

ASSEMBLY, No. 4628

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 27, 2017

Sponsored by:

Assemblywoman PATRICIA EGAN JONES
District 5 (Camden and Gloucester)

SYNOPSIS

Requires court to provide notice of right to legal counsel, and appoint counsel to indigent parents, during adoption proceedings.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning adoption and amending and supplementing
2 P.L.1977, c.367 (C.9:3-37 et seq.).

3

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

6

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

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

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

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

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

31 (3) Who has, prior to the placement of the child for adoption,
32 received notice of the intention to place the child, which notice
33 shall inform the parent of the parent's right to be represented by and
34 consult with legal counsel and, if indigent, of the requirement that
35 the court provide the parent with counsel pursuant to section 3 of
36 P.L. , c. (C.) (pending before the Legislature as this bill), the
37 purpose of the placement, that failure to respond to the notice will
38 prevent the person receiving the notice from objecting to any future
39 adoption of the child, and that the parent has a right to file with the
40 surrogate in the county in which venue is anticipated to lie, the
41 address of which surrogate shall be included in the notice, written
42 objections to the proposed placement within 20 days after notice is
43 given, in the case of a resident, and 35 days in the case of a
44 nonresident; and who has either failed to file written objections or
45 denied paternity or maternity of the child. Failure to respond to this

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 notice and object to the placement of the child for adoption shall
2 constitute a waiver of all notice of any subsequent proceedings with
3 regard to the child including proceedings for adoption or
4 termination of parental rights;

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

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

16 (6) Who is presumed to be the biological father of the child
17 who is the subject of the adoption proceeding pursuant to paragraph
18 (2) of subsection a. of section 6 of P.L.1983, c.17 (C.9:17-43) but
19 who, within 120 days of the birth of the child or prior to the date of
20 the preliminary hearing, whichever occurs first, has not
21 acknowledged paternity by amending the original birth certificate
22 record filed with the local registrar's office in the municipality of
23 birth of the child who is the subject of the adoption proceeding in
24 accordance with birth record amendment procedures, or has not
25 filed an action for paternity in court.

26 c. If personal service of the notice cannot be effected because
27 the 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
30 prior to or during the placement and not more than nine months
31 prior to the 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,
38 using the party's name and last known or suspected address, to the
39 local post office, the **【Division of Motor Vehicles】** New Jersey
40 Motor Vehicle Commission, county welfare agency, the municipal
41 police department, the Division of State Police, the county
42 probation office, the Department of Corrections, and any social
43 service and law enforcement agencies known to have had contact
44 with the party, or the equivalents in other states, territories or
45 countries. Failure to receive a response to the inquiries within 45
46 days shall be a negative response.

47 d. In any case where, within 120 days of the birth of the child
48 or prior to the date of the preliminary hearing, whichever occurs

1 first, the identity of a birth parent cannot be determined or where
2 the 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
4 court to identify the other parent, service on that parent shall be
5 waived by 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
15 by the court.

16 (cf: P.L.1998, c.20, s.1)

17

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

20 10. a. A person who is entitled to notice pursuant to section 9 of
21 P.L.1977, c.367 (C.9:3-45) shall have the right to object to the
22 adoption of his child within 20 days after the filing of the complaint
23 for adoption for a State resident and 35 days after the filing in the
24 case of a nonresident, the right to be represented by and consult
25 with legal counsel, and if indigent, the right to have the court
26 provide the person with counsel pursuant to section 3 of P.L. , c.
27 (C.) (pending before the Legislature as this bill). Failure to
28 object within that time period constitutes a waiver of the right to
29 object.

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

43 A judgment of adoption shall be entered over an objection of a
44 person who is entitled to notice pursuant to section 9 of P.L.1977,
45 c.367 (C.9:3-45) communicated to the court by personal appearance
46 or by letter if the court finds, during the six-month period prior to
47 the placement of the child for adoption or within 120 days after the
48 birth of a child or prior to the date of the preliminary hearing,

1 whichever occurs first, in the case of a child placed for adoption as
2 a newborn infant:

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

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

10 The regular and expected functions of care and support of a child
11 shall include the following:

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

14 (b) communicating with the child or person having legal custody
15 of the child and parenting time rights, or unless prevented from so
16 doing by the custodial parent or other custodian of the child or a
17 social service agency over the birth parent's objection; or

18 (c) providing financial support for the child unless prevented
19 from doing so by the custodial parent or other custodian of the child
20 or a 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
23 the court finds that the situation set forth in paragraph (1) or (2) has
24 occurred during the six-month period prior to the placement of the
25 child for adoption, or within 120 days after the birth of a child or
26 prior to the date of the preliminary hearing, whichever occurs first,
27 in the case of a child placed for adoption as a newborn infant.

