

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

2

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]** 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

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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.