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# A National Putative Father Registry, Wells Conference on Adoption Law

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# A NATIONAL PUTATIVE FATHER REGISTRY

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## WITH APPENDIX "SURVEY OF PUTATIVE FATHER REGISTRIES BY STATE"†

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## INTRODUCTION

The large numbers of children and families touched by adoption justify an American public policy that facilitates adoption. Americans adopt 127,000 children per year[1] with over 2% of families including an adopted child.[2] Children adopted out of the public child welfare system comprise 59% of the total annual American adoptions.[3] One half million American children reside in foster care,[4] and 119,000 of these foster children are legally free and waiting for adoption.[5]

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† Appendix begins on page 339.

[1] About 127,000 children were adopted in the United States in 2001. EVAN P. DONALDSON ADOPTION INSTITUTE, SAFEGUARDING THE RIGHTS AND WELL-BEING OF BIRTHPARENTS 15 (2006), http://www.adoptioninstitute.org/publications/2006_11_Birthparent_Study_All.pdf [hereinafter EVAN P. DONALDSON ADOPTION INSTITUTE]. The number of adoptions has remained between 118,000 and 127,000 every year since 1987. Victor E. Flango & Mary M. Casey, *Adoptions 2000–2001*, 8 ADOPTION Q., 23, 33 (2005). The number of adoptions has increased from 1985 to 2002 by 16.9%. EVAN P. DONALDSON ADOPTION INSTITUTE, *supra*, at 15.

[2] Adoption.com, Some Numbers in the Nutshell, http://infant.adoption.com/newborn/some-numbers-in-the-nutshell.html (last visited Apr. 29, 2008).

[3] EVAN P. DONALDSON ADOPTION INSTITUTE, *supra* note 1, at 16.

[4] The Child Welfare Information Gateway reported that 523,000 foster children were in foster care in America in 2003. Child Welfare Information Gateway, Foster Care: Numbers and Trends, http://www.childwelfare.gov/pubs/factsheets/foster.cfm (last visited Apr. 29, *(continued)*

Data on American women and children also inform adoption policy. Single women deliver nearly 36% of the nation's children every year[6] and form the majority of single custodial parents.[7] Children who grow up without participating fathers are more likely to commit crimes, abuse substances, earn lower grade point averages, and live in poverty.[8] It is unmarried mothers who are most likely to make adoption plans for their children.[9] The majority of mothers who have relinquished children to adoption demonstrate positive socio-demographic and social psychological outcomes five years after the adoption.[10] Less is known about the effect of adoption on birth fathers who report under-involvement with the adoption

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2008). Foster care is defined in the Code of Federal Regulations (CFR) as "24-hour substitute care for children outside their own homes." Foster care settings include, but are not limited to, non-relative foster family homes, relative foster homes (whether payments are being made or not), group homes, emergency shelters, residential facilities, and pre-adoptive homes. 45 C.F.R. § 1355 app. A § 2 (2006).

[5] NATIONAL ADOPTION DAY COALITION, FOSTER CARE ADOPTION IN THE UNITED STATES: AN ANALYSIS OF INTEREST IN ADOPTION AND A REVIEW OF STATE RECRUITMENT STRATEGIES 1 (2005), http://www.urban.org/UploadedPDF/411254_foster_care_adoption.pdf. On average, these children have been in foster care for 3.5 years. *Id.*

[6] CENTERS FOR DISEASE CONTROL, BIRTHS: FINAL DATA FOR 2004: NAT'L VITAL STAT. REP. 2 (2006), http://www.cdc.gov/nchs/data/nvsr/nvsr55/nvsr55_01.pdf.

[7] "Of all custodial parents, 85% were mothers and 15% were fathers." ParentsWithoutPartners.org, Facts about Single Parent Families, http://www.parentswithoutpartners.org/Support1.htm (last visited Apr. 29, 2008).

[8] The National Center for Fathering, The Consequences of Fatherlessness,. http://www.fathers.com/content/index.php?option=com_content&task=view&id=391 (last visited Apr. 29, 2008).

