

[First Reprint]  
ASSEMBLY, No. 1534

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1996

By Assemblymen KAVANAUGH and BATEMAN

1 AN ACT concerning adoption and amending P.L.1983, c.17, P.L.1994,  
2 c.164 and R.S.26:8-30, and amending and supplementing P.L.1977,  
3 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 mother or father of a 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

**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:**

<sup>1</sup> Assembly ACO committee amendments adopted May 5, 1997.

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

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

16 (5) Whose child has been made available for adoption in a foreign  
17 state or country if the United States Immigration and Naturalization  
18 Service has determined that the child has been approved for adoptive  
19 placement. The finding of the United States Immigration and  
20 Naturalization Service shall be presumed valid and no notice shall be  
21 served ;or

22 (6) Who is presumed to be the natural father of the child who is the  
23 subject of the adoption proceeding pursuant to paragraph (2) of  
24 subsection a. of section 6 of P.L.1983, c.17 (C.9:17-43) but who,  
25 prior to or within six months of the birth of the child, has not  
26 acknowledged paternity <sup>1</sup> [by executing a Certificate of Parentage as  
27 provided in section 7 of P.L.1994, c.164 (C.26:8-28.1)] by amending  
28 the original birth certificate record filed with the local registrar's office  
29 in the municipality of birth of the child who is the subject of the  
30 adoption proceeding in accordance with birth record amendment  
31 procedures<sup>1</sup> or has not filed an action for paternity in court.

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

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

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

43 (3) Unless otherwise restricted by law, made direct inquiries, using  
44 the party's name and last known or suspected address, to the local post  
45 office, the Division of Motor Vehicles, county welfare agency, the  
46 municipal police department, the Division of State Police, the county

1 probation office, the Department of Corrections, and any social service  
2 and law enforcement agencies known to have had contact with the  
3 party, or the equivalents in other states, territories or countries.  
4 Failure to receive a response to the inquiries within 45 days shall be a  
5 negative response.

6 d. In any case where , within six months of the birth of the child,  
7 the identity of a birth parent cannot be determined or where the known  
8 parent of a child is unable or refuses to identify the other parent, and  
9 the court is unable from other information before the court to identify  
10 the other parent, service on that parent shall be waived by the court.

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

21 f. If a person has been named as a parent <sup>1</sup>[on a Certificate of  
22 Parentage but that named person has not executed the Certificate of  
23 Parentage within six months of the birth of the child, as provided in  
24 section 7 of P.L.1994, c.164 (C.26:8-28.1),] on the original certificate  
25 of birth filed with the local registrar of the municipality of birth of the  
26 child who is the subject of the adoption proceeding, but that named  
27 person has not amended the original certificate of birth of the child  
28 filed with the local registrar's office within six months of the birth of  
29 the child,<sup>1</sup> service on that person shall be waived by the court.

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

31

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

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

40 In a contest between a person who is entitled to notice pursuant to  
41 section 9 of P.L.1977, c.367 (C.9:3-45) objecting to the adoption and  
42 the prospective adoptive parent, the standard shall be the best interest  
43 of the child. The best interest of a child requires that a parent  
44 affirmatively assume the duties encompassed by the role of being a  
45 parent. In determining whether a parent has affirmatively assumed the  
46 duties of a parent, the court shall consider, but is not limited to

1 consideration of, the fulfillment of financial obligations for the birth  
2 and care of the child, demonstration of continued interest in the child,  
3 demonstration of a genuine effort to maintain communication with the  
4 child, and demonstration of the establishment and maintenance of a  
5 place of importance in the child's life.

6 A judgment of adoption shall [not] be entered over an objection of  
7 a parent communicated to the court by personal appearance or by  
8 letter [unless] if the court finds, during the six month period prior to  
9 the placement of the child for adoption :

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

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

17 The regular and expected functions of care and support of a child  
18 shall include the following:

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

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

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

30 A parent shall be presumed to have failed to perform the regular  
31 and expected parental functions of care and support of the child if the  
32 court finds that the situation set forth in paragraph (1) or (2) has  
33 occurred [for six or more months] during the six month period prior  
34 to the placement of the child for adoption.

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

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

10      (cf: P.L.1993, c.345, s.9)

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

14       11. a. When the child to be adopted has been received from an  
15       approved agency, the prospective parent shall file with the court a  
16       complaint for adoption after the child has been in the home of the  
17       prospective parent for at least six months. In the discretion of the  
18       approved agency, a complaint may be filed prior to that time and the  
19       court may schedule a hearing to resolve all matters except finalization  
20       of the adoption. The adoption shall not be finalized under this section  
21       unless the child has been in the home of the adoptive parent for at least  
22       six months. The complaint shall be accompanied by a consent to the  
23       plaintiff's adoption of the child signed and acknowledged by an  
24       authorized officer or representative of the approved agency; except  
25       that failure or refusal on the part of the approved agency to give  
26       consent, or withdrawal of consent on the part of the approved agency,  
27       shall not preclude an action for adoption.

