60 days after the
22 birth of a child, in the case of a child placed for adoption as a newborn
23 infant.

24 In the case where the objecting parent is incarcerated during the six
25 month period prior to placement of the child for adoption, relevant
26 factors to be considered in determining whether that incarcerated
27 parent has failed to perform the regular and expected parental
28 functions or is unable to perform the regular and expected parental
29 functions pursuant to this subsection, shall include the extent of the
30 relationship which existed between the parent and child prior to
31 incarceration, including financial support; the efforts made to continue
32 a relationship during the incarceration; the ability to communicate and
33 visit with the child during incarceration; and the effect of the
34 communication and visitation on the child's development in terms of
35 providing nurturing and emotional support.

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

45 (cf: P.L.1993, c.345, s.9)

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

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

7 (1) Declare the child to be a ward of the court and declare that the
8 plaintiff shall have custody of the child subject to further order of the
9 court;

10 (2) Appoint an approved agency to make an investigation and
11 submit a written report to the court which shall include:

12 (a) the facts and circumstances surrounding the surrender of
13 custody by the child's parents and the placement of the child in the
14 home of the plaintiff, including the identity of any intermediary who
15 participated in the placement of the child;

16 (b) an evaluation of the child and of the plaintiff and the spouse of
17 the plaintiff if not the child's parent and any other person residing in
18 the prospective home; and

19 (c) any fees, expenses or costs paid by or on behalf of the adopting
20 parent in connection with the adoption.

21 The agency conducting the investigation shall, if it is able to,
22 contact the birth parent and confirm that counseling, if required by
23 section 18 of P.L.1993, c.345 (C.9:3-39.1), has either been provided
24 or waived by the birth parent. If not previously provided, the agency
25 shall advise the parent of the availability of such counseling through
26 the agency and shall provide such counseling if requested by the birth
27 parent or if the birth parent resides out of State or out of the country,
28 such counseling should be made available by or through an agency
29 approved to provide such counseling in the birth parent's state or
30 country of domicile. The agency shall further confirm that the birth
31 parent has been advised that the decision of the birth parent not to
32 place the child for adoption or the return of the child to the birth
33 parent can not be conditioned upon the repayment of expenses by the
34 birth parent to the adoptive parent.

35 All expenses and fees for the investigation and any counseling
36 provided shall be the responsibility of the plaintiff;

37 (3) Direct the plaintiff to cooperate with the approved agency
38 making the investigation and report; and

39 (4) Fix a day for preliminary hearing not less than two or more
40 than three months from the date of the filing of the complaint; except
41 that the hearing may be accelerated upon the application of the
42 approved agency and upon notice to the plaintiff if the agency
43 determines that removal of the child from the plaintiff's home is
44 required, in which case the court shall appoint a guardian ad litem to
45 represent the child at all future proceedings regarding the adoption.

46 Whenever the plaintiff is a stepparent of the child, the court, in its

1 discretion, may dispense with the agency investigation and report and
2 take direct evidence at the preliminary hearing of the facts and
3 circumstances surrounding the filing of the complaint for adoption.

4 Whenever a plaintiff is a brother, sister, grandparent, aunt, uncle,
5 or birth father of the child, the order may limit the investigation to an
6 inquiry concerning the status of the parents of the child and an
7 evaluation of the plaintiff. At least 10 days prior to the day fixed for
8 the preliminary hearing the approved agency shall file its report with
9 the court and serve a copy on the plaintiff.

10 b. The preliminary hearing shall be in camera and shall have for its
11 purpose the determination of the circumstances under which the child
12 was relinquished by his parents and received into the home of the
13 plaintiff, the status of the parental rights of the parents, the fitness of
14 the child for adoption and the fitness of the plaintiff to adopt the child
15 and to provide a suitable home. If the report of the approved agency
16 pursuant to subsection a. of this section contains material findings or
17 recommendations adverse to the plaintiff, the presence of a
18 representative of the approved agency who has personal knowledge of
19 the investigation shall be required at the preliminary hearing. If in the
20 course of the preliminary hearing the court determines that there is
21 lack of jurisdiction, lack of qualification on the part of the plaintiff or
22 that the best interests of the child would not be promoted by the
23 adoption, the court shall deny the adoption and make such further
24 order concerning the custody and guardianship of the child as may be
25 deemed proper in the circumstances.