[9] National Council for Adoption, Adoption Factbook IV 10 (Thomas C. Atwood et al. eds., 2007).

[10] EVAN P. DONALDSON ADOPTION INSTITUTE, *supra* note 1, at 43–50. International and American studies indicate that the former era of secrecy in adoption was associated with birth mothers' greater grief and that their participation in the choice of an adoptive family for their children was the single practice that most benefited them. *Id.* at 48. Exceedingly small and unrepresentative studies conducted on birth fathers yielded no generalizeable results. *Id.* at 49.

process.[11] Adopted children experience parental investment on a level with two parent biological families.[12]

It is right that Americans view adoption favorably,[13] because adoption is common in the United States and it demonstrably benefits American children, birth mothers, and families. American law and policy should and does facilitate adoption.[14] But formidable obstacles to adoption lie in the court processes and delays that occur when birth parents appeal a court's decision to terminate their parental rights.[15] The most commonly contested adoptions occur where mothers want to place children for adoption and fathers object.[16] It is axiomatic that the law should first protect birth parents' rights to their children, but that principle is muddied by the numbers of children who lack a participating or legally identifiable father. Resolving the parental rights of a non participating father or a father who is not legally identifiable should not impede the adoption of his child. This Article endorses a national putative father registry which will reduce contested adoptions by encouraging the development of more state registries and by connecting those state registries in one national database. Public policy should favor such a national putative father registry where the parental rights of responsible fathers receive unparalleled protection, while the rights of children to permanency are expedited where their fathers have not stepped up to the plate.

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[11] Researchers concluded that studies on birth fathers were based on small and unrepresentative groups but that adoption impacted fathers more strongly than previously assumed. *Id.* at 49.

[12] Laura Hamilton, Simon Cheng, & Brian Powell, *Adoptive Parents, Adaptive Parents: Evaluating the Importance of Biological Ties for Parental Investment*, 72 AM. SOC. REV. 95, 109–10 (2007).

[13] The Evan P. Donaldson Adoption Institute's 1997 Benchmark Adoption Study indicates 60% of Americans have personal experience with adoption; 60% have generally favorable attitudes toward adoption; and 70% approve of a birth mother's decision to relinquish a child to adoption. The Evan P. Donaldson Adoption Institute, Benchmark Adoption Survey, http://www.adoptioninstitute.org/survey/baexec.html (last visited Apr. 29, 2008).

[14] Mary Beck, *Toward a National Putative Father Registry Database*, 25 HARV. J.L. & PUB. POL'Y 1031, 1035–36 (2002).

[15] Judith S. Rycus, Madelyn Freundlich, Ronald. C. Hughes, Betsy Keefer & Emily Joyce Oakes, *Confronting Barriers to Adoption Success*, 44 FAM. CT. REV. 210, 212 (2006).

[16] Tamar Lewin, *Unwed Fathers Fight for Babies Placed for Adoption by Unwed Mothers*, N.Y. TIMES, Mar. 19, 2006, at A1.

The momentum has built towards enactment of a national putative father registry database such that Senator Mary Landrieu introduced one in the United States Senate in 2006 called the PROUD FATHER ACT.[17] While Congress did not enact it, its legislative intent to protect the parental rights of earnest unwed fathers against interstate adoption,[18] to protect the privacy and safety of birth mothers,[19] and to expedite the prompt stable placement of children[20] justifies its re-introduction and enactment. Only a national registry can accomplish these legislative goals, because relocation across state lines is so common.[21] When mothers and/or their children move from states of conception to second states that assume jurisdiction over the children for adoption or dependency, unwed fathers may be unable to locate their children. Such fathers' efforts to assume parental responsibility must be protected. And where fathers do not promptly shoulder parental responsibilities, the children's opportunities for prompt permanency with another family must be protected. Putative Father Registries provide such protection for fathers and their children when they guarantee notice to timely registered fathers, require fathers to legally establish paternity, and set registration deadlines to stabilize placement.

State registries garner media attention when a father contests a state's registration deadline.[22] Unfortunately, the media may focus on the sensational highlights of such a contested adoption and not expose the sound policies behind laws requiring unwed fathers to promptly establish their paternity legally and assume commensurate responsibilities.

