

[Second Reprint]
SENATE, No. 56

STATE OF NEW JERSEY
208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator WALTER KAVANAUGH

District 16 (Morris and Somerset)

Co-Sponsored by:

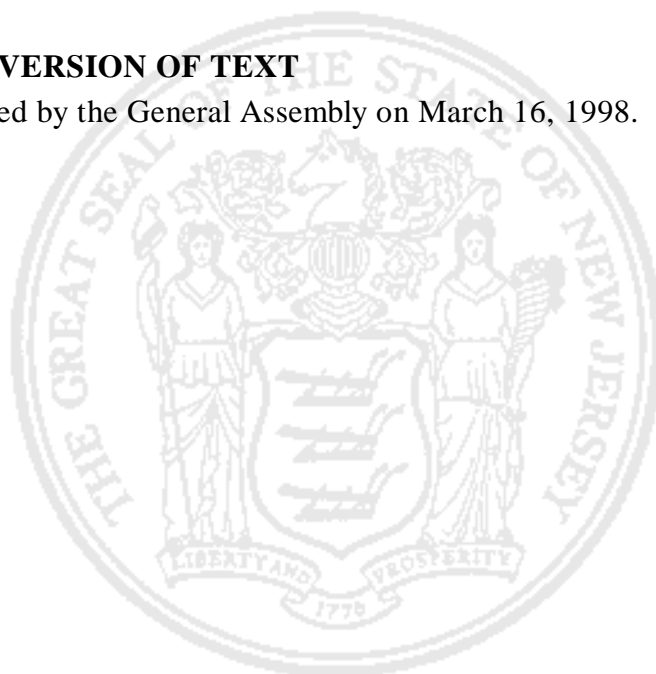
Assemblymen Bateman, Biondi, Bagger and Assemblywoman Heck

SYNOPSIS

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

CURRENT VERSION OF TEXT

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



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

S56 [2R] KAVANAUGH

2

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

4

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

7

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

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

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

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASC committee amendments adopted March 2, 1998.

² Assembly floor amendments adopted March 16, 1998.

1 adoption or termination of parental rights;

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

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

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

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

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

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

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

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

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

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

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

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

22
23 2. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read as
24 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9

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

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

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

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

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

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

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

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

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

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

1 making the investigation and report; and

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

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

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

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

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

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

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

1 authority over the child;

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

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

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

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

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

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

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

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

10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39

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

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

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

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

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

16

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

29

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