26 c. If upon completion of the preliminary hearing the court finds
27 that:

28 (1) The parents of the child do not have rights as to custody of the
29 child by reason of their rights previously having been terminated by
30 court order; or, as provided in the parents' objection has been
31 contravened pursuant to subsection a. of section 10 of P.L.1977, c.367
32 (C.9:3-46) [their failure to make timely objection to the adoption, or
33 their substantial failure to perform the regular and expected parental
34 functions of care and support of the child, although able to do so, or
35 their inability to perform these functions which is unlikely to change
36 in the immediate future];

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

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

40 (4) The plaintiff is fit to adopt the child, the court shall: (a) issue
41 an order stating its findings, declaring that no parent or guardian of the
42 child has a right to custody or guardianship of the child; (b) terminate
43 the parental rights of that person, which order shall be a final order;
44 (c) fix a date for final hearing not less than six nor more than nine
45 months from the date of the preliminary hearing; and (d) appoint an
46 approved agency to supervise and evaluate the continuing placement

1 in accordance with subsection d. of this section. If the plaintiff is a
2 brother, sister, grandparent, aunt, uncle, birth father, stepparent or
3 foster parent of the child, or if the child has been in the home of the
4 plaintiff for at least two years immediately preceding the
5 commencement of the adoption action, and if the court is satisfied that
6 the best interests of the child would be promoted by the adoption, the
7 court may dispense with this evaluation and final hearing and enter a
8 judgment of adoption immediately upon completion of the preliminary
9 hearing.

10 d. The approved agency appointed pursuant to subsection c. of this
11 section shall from time to time visit the home of the plaintiff and make
12 such further inquiry as may be necessary to observe and evaluate the
13 care being received by the child and the adjustment of the child and the
14 plaintiff as members of a family. At least 15 days prior to the final
15 hearing the approved agency shall file with the court a written report
16 of its findings, including a recommendation concerning the adoption,
17 and shall mail a copy of the report to the plaintiff.

18 If at any time following the preliminary hearing the approved
19 agency concludes that the best interests of the child would not be
20 promoted by the adoption, the court shall appoint a guardian ad litem
21 for the child and after a hearing held upon the application of the
22 approved agency and upon notice to the plaintiff, may modify or
23 revoke any order entered in the action and make such further order
24 concerning the custody and guardianship of the child as may be
25 deemed proper in the circumstances.

26 e. At the final hearing the court shall proceed in camera; except
27 that if the approved agency in its report pursuant to subsection d. of
28 this section has recommended that the adoption be granted, the final
29 hearing may be dispensed with and, if the court is satisfied that the
30 best interests of the child would be promoted by the adoption, a
31 judgment of adoption may be entered immediately.

32 The appearance of the approved agency at the final hearing shall not
33 be required unless its recommendations are adverse to the plaintiff or
34 unless ordered by the court. If its appearance is required, the
35 approved agency shall be entitled to present testimony and to
36 cross-examine witnesses and shall be subject to cross-examination with
37 respect to its report and recommendations in the matter.

38 f. If, based upon the report and the evidence presented, the court
39 is satisfied that the best interests of the child would be promoted by
40 the adoption, the court shall enter a judgment of adoption. If, based
41 upon the evidence, the court is not satisfied that the best interests of
42 the child would be promoted by the adoption, the court shall deny the
43 adoption and make such further order concerning the custody and
44 guardianship of the child as may be deemed proper in the
45 circumstances.

46 (cf: P.L.1993, c.345, s.11)

1 4. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read as
2 follows:

3 6. a. A man is presumed to be the **[natural] biological** father of a
4 child if:

5 (1) He and the child's **[natural] biological** mother are or have been
6 married to each other and the child is born during the marriage, or
7 within 300 days after the marriage is terminated by death, annulment
8 or divorce;

9 (2) Before the child's birth, he and the child's **[natural] biological**
10 mother have attempted to marry each other by a marriage solemnized
11 in apparent compliance with law, although the attempted marriage is
12 or could be declared invalid, and:

13 (a) if the attempted marriage could be declared invalid only by a
14 court, the child is born during the attempted marriage, or within 300
15 days after its termination by death, annulment or divorce; or

16 (b) if the attempted marriage is invalid without a court order, the
17 child is born within 300 days after the termination of cohabitation;

18 (3) After the child's birth, he and the child's **[natural] biological**
19 mother have married, or attempted to marry, each other by a marriage
20 solemnized in apparent compliance with law, although the attempted
21 marriage is or could be declared invalid, and:

22 (a) he has acknowledged his paternity of the child in writing filed
23 with the local registrar of vital statistics;

24 (b) he has sought to have his name placed on the child's birth
25 certificate as the child's father, pursuant to R.S.26:8-40; or

26 (c) he openly holds out the child as his natural child; or

27 (d) he is obligated to support the child under a written voluntary
28 agreement or court order;

29 (4) While the child is under the age of majority, he receives the
30 child into his home and openly holds out the child as his natural child;

31 (5) While the child is under the age of majority, he provides
32 support for the child and openly holds out the child as his natural
33 child; or

34 (6) He acknowledges his paternity of the child in a writing filed
35 with the local registrar of vital statistics, which shall promptly inform
36 the mother of the filing of the acknowledgment, and she does not
37 dispute the acknowledgment within a reasonable time after being
38 informed thereof, in a writing filed with the local registrar. If another
39 man is presumed under this section to be the child's father,
40 acknowledgment may be effected only with the written consent of the
41 presumed father **[or after the presumption has been rebutted]**. Each
42 attempted acknowledgment, whether or not effective, shall be kept on
43 file by the local registrar of vital statistics and shall entitle the person
44 who filed it to notice of all proceedings concerning parentage and
45 adoption of the child, as provided in section 10 of **[this act] P.L.1983,**
46 **c.17 (C.9:17-47)** and pursuant to section 9 of P.L.1977, c.367

1 (C.9:3-45).

2 b. A presumption under this section may be rebutted in an
3 appropriate action only by clear and convincing evidence. If two or
4 more presumptions arise which conflict with each other, the
5 presumption which on the facts is founded on the weightier
6 considerations of policy and logic controls. The presumption is
7 rebutted by a court order terminating the presumed father's paternal
8 rights or by establishing that another man is the child's[natural]
9 biological or adoptive father.

10 c. Notwithstanding the provisions of this section to the contrary,
11 in an action brought under this act against the legal representative or
12 the estate of a deceased alleged father, the criteria in paragraphs (4)
13 and (5) of subsection a. of this section shall not constitute
14 presumptions but shall be considered by the court together with all of
15 the evidence submitted. The decision of the court shall be based on a
16 preponderance of the evidence.

17 d. In the absence of a presumption, the court shall decide whether
18 the parent and child relationship exists, based upon a preponderance
19 of the evidence.

20 (cf: P.L.1983, c.17, s.6)

21

22 5. R.S.26:8-30 is amended to read as follows:

23 26:8-30. The attending physician, midwife or person acting as the
24 agent of the physician or midwife, who was in attendance upon the
25 birth shall be responsible for the proper execution and return of a
26 certificate of birth, which certificate shall be upon the form provided
27 or approved by the State department, and for making available to the
28 mother and[natural] biological father a Certificate of Parentage along
29 with related information as required by the State IV-D agency. It shall
30 be the responsibility of personnel at the hospital or birthing facility to
31 offer an opportunity to the child's[natural] biological father to execute
32 a Certificate of Parentage. Failure of the[natural] biological father or
33 mother to execute the Certificate of Parentage and the date of the
34 request shall be noted on the Certificate of Parentage. The Certificate
35 of Parentage shall be filed with the State IV-D agency or its designee.
36 **【The provision of services related to paternity acknowledgment】**
37 Establishment and enforcement of child support matters shall not be
38 required when a legal action is pending in the case, such as adoption,
39 or State law prohibits such intervention.