Senator Mary Landrieu's proposed PROUD FATHER ACT provides funding to states to voluntarily develop compatible registries; the

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[17] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. (2006).

[18] *Id.* §§ 442(a)(1)(A), 441(8)(A).

[19] *Id.* § 442(a)(1)(D).

[20] *Id.* § 445(c).

[21] 75% of custodial mothers move at least once within four years after separation or divorce. Fathers and Families Information Resources, http://www.fathersandfamilies.org/site/infores.php?pagename=issuesmoeaways (last visited Apr. 29, 2008).

[22] *See, e.g.*, Lewin, *supra* note 16, at A1; *Talk of the Nation: Fathers Fight for Parental Rights* (NPR Broadcast Mar. 27, 2006), http://www.npr.org:templates:story:story.php%3FstoryId=5303741; *Anderson Cooper 360: Biological Fathers and Adoption* (CNN Television Broadcast Mar. 20, 2006), http://transcripts.cnn.com/TRANSCRIPTS/0603/20/acd.01.html.

Congressional authority to implement it is based on spending power.[23] If enacted, a national registry would encourage—not mandate—all states to develop registries communicating with a national database. A father's registration in one state would be searchable in any state. The Bill requires a national media campaign and requires participating states to develop state-based publicity campaigns advising men of the steps required to protect their parental rights.[24] Putative father registry benefits should extend not just to parties in voluntary placement adoptions but to the nation's half million children in dependency proceedings.[25]

This Article will discuss the mechanics of putative father registries, review jurisdictional issues, analyze the policies behind their development, and review relevant case law over the last 5 years.

## I. MECHANICS

The United States Supreme Court upheld the constitutionality of putative father registries in 1983 in *Lehr v. Robertson*[26] in which a New York father challenged his state's putative father registry that both eliminated a need to provide him with notice of an adoption and required the dismissal of his paternity action that he had filed after the inception of the stepparent adoption action.[27] Since then, some thirty-three states have enacted some form of a registry for putative fathers.[28] This number is somewhat misleading in that while thirty-three states have a registry, some are not even minimally functional registries that ensure legal notice of an

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[23] Proud Father Act, S. 3803 §§ 442(a), 441(c) (describing the funding offered to states). Section 2 of the bill authorized placing legislation into the Social Security Act, 42 U.S.C. § 620.

[24] Proud Father Act, S. 3803 §§ 441(b), 442(b)(3)(B) (providing that the national media mount an educational campaign and that participating states develop state educational campaigns).

[25] U.S. DEP'T OF HEALTH & HUMAN SERV., ADMIN. FOR CHILDREN & FAMILIES, TRENDS IN FOSTER CARE AND ADOPTION—FY 2000–FY 2005, http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm (last visited Apr. 29, 2008) [hereinafter TRENDS IN FOSTER CARE AND ADOPTION] (showing 511,000 children were in foster care in 2005).

[26] 463 U.S. 248 (1983).

[27] *Id.* at 265.

[28] *See* Lindsay Biesterfeld, *Putative Father Registry Table*, Appendix 1, *infra* (original work in possession of the author).

adoption action to a registered father.[29] The number of functional state registries is closer to twenty-seven.[30]

If enacted, Senator Landrieu's bill would fund each state to develop a registry compatible with the national database and to provide certain required features.[31] State participation is voluntary;[32] the required features do not undermine the substantive adoption law or child abuse law of any state;[33] each state defines the parameters of each of the required features.[34] For example, the PROUD FATHER ACT requires that participating states provide legal notice of an adoption or termination of parental rights action to any timely registered father; the state defines the way in which notice is provided and the registration time limit that insures notice.[35]

Registries are for men who are putative fathers. The definition of a putative father is "a man who has had sexual relations with a woman to whom he is not married and is therefore [on notice] that such woman may be pregnant as a result of such relations."[36] The men who have no need to register include those who are presumed fathers (married to the mother), adjudicated fathers (where courts have decreed their paternity), and acknowledged fathers (where fathers have executed an affidavit of paternity and filed it with the appropriate state agency).[37] The parental

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[29] *See id.*

[30] *See id.*; U.S. DEP'T OF HEALTH & HUMAN SERV., CHILD WELFARE INFORMATION GATEWAY, THE RIGHTS OF PRESUMED (PUTATIVE) FATHERS: SUMMARY OF STATE LAWS (2007), http://www.childwelfare.gov/systemwide/laws_policies/statutes/putativeall.pdf.

[31] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. §§ 441(c), 442(a) (2006).

[32] *Id.* § 444(a)(1).

[33] *See id.* §§ 443(9), (11), 445(c).

[34] *Id.* § 443(9).

[35] *Id.* §§ 440(4), 441(a)(8), 443(9).

[36] *Id.* § 440(8).

[37] For example, Missouri requires service of an adoption petition on a man who has been adjudicated or acknowledged as the father of a child or on the man whose consent is required for the adoption. MO. ANN. STAT. § 453.060(2), (5) & (6) (West 2003 & Supp. 2007). Missouri also identifies men whose consents are required for adoption. MO. ANN. STAT. § 453.030(3)(2) (West 2003 & Supp. 2007). The Revised Uniform Parentage Act (RUPA) does not use the term "putative father." RUPA replaced the term "putative father" with "alleged father". The comment section explains the reason for this change: "According to Webster's 'putative' means 'commonly accepted or supposed.' Many 'alleged fathers' do not fit that definition." UNIF. PARENTAGE ACT § 102(3) cmt. (2002), 9B U.L.A. 305 (2001 & Supp. 2007).

rights of these men are already legally protected as they are assumed to be participating parents or at least can be required to support their children.

Under the national registry scheme, each participating state erects a putative father registry and ensures notice of an adoption or dependency action to the timely registered putative father. Notice is provided to the presumed, adjudicated, or acknowledged father by other state statutes.[38] Putative fathers register by filling out a form (including at least the identity of the mother and/or the child and father's mailing address) and mailing it or otherwise providing it to the appropriate state agency.[39] That agency transmits the registration to a national putative father registry database.[40] The transmission from the state of registration to the national database ensures notice of an adoption or child dependency action in any participating state to a putative father no matter where he registered.[41] Thus, if a mother moved from the state of conception (i.e. where she was in college) to another state to deliver and placed the child for adoption (i.e. where her parents lived), and the adoption is filed in a third state (i.e. where the adoptive parents resided); the father—with or without notice of the mother's relocation or the adoptive parents' domicile—could use one registration to protect his rights to notice and an opportunity to be heard in an adoption filed in any participating state.

Participating states must ensure legal notice to the putative father who registers within a state-set time limit such that timely registration may occur during the pregnancy or before the child reaches a certain age.[42] State registration time limits currently start with conception and end variously from the moment of birth to 30 days or more after birth.[43]

Under a national registry, mothers are not required to identify fathers or to notify them of pregnancy, of an adoption petition, or of a dependency action for child abuse and neglect.[44] Adoptive petitioners and/or courts are required to serve presumed fathers, adjudicated fathers, and acknowledged fathers, and must search the putative father registry to provide notice to

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[38] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. § 441(a)(8) (2006).

[39] *Id.* §§ 443(5), 444(c), (f).

[40] *Id.* § 444(d)(1), (2)(A).

[41] *Id.* § 443(6).

[42] *See id.* §§ 441(8), 443(9).

[43] *See* Lindsay Biesterfeld, *Putative Father Registry Table*, appendix 1, *infra* (original work in possession of the author).

[44] Beck, *supra* note 14, at 1072.

registered putative fathers.[45] Thus, mothers cannot thwart putative fathers, because fathers' registrations are independent of the mothers' locations or communications.

States must define consequences for failure to timely file with registries.[46] The consequence may be the loss of notice of adoption proceedings. Commonly, states establish additional consequences. For example, Connecticut and Minnesota provide that a father who fails to timely file waives rights to intervene in an adoption.[47] Alabama, Arizona, