

SENATE, No. 818

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1996

By Senator EWING

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
18 of the mother of a child born or conceived during the marriage [and]
19 or (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
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

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

Matter underlined thus is new matter.

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

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

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

19 (6) Who is presumed to be the natural father of the child that is the
20 subject of the adoption proceeding pursuant to paragraph (2) of
21 subsection a. of section 6 of P.L.1983, c.17 (C.9:17-43) but who,
22 prior to or within six months of the birth of the child, has not
23 acknowledged paternity by executing a Certificate of Parentage as
24 provided in section 7 of P.L.1994, c.164 (C.26:8-28.1) or has not filed
25 an action for paternity in court.

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

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

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

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

46 d. In any case where , within six months of the birth of the child,

1 the identity of a birth parent cannot be determined or where the
2 known parent of a child is unable or refuses to identify the other
3 parent, and the court is unable from other information before the court
4 to identify the other parent, service on that parent shall be waived by
5 the court.

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

16 f. If a person has been named as a parent on a Certificate of
17 Parentage but that named person has not executed the Certificate of
18 Parentage within six months of the birth of the child, as provided in
19 section 7 of P.L.1994, c.164 (C.26:8-28.1), service on that person
20 shall be waived by the court.

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
28 for adoption for a State resident and 35 days after the filing in the case
29 of a nonresident. Failure to object within that time period constitutes
30 a 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
44 of a parent communicated to the court by personal appearance or by
45 letter [unless] if the court finds, during the six month period prior to
46 the placement of the child for adoption :

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

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

8 The regular and expected functions of care and support of a child
9 shall include the following:

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

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

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

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

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

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

1 interests of the child would be promoted by the adoption.
2 (cf: P.L.1993, c.345, s.9)

3

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

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

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

31 If the agency's report contains any material findings or
32 recommendations adverse to the plaintiff the agency shall serve a copy
33 of that part of its report upon the plaintiff at least five days prior to the
34 hearing and the court shall appoint a guardian ad litem for the child in
35 the adoption proceeding if the court determines that a guardian is
36 necessary to represent the best interest of the child. If the approved
37 agency that placed the child with the plaintiff has not consented to the
38 adoption, the court may appoint another approved agency to conduct
39 an investigation and make recommendations in the matter. The
40 appointment shall not deprive the placing agency of standing to appear
41 at the hearing and contest the adoption. Personal appearance at the
42 hearing by a representative of the approved agency conducting the
43 investigation may be dispensed with by the court if the agency's report
44 favors the adoption. If an appearance is required, the approved
45 agency shall be entitled to present testimony and to cross-examine
46 witnesses and shall be subject to cross-examination with respect to its

1 report and recommendations in the matter. The appearance of the
2 child to be adopted shall not be required unless ordered by the court
3 or unless the inquiry pursuant to section 13 of P.L.1977, c.367
4 (C.9:3-49) indicates that the child is opposed to the adoption.

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

12 d. If, based upon the approved agency's report and the evidence
13 presented at the hearing, the court is satisfied that the best interests of
14 the child would be promoted by the adoption, the court shall enter a
15 judgment of adoption. If, based upon the approved agency's report
16 and the evidence presented at the hearing, the court is not satisfied
17 that the best interests of the child would be promoted by the adoption,
18 the court shall deny the adoption and make such further order
19 concerning the custody and guardianship of the child as may be
20 deemed proper in the circumstances.

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

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

26

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

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

33 (1) Declare the child to be a ward of the court and declare that the
34 plaintiff shall have custody of the child subject to further order of the
35 court;

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

38 (a) the facts and circumstances surrounding the surrender of
39 custody by the child's parents and the placement of the child in the
40 home of the plaintiff, including the identity of any intermediary who
41 participated in the placement of the child;

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

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

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

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

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

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

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

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

36 b. The preliminary hearing shall be in camera and shall have for its
37 purpose the determination of the circumstances under which the child
38 was relinquished by his parents and received into the home of the
39 plaintiff, the status of the parental rights of the parents, the fitness of
40 the child for adoption and the fitness of the plaintiff to adopt the child
41 and to provide a suitable home. If the report of the approved agency
42 pursuant to subsection a. of this section contains material findings or
43 recommendations adverse to the plaintiff, the presence of a
44 representative of the approved agency who has personal knowledge of
45 the investigation shall be required at the preliminary hearing. If in the
46 course of the preliminary hearing the court determines that there is

1 lack of jurisdiction, lack of qualification on the part of the plaintiff or
2 that the best interests of the child would not be promoted by the
3 adoption, the court shall deny the adoption and make such further
4 order concerning the custody and guardianship of the child as may be
5 deemed proper in the circumstances.