40 For the purposes of this section, "State IV-D agency" means the
41 agency in the Department of Human Services designated to administer
42 the Title IV-D Child Support Program.

43 (cf: P.L.1994, c.164, s.4)

44

45 6. (New Section) The Department of Human Services, in
46 consultation with the Department of Health and Senior Services,

1 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
2 (C.52:14B-1 et seq.), shall adopt rules and regulations to implement
3 the provisions of this act and to publicize throughout the State the
4 necessity for a father, prior to or within 60 days of the birth of a child,
5 to acknowledge paternity by amending the original birth certificate
6 record with the local registrar's office in the municipality of birth of
7 the child who is the subject of the adoption or by filing a paternity
8 action in court in order to be entitled to notice of an adoption pursuant
9 to section 9 of P.L.1977, c.367 (C.9:3-45).

10

11 7. This act shall take effect 120 days after enactment.

12

13

14

STATEMENT

15

16 The purpose of this bill is to secure permanence in adoption
17 placements by requiring certain unmarried parents to acknowledge
18 paternity of a child in order to be entitled to notice of adoption.
19 Because the law provides that those who are entitled to notice may
20 object to an adoption, objections should occur at an early point in the
21 child's life. If there is an objection, the bill provides that the standard
22 to be used in resolving the dispute shall be the best interest of the
23 child, which requires a parent to affirmatively assume the role of
24 parent. In addition, to provide notice to the public of the new
25 requirement to acknowledge paternity, the bill requires publicizing the
26 requirement throughout the State.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1637

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 2, 1998

The Assembly Senior Issues and Community Services Committee favorably reports Assembly Bill No. 1637.

As amended by committee, the purpose of this bill is to secure permanence in adoption placements by requiring certain unmarried parents to acknowledge paternity of a child in order to be entitled to notice of adoption. Because the law provides that those who are entitled to notice may object to an adoption, objections should occur at an early point in the child's life. If there is an objection, the bill provides that the standard to be used in resolving the dispute shall be the best interest of the child, which requires a parent to affirmatively assume the role of parent. In addition, to provide notice to the public of the new requirement to acknowledge paternity, the bill requires publicizing the requirement throughout the State.

The committee amended section 5 of the bill to prohibit the establishment and enforcement of child support matters when a legal action is pending in the case, such as adoption, or State law prohibits such intervention.

This bill is identical to Senate Bill No. 56 Aca (Kavanaugh) which was amended and released by this committee on this date.

Office of the Governor
NEWS RELEASE

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RELEASE: May 14, 1998

**ACTING GOV. DIFRANCESCO SIGNS LAW TO ENCOURAGE PERMANENCE IN
ADOPTION, PROTECT BEST INTEREST OF CHILDREN**

Senate President Donald DiFrancesco, serving as acting governor, today signed legislation that will ensure permanence in adoption placement by setting stricter guidelines and requirements for the establishment of parentage and the filing of objections by unmarried parents.

"The bond formed between adoptive parents and adopted children should not be shattered by the sudden appearance of a biological parent - sometimes several years after an adoption occurs," Senator DiFrancesco said. "This legislation ensures that the courts make the child's best interests the top priority when making a decision regarding an adoption."

S-56, sponsored by Senator Walter Kavanaugh and Assembly Members Kip Bateman and Peter Biondi (R-Morris/Somerset), requires certain unmarried parents to acknowledge paternity within 120 days of a child's birth or prior to the date of the preliminary adoption hearing to be entitled to receive notice of adoption. Upon receiving notice, a parent wishing to object to the adoption must file a written objection within 20 days, in the case of a resident, or 35 days in the case of a non-resident.

Additionally, the bill establishes the "best interest of the child" as the standard for resolving contested adoption cases.

Senate President Di Francesco is serving as acting governor while Gov. Christie Whitman attends the Bilderberg Conference, an international forum on political and economic concerns, in Ayrshire, Scotland.