28       b. Upon the filing of the complaint, the court shall set a date for  
29       the adoption hearing not less than 10 nor more than 30 days from the  
30       date of institution of the action unless a longer period shall be required  
31       in order to obtain service of notice upon one or more of the people  
32       entitled thereto and shall order the approved agency concerned to file  
33       at least five days prior to the hearing a written report which shall  
34       describe the circumstances surrounding the surrender of the child and  
35       shall set forth the results of the agency's evaluation of the child, the  
36       plaintiff and any other person residing in the proposed adoptive home;  
37       and the agency's assessment of the care being received by the child and  
38       the adjustment of the child and the plaintiff as members of a family.

39       If the agency's report contains any material findings or  
40       recommendations adverse to the plaintiff the agency shall serve a copy  
41       of that part of its report upon the plaintiff at least five days prior to the  
42       hearing and the court shall appoint a guardian ad litem for the child in  
43       the adoption proceeding if the court determines that a guardian is  
44       necessary to represent the best interest of the child. If the approved  
45       agency that placed the child with the plaintiff has not consented to the  
46       adoption, the court may appoint another approved agency to conduct

1 an investigation and make recommendations in the matter. The  
2 appointment shall not deprive the placing agency of standing to appear  
3 at the hearing and contest the adoption. Personal appearance at the  
4 hearing by a representative of the approved agency conducting the  
5 investigation may be dispensed with by the court if the agency's report  
6 favors the adoption. If an appearance is required, the approved  
7 agency shall be entitled to present testimony and to cross-examine  
8 witnesses and shall be subject to cross-examination with respect to its  
9 report and recommendations in the matter. The appearance of the  
10 child to be adopted shall not be required unless ordered by the court  
11 or unless the inquiry pursuant to section 13 of P.L.1977, c.367  
12 (C.9:3-49) indicates that the child is opposed to the adoption.

13 c. The adoption hearing shall be held in camera. If a parent of the  
14 child has made an objection to the adoption, in accordance with  
15 section 10 of P.L.1977, c.367 (C.9:3-46), the court shall take evidence  
16 relating to the objection. If the court finds against the objecting parent  
17 in accordance with subsection a. of section 10 of P.L.1977, c.367  
18 (C.9:3-46), it shall make an order terminating the parental rights of the  
19 parent and proceed with the hearing.

20 d. If, based upon the approved agency's report and the evidence  
21 presented at the hearing, the court is satisfied that the best interests of  
22 the child would be promoted by the adoption, the court shall enter a  
23 judgment of adoption. If, based upon the approved agency's report  
24 and the evidence presented at the hearing, the court is not satisfied  
25 that the best interests of the child would be promoted by the adoption,  
26 the court shall deny the adoption and make such further order  
27 concerning the custody and guardianship of the child as may be  
28 deemed proper in the circumstances.

29 e. In a case where an affidavit pursuant to section 8 of P.L. ,  
30 c. (C. )(pending before the Legislature as this bill) is necessary, a  
31 court shall not enter a judgment of adoption unless the approved  
32 agency has submitted the affidavit to the court.

33 (cf: P.L.1993, c.345, s.10)

34

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

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

41 (1) Declare the child to be a ward of the court and declare that the  
42 plaintiff shall have custody of the child subject to further order of the  
43 court;

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

46 (a) the facts and circumstances surrounding the surrender of

1 custody by the child's parents and the placement of the child in the  
2 home of the plaintiff, including the identity of any intermediary who  
3 participated in the placement of the child;

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

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

9 The agency conducting the investigation shall, if it is able to,  
10 contact the birth parent and confirm that counseling, if required by  
11 section 18 of P.L.1993, c.345 (C.9:3-39.1), has either been provided  
12 or waived by the birth parent. If not previously provided, the agency  
13 shall advise the parent of the availability of such counseling through  
14 the agency and shall provide such counseling if requested by the birth  
15 parent or if the birth parent resides out of State or out of the country,  
16 such counseling should be made available by or through an agency  
17 approved to provide such counseling in the birth parent's state or  
18 country of domicile. The agency shall further confirm that the birth  
19 parent has been advised that the decision of the birth parent not to  
20 place the child for adoption or the return of the child to the birth  
21 parent can not be conditioned upon the repayment of expenses by the  
22 birth parent to the adoptive parent.

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

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

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

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

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

44 b. The preliminary hearing shall be in camera and shall have for its  
45 purpose the determination of the circumstances under which the child  
46 was relinquished by his parents and received into the home of the

1 plaintiff, the status of the parental rights of the parents, the fitness of  
2 the child for adoption and the fitness of the plaintiff to adopt the child  
3 and to provide a suitable home. If the report of the approved agency  
4 pursuant to subsection a. of this section contains material findings or  
5 recommendations adverse to the plaintiff, the presence of a  
6 representative of the approved agency who has personal knowledge of  
7 the investigation shall be required at the preliminary hearing. If in the  
8 course of the preliminary hearing the court determines that there is  
9 lack of jurisdiction, lack of qualification on the part of the plaintiff or  
10 that the best interests of the child would not be promoted by the  
11 adoption, the court shall deny the adoption and make such further  
12 order concerning the custody and guardianship of the child as may be  
13 deemed proper in the circumstances.

14 c. If upon completion of the preliminary hearing the court finds  
15 that:

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

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

27 (3) The child is fit for adoption; [and]

28 (4) The plaintiff is fit to adopt the child ; and

29 (5) If an affidavit pursuant to section 8 of P.L. , c. (C. )(pending  
30 before the Legislature as this bill) is necessary, the affidavit has been  
31 filed with the court, the court shall: (a) issue an order stating its  
32 findings, declaring that no parent or guardian of the child has a right  
33 to custody or guardianship of the child; (b) terminate the parental  
34 rights of that person, which order shall be a final order; (c) fix a date  
35 for final hearing not less than six nor more than nine months from the  
36 date of the preliminary hearing; and (d) appoint an approved agency  
37 to supervise and evaluate the continuing placement in accordance with  
38 subsection d. of this section. If the plaintiff is a brother, sister,  
39 grandparent, aunt, uncle, birth father, stepparent or foster parent of  
40 the child, or if the child has been in the home of the plaintiff for at  
41 least two years immediately preceding the commencement of the  
42 adoption action, and if the court is satisfied that the best interests of  
43 the child would be promoted by the adoption, the court may dispense  
44 with this evaluation and final hearing and enter a judgment of adoption  
45 immediately upon completion of the preliminary hearing.

46 d. The approved agency appointed pursuant to subsection c. of this

1 section shall from time to time visit the home of the plaintiff and make  
2 such further inquiry as may be necessary to observe and evaluate the  
3 care being received by the child and the adjustment of the child and the  
4 plaintiff as members of a family. At least 15 days prior to the final  
5 hearing the approved agency shall file with the court a written report  
6 of its findings, including a recommendation concerning the adoption,  
7 and shall mail a copy of the report to the plaintiff.

8 If at any time following the preliminary hearing the approved  
9 agency concludes that the best interests of the child would not be  
10 promoted by the adoption, the court shall appoint a guardian ad litem  
11 for the child and after a hearing held upon the application of the  
12 approved agency and upon notice to the plaintiff, may modify or  
13 revoke any order entered in the action and make such further order  
14 concerning the custody and guardianship of the child as may be  
15 deemed proper in the circumstances.

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

22 The appearance of the approved agency at the final hearing shall not  
23 be required unless its recommendations are adverse to the plaintiff or  
24 unless ordered by the court. If its appearance is required, the  
25 approved agency shall be entitled to present testimony and to  
26 cross-examine witnesses and shall be subject to cross-examination with  
27 respect to its report and recommendations in the matter.

28 f. If, based upon the report and the evidence presented, the court  
29 is satisfied that the best interests of the child would be promoted by  
30 the adoption, the court shall enter a judgment of adoption. If, based  
31 upon the evidence, the court is not satisfied that the best interests of  
32 the child would be promoted by the adoption, the court shall deny the  
33 adoption and make such further order concerning the custody and  
34 guardianship of the child as may be deemed proper in the  
35 circumstances.

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

37  
38 5. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read as  
39 follows:

40 6. a. A man is presumed to be the natural father of a child if:

41 (1) He and the child's natural mother are or have been married to  
42 each other and the child is born during the marriage, or within 300  
43 days after the marriage is terminated by death, annulment or divorce;

44 (2) Before the child's birth, he and the child's natural mother have  
45 attempted to marry each other by a marriage solemnized in apparent  
46 compliance with law, although the attempted marriage is or could be

1 declared invalid, and:

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

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

7 (3) After the child's birth, he and the child's natural mother have  
8 married, or attempted to marry, each other by a marriage solemnized  
9 in apparent compliance with law, although the attempted marriage is  
10 or could be declared invalid, and:

11 (a) he has acknowledged his paternity of the child in [writing filed  
12 with the local registrar of vital statistics] <sup>1</sup>[a Certificate of Parentage  
13 pursuant to section 7 of P.L.1994, c.164 (C.26:8-28.1);] in writing  
14 filed with the local registrar of vital statistics;<sup>1</sup>

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

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

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

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

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

25 (6) He acknowledges his paternity of the child in a [writing filed  
26 with the local registrar of vital statistics, which shall promptly inform  
27 the mother of the filing of the acknowledgment, and she does not  
28 dispute the acknowledgment within a reasonable time after being  
29 informed thereof, in a writing filed with the local registrar] <sup>1</sup>[  
30 Certificate of Parentage as provided by section 7 of P.L.1994, c.164  
31 (C.26:8-28.1)] writing filed with the local registrar of vital statistics,  
32 which shall promptly inform the mother of the filing of the  
33 acknowledgment, and she does not dispute the acknowledgment within  
34 a reasonable time after being informed thereof, in a writing filed with  
35 the local registrar<sup>1</sup>. If another man is presumed under this section to

36 be the child's father, acknowledgment may be effected only with the  
37 written consent of the presumed father [or after the presumption has  
38 been rebutted]. Each attempted acknowledgment, whether or not  
39 effective, shall be kept on file by the [local registrar of vital statistics]  
40 <sup>1</sup>[State IV-D Agency or its designee] local registrar of vital statistics<sup>1</sup>  
41 and shall entitle the person who filed it to notice of all proceedings  
42 concerning parentage and adoption of the child, as provided in section  
43 10 of [this act] P.L.1983, c.17 (C.9:17-47) and pursuant to section 9  
44 of P.L.1977, c.367 (C. 9:3-45).

45 b. A presumption under this section may be rebutted in an  
46 appropriate action only by clear and convincing evidence. If two or

1 more presumptions arise which conflict with each other, the  
2 presumption which on the facts is founded on the weightier  
3 considerations of policy and logic controls. The presumption is  
4 rebutted by a court order terminating the presumed father's paternal  
5 rights or by establishing that another man is the child's natural or  
6 adoptive father.

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

14 d. In the absence of a presumption, the court shall decide whether  
15 the parent and child relationship exists, based upon a preponderance  
16 of the evidence.

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

18

19 <sup>1</sup>[6. Section 7 of P.L.1994, c.164 (C.26:8-28.1) is amended to read  
20 as follows:

21 7. A Certificate of Parentage may serve to satisfy the method of  
22 collection of Social Security numbers as required pursuant to  
23 subsection c. of R.S.26:8-28 and shall serve as the voluntary  
24 acknowledgement of paternity by a father. The Certificate of  
25 Parentage shall contain, at a minimum, the following information:

26 a. a sworn statement by the father that he is the natural father of  
27 the child;

28 b. the Social Security numbers and addresses of the father and  
29 mother;

30 c. the signature of the mother and father authenticated by a witness  
31 or notary; and

32 d. instructions for filing the Certificate of Parentage with the  
33 agency designated by the State IV-D agency

34 If a person has been named as a parent on a Certificate of Parentage  
35 but that named parent does not execute the Certificate of Parentage,  
36 the State IV-D agency or its designee shall attempt to locate that  
37 person and shall provide him with the opportunity to execute the  
38 Certificate of Parentage within six months of the birth of the child.  
39 Failure to execute the Certificate of Parentage and the date of the  
40 request shall be noted on the Certificate of Parentage. If the  
41 whereabouts of that person are unknown and the child is the subject  
42 of an adoption proceeding, the State IV-D agency shall contact the  
43 approved agency, intermediary or other person who is placing the child  
44 for adoption who shall attempt to locate that person pursuant to  
45 subsection c. of section 9 of P.L.1977, c.367 (C.9:3-45).

46 In addition, the State IV-D agency, in cooperation with birthing

1 centers and hospitals providing maternity services, shall provide  
2 written information to the father and mother of the child explaining the  
3 implications of signing a Certificate of Parentage, including the  
4 parental rights, responsibilities and financial obligations, as well as the  
5 availability of paternity establishment services and child support  
6 enforcement services. The information also shall state that failure to  
7 sign a Certificate of Parentage prior to or within six months of the  
8 birth of the child constitutes a waiver of the right to notice of an  
9 adoption pursuant to section 9 of P.L.1977, c.367 (C.9:3-45).  
10 (cf: P.L.1994, c.164, s.7)]<sup>1</sup>

11

12 <sup>1</sup>[7.] 6.<sup>1</sup> R.S.26:8-30 is amended to read as follows:

13 26:8-30. The attending physician, midwife or person acting as the  
14 agent of the physician or midwife, who was in attendance upon the  
15 birth shall be responsible for the proper execution and return of a  
16 certificate of birth, which certificate shall be upon the form provided  
17 or approved by the State department, and for making available to the  
18 mother and natural father a Certificate of Parentage along with related  
19 information as required by the State IV-D agency. It shall be the  
20 responsibility of personnel at the hospital or birthing facility to offer  
21 an opportunity to the child's natural father to execute a Certificate of  
22 Parentage <sup>1</sup>[and to orally inform a parent that failure to execute the  
23 Certificate of Parentage constitutes a waiver of notice of adoption  
24 pursuant to section 9 of P.L.1977, c.367 (C.9:3-45)]<sup>1</sup>. Failure of the  
25 natural father or mother to execute the Certificate of Parentage and  
26 the date of the request shall be noted on the Certificate of Parentage.  
27 The Certificate of Parentage shall be filed with the State IV-D agency  
28 or its designee. [The provision of services related to paternity  
29 acknowledgment] Establishment and enforcement of child support  
30 matters shall not be required when a legal action is pending in the case,  
31 such as adoption, or State law prohibits such intervention.

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

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

36

37 <sup>1</sup>[8. (New section) a. In a case in which a person is presumed to  
38 be the natural father who must execute a Certificate of Parentage, as  
39 provided in paragraph (6) of subsection b. of section 9 of P.L.1977,  
40 c.367 (C.9:3-45) or is named as the parent in subsection f. of section  
41 9 of P.L.1977, c.367 (C.9:3-45), or the identity of a parent cannot be  
42 determined or the known parent of a child is unable or refuses to  
43 identify the other parent as provided in subsection d. of section 9 of  
44 P.L.1977, c.367 (C.9:3-45), the approved agency, intermediary or  
45 other person who is placing a child for adoption shall make a written  
46 request to the State IV-D agency or its designee to search parentage

1 records to determine if a Certificate of Parentage was completed prior  
 2 to or within six months of the birth of the child. If appropriate, the  
 3 approved agency, intermediary or other person who is placing a child  
 4 for adoption may make a written request for a search of parentage  
 5 records prior to the six month period following the birth of the child.

6 b. Within 20 days of receiving the written request, the State IV-D  
 7 agency or its designee shall submit an affidavit to the requestor  
 8 advising whether or not a Certificate of Parentage was completed, and  
 9 if so, whether both parents executed the Certificate of Parentage. If  
 10 a person was named but did not execute the Certificate of Parentage,  
 11 the affidavit shall advise whether the State IV-D agency or its designee  
 12 was able to locate the person in accordance with the provisions of  
 13 section 7 of P.L.1994, c.164 (C.26:8-28.1), and if so, the date of the  
 14 request to execute the Certificate of Parentage.

15 c. The affidavit shall include the date that the request for a search  
 16 of paternity records was made.]<sup>1</sup>

17

18 <sup>1</sup>[9.] 7.<sup>1</sup> (New Section) The Department of Human Services, in  
 19 consultation with the Department of Health <sup>1</sup>and Senior Services<sup>1</sup> ,  
 20 pursuant to the "<sup>1</sup>[Administrative] Administrative<sup>1</sup> Procedure Act,"  
 21 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations  
 22 to implement the provisions of <sup>1</sup>[section 8 of P.L. c. (C. )  
 23 (pending before the Legislature as this bill)] this act<sup>1</sup> and to publicize  
 24 throughout the State the necessity for a father, prior to or within six  
 25 months of the birth of a child, to acknowledge paternity by <sup>1</sup>[executing  
 26 a Certificate of Parentage as provided in section 7 of P.L.1994, c.164  
 27 (C.26:8-28.1)] by amending the original birth certificate record with  
 28 the local registrar's office in the municipality of birth of the child who  
 29 is the subject of the adoption<sup>1</sup> or by filing a paternity action in court  
 30 in order to be entitled to notice of an adoption pursuant to section 9  
 31 of P.L.1977, c.367 (C.9:3-45).

32

33 <sup>1</sup>[10.] 8.<sup>1</sup> This act shall take effect 120 days after enactment.

34

35

36

37

38 \_\_\_\_\_  
 38 Requires certain unmarried parents to execute Certificate of Parentage  
 39 prior to or within six months of child's birth to be entitled to notice of  
 40 adoption.