6 c. If upon completion of the preliminary hearing the court finds
7 that:

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

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

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

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

21 (5) If an affidavit pursuant to section 8 of P.L. _____, c.
22 (C. _____)(pending before the Legislature as this bill) is necessary, the
23 affidavit has been filed with the court,

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

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

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

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

15 The appearance of the approved agency at the final hearing shall not
16 be required unless its recommendations are adverse to the plaintiff or
17 unless ordered by the court. If its appearance is required, the
18 approved agency shall be entitled to present testimony and to
19 cross-examine witnesses and shall be subject to cross-examination with
20 respect to its report and recommendations in the matter.

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

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

30
31 5. Section 6 of P.L.1983, c.17 (C.9:17-43) is amended to read as
32 follows:

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

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

37 (2) Before the child's birth, he and the child's natural mother have
38 attempted to marry each other by a marriage solemnized in apparent
39 compliance with law, although the attempted marriage is or could be
40 declared invalid, and:

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

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

46 (3) After the child's birth, he and the child's natural mother have

1 married, or attempted to marry, each other by a marriage solemnized
2 in apparent compliance with law, although the attempted marriage is
3 or could be declared invalid, and:

4 (a) he has acknowledged his paternity of the child in [writing filed
5 with the local registrar of vital statistics] a Certificate of Parentage
6 pursuant to section 7 of P.L.1994, c.164 (C.26:8-28.1);

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

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

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

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

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

17 (6) He acknowledges his paternity of the child in a [writing filed
18 with the local registrar of vital statistics, which shall promptly inform
19 the mother of the filing of the acknowledgment, and she does not
20 dispute the acknowledgment within a reasonable time after being
21 informed thereof, in a writing filed with the local registrar] Certificate
22 of Parentage as provided by section 7 of P.L.1994, c.164
23 (C.26:8-28.1). If another man is presumed under this section to be
24 the child's father, acknowledgment may be effected only with the
25 written consent of the presumed father [or after the presumption has
26 been rebutted]. Each attempted acknowledgment, whether or not
27 effective, shall be kept on file by the [local registrar of vital statistics]
28 State IV-D Agency or its designee and shall entitle the person who
29 filed it to notice of all proceedings concerning parentage and adoption
30 of the child, as provided in section 10 of [this act] P.L.1983, c.17
31 (C.9:17-47) and pursuant to section 9 of P.L.1977, c.367 (C.9:3-45).

32 b. A presumption under this section may be rebutted in an
33 appropriate action only by clear and convincing evidence. If two or
34 more presumptions arise which conflict with each other, the
35 presumption which on the facts is founded on the weightier
36 considerations of policy and logic controls. The presumption is
37 rebutted by a court order terminating the presumed father's paternal
38 rights or by establishing that another man is the child's natural or
39 adoptive father.

40 c. Notwithstanding the provisions of this section to the contrary,
41 in an action brought under this act against the legal representative or
42 the estate of a deceased alleged father, the criteria in paragraphs (4)
43 and (5) of subsection a. of this section shall not constitute
44 presumptions but shall be considered by the court together with all of
45 the evidence submitted. The decision of the court shall be based on a
46 preponderance of the evidence.

1 d. In the absence of a presumption, the court shall decide whether
2 the parent and child relationship exists, based upon a preponderance
3 of the evidence.

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

5
6 6. Section 7 of P.L.1994, c.164 (C.26:8-28.1) is amended to read
7 as follows:

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

13 a. a sworn statement by the father that he is the natural father of
14 the child;

15 b. the Social Security numbers and addresses of the father and
16 mother;

17 c. the signature of the mother and father authenticated by a witness
18 or notary; and

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

21 If a person has been named as a parent on a Certificate of Parentage
22 but that named parent does not execute the Certificate of Parentage,
23 the State IV-D agency or its designee shall attempt to locate that
24 person and shall provide him with the opportunity to execute the
25 Certificate of Parentage within six months of the birth of the child.
26 Failure to execute the Certificate of Parentage and the date of the
27 request shall be noted on the Certificate of Parentage. If the
28 whereabouts of that person are unknown and the child is the subject
29 of an adoption proceeding, the State IV-D agency shall contact the
30 approved agency, intermediary or other person who is placing the child
31 for adoption who shall attempt to locate that person pursuant to
32 subsection c. of section 9 of P.L.1977, c.367 (C.9:3-45).

33 In addition, the State IV-D agency, in cooperation with birthing
34 centers and hospitals providing maternity services, shall provide
35 written information to the father and mother of the child explaining the
36 implications of signing a Certificate of Parentage, including the
37 parental rights, responsibilities and financial obligations, as well as the
38 availability of paternity establishment services and child support
39 enforcement services. The information also shall state that failure to
40 sign a Certificate of Parentage prior to or within six months of the
41 birth of the child constitutes a waiver of the right to notice of an
42 adoption pursuant to section 9 of P.L.1977, c.367 (C.9:3-45).

43 (cf: P.L.1994,c.164,s.7)

44
45 7. R.S.26:8-30 is amended to read as follows:

46 26:8-30. The attending physician, midwife or person acting as the

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

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

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

23

24 8. (New section) a. In a case in which a person is presumed to be
25 the natural father who must execute a Certificate of Parentage, as
26 provided in paragraph (6) of subsection b. of section 9 of P.L.1977,
27 c.367 (C.9:3-45) or is named as the parent in subsection f. of section
28 9 of P.L.1977, c.367 (C.9:3-45), or the identity of a parent cannot be
29 determined or the known parent of a child is unable or refuses to
30 identify the other parent as provided in subsection d. of section 9 of
31 P.L.1977, c.367 (C.9:3-45), the approved agency, intermediary or
32 other person who is placing a child for adoption shall make a written
33 request to the State IV-D agency or its designee to search parentage
34 records to determine if a Certificate of Parentage was completed prior
35 to or within six months of the birth of the child. If appropriate, the
36 approved agency, intermediary or other person who is placing a child
37 for adoption may make a written request for a search of parentage
38 records prior to the six month period following the birth of the child.

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

1 request to execute the Certificate of Parentage.

2 c. The affidavit shall include the date that the request for a search
3 of paternity records was made.

4

5 9. (New Section) The Department of Human Services, in
6 consultation with the Department of Health, pursuant to the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.),
8 shall adopt rules and regulations to implement the provisions of
9 section 8 of P.L. c. (C.) (pending before the Legislature as this
10 bill) and to publicize throughout the State the necessity for a father,
11 prior to or within six months of the birth of a child, to acknowledge
12 paternity by executing a Certificate of Parentage as provided in section
13 7 of P.L. 1994, c.164 (C.26:8-28.1) or by filing a paternity action in
14 court in order to be entitled to notice of an adoption pursuant to
15 section 9 of P.L.1977, c.367 (C.9:3-45).

16

17 10. This act shall take effect 120 days after enactment.

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19

20

STATEMENT

21

22 The purpose of this bill is to secure permanence in adoption
23 placements by requiring certain unmarried parents to acknowledge
24 parentage prior to or within six months of the birth of the child in
25 order to be entitled to notice of adoption. Because the law provides
26 that those who are entitled to notice may object to an adoption, and
27 the bill imposes the six-month time frame, objections should occur at
28 an early point in the child's life. To serve the State's interest and the
29 child's need for early permanence and stability, the time period is
30 measured in terms of the child's life. If there is an objection, the bill
31 provides that the standard to be used in resolving the dispute shall be
32 the best interest of the child, which requires a parent to affirmatively
33 assume the role of parent. In addition, to provide notice to the public
34 of the new requirement to acknowledge parentage, the bill requires
35 publicizing the requirement throughout the State.

36 Specifically, in order to be entitled to notice of an adoption, the bill
37 amends section 9 of P.L.1977, c.367 (C.9:3-45) by requiring a person
38 who:

39 •is presumed to be the natural father of the child pursuant to
40 paragraph (2) of subsection a. of section 6 of P.L.1983, c.17
41 (C.9:17-43) to execute a Certificate of Parentage acknowledging
42 paternity, prior to or within six months of the birth of the child, or
43 to file an action for paternity in court within six months of the
44 child's birth.

45 •has been named as a parent on a Certificate of Parentage but has
46 not executed the certificate to sign the Certificate of Parentage

1 within six months of the birth.

2 The bill further provides that if, within six months of the birth of the
3 child, the identity of a parent cannot be determined or where the
4 known parent is unable or refuses to identify the other parent, service
5 on that parent is waived by the court.

6 The law which established the Certificate of Parentage, section 7 of
7 P.L.1994, c.164 (C.26:8-28.1), is amended to require that if a parent
8 has been named but has not executed a Certificate of Parentage, the
9 State IV-D agency or its designee shall attempt to locate that person
10 and provide him with the opportunity to execute the certificate within
11 six months of the birth of the child. If that person cannot be located
12 and the child is the subject of an adoption proceeding, the State IV-D
13 agency or its designee shall contact the approved agency, intermediary
14 or other person who is placing the child for adoption and that person
15 or entity shall attempt to locate that person in accordance with
16 subsection c. of section 9 of P.L.1977, c.367 (C.9:3-45).

17 In a case in which a parent must execute a Certificate of Parentage
18 in order to be entitled to notice of adoption, or where the identity of
19 the parent cannot be determined, the approved agency, intermediary
20 or other person placing the child for adoption shall make a written
21 request to the State IV-D agency or its designee to determine if a
22 Certificate of Parentage was completed prior to or within six months
23 of the birth of the child. Within 20 days of receiving the written
24 request, an affidavit shall be submitted to the requestor advising the
25 particulars of the execution of the Certificate of Parentage. The
26 affidavit shall be filed with the court.

27 To notify unmarried parents of the requirement to execute a
28 Certificate of Parentage within six months of the birth of the child in
29 order to be entitled to notice of adoption, the bill requires that written
30 information provided to parents include a statement that failure to sign
31 the Certificate of Parentage prior to or within six months of the birth
32 of the child constitutes a waiver of the right to notice of an adoption.
33 Also, the bill requires the personnel at the hospital or birth facility to
34 orally inform a parent of this requirement. In addition, the Department
35 of Human Services, in consultation with the Department of Health,
36 shall adopt rules and regulations to publicize throughout the State the
37 requirement to acknowledge paternity by executing a Certificate of
38 Parentage prior to or within six months of the birth of the child, in
39 order to be entitled to notice of adoption.

40 The bill further provides that when there is an objection to an
41 adoption, pursuant to section 10 of P.L.1977, c.367 (C.9:3-46), the
42 time period for filing the objection is 20 days after the filing of the
43 complaint for adoption for a State resident and 35 days after the filing
44 for a nonresident. In resolving the dispute, the standard shall be the
45 best interest of the child. Under current law, the parent first must be
46 found to have substantially failed to perform or be unable to perform

1 regular and expected parental functions. The bill provides that the
2 best interest of the child requires that each parent affirmatively assume
3 the role of being a parent. Factors to be considered are whether that
4 parent has fulfilled financial obligations for the birth and care of the
5 child, demonstrated continued interest in the child, demonstrated a
6 genuine effort to maintain communication with the child and
7 demonstrated the establishment and maintenance of a place of
8 importance in the child's life.

9 Further amendments to section 10 of P.L.1977, c.367 (C.9:3-46)
10 include a six-month time period prior to the placement of the child for
11 adoption as the time frame on which the court shall focus when
12 determining whether a parent has substantially failed to perform or is
13 unable to perform regular and expected parental functions. In the case
14 where the objecting parent is incarcerated, the amendments codify
15 factors that the New Jersey Supreme Court considered in Matter of
16 LAS, 134 N.J.127 (1993), namely, the extent of the relationship which
17 existed between the parent and child prior to incarceration, the efforts
18 to continue a relationship, the ability to communicate and visit with the
19 child, and the effect of the communication and visitation on the child's
20 development.

21

22

23

24

25 Requires certain unmarried parents to execute Certificate of Parentage
26 prior to or within six months of child's birth to be entitled to notice of
27 adoption.