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

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

1 determining whether the best interests of the child would be
2 promoted by the adoption.

3 (cf: P.L.1998, c.20, s.2)

4

5 3. (New section) a. In any action concerning the termination of
6 parental rights filed pursuant to section 6 of P.L.1955, c.232, and
7 any action concerning the adoption of a child for whom the parental
8 rights of the parents have been terminated filed pursuant to section
9 11 of P.L.977, c.367 (C.9:3-47) or section 12 of P.L.1977, c.367
10 (C.9:3-48), notice of the right to retain and consult with legal
11 counsel shall be provided to the respondent parent. If the parent
12 appears before the court, is indigent, and requests counsel, the court
13 shall appoint the Office of the Public Defender to represent the
14 parent. The Office of the Public Defender shall appoint counsel to
15 represent the parent in accordance with subsection b. of this section.

16 b. The Office of the Public Defender is authorized to provide
17 representation to children and indigent parents in termination of
18 parental rights proceedings under Title 9 of the Revised Statutes
19 pursuant to the provisions of this section.

20 (1) In selecting attorneys to serve as counsel for indigent
21 parents, the Office of the Public Defender shall take into
22 consideration the nature, complexity and other characteristics of the
23 cases, the services to be performed, the status of the matters, the
24 attorney's pertinent trial and other legal experience and other
25 relevant factors.

26 (2) The Office of the Public Defender shall ensure that an
27 attorney selected pursuant to this section has received training in
28 representing clients in termination of parental rights actions from
29 the Office of the Public Defender or will receive such equivalent
30 training, as soon as practicable, from other sources.

31 c. (1) Nothing in this section shall be construed to limit the
32 powers of the Public Defender pursuant to section 7 of P.L.1967,
33 c.43 (C.2A:158A-7).

34 (2) Nothing in this section shall be construed to preclude a
35 parent from retaining private counsel.

36

37 4. This act shall take effect immediately.

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40 STATEMENT

41

42 This bill requires the court to appoint legal counsel for indigent
43 parents during adoption proceedings.

44 The bill mandates that in an adoption proceeding or prior to a
45 child being placed for adoption, certain information must be
46 provided to the parent. Specifically, the notice of hearing or notice
47 of intention to place the child for adoption must inform each parent
48 of the parent's right to be represented by and consult with legal

1 counsel, and if indigent, of the parent's right to have the court
2 provide the parent with counsel pursuant to the provisions of the
3 bill. The bill also expands the definition of "parent" to include a
4 legal guardian or custodian.

5 Currently, the law requires the court to inform each parent or
6 person entitled to notice of an adoption action of the purpose of the
7 action, the consequences of not responding to the notice in a timely
8 manner, the parent's or person's right to file written objections, and
9 the timeframe under which the objections must be filed. The law
10 does not require the court to inform parents or other persons entitled
11 to notice of the adoption action of the right to be represented by or
12 consult with legal counsel or, if indigent, to be provided with
13 counsel.

14 Under the provisions of the bill, in any action concerning a
15 termination of parental rights or the adoption of a child for whom
16 the parental rights of the parents have been terminated, the court
17 would be required to provide the respondent parent with notice of
18 the parent's right to retain and consult with legal counsel. If the
19 parent is indigent, the court would be required to appoint the Office
20 of the Public Defender to represent the parent.

21 Current law requires the court to provide notice of a parent's
22 right to retain and consult with legal counsel or, if the parent is
23 indigent, to appoint the Office of Public Defender to represent the
24 parent in certain actions to terminate parental rights, but not in all
25 instances. This bill would expand the instances in which the court
26 is required to provide such notice and appoint the Public Defender
27 to represent an indigent parent to include an action to terminate
28 parental rights or when a parent files a complaint for adoption.

29 The bill also stipulates that the Office of the Public Defender
30 would appoint counsel to represent the parent in accordance with
31 guidelines established in the bill, and its provisions would not
32 prohibit a parent from retaining private counsel or limit the powers
33 of the Public Defender established pursuant to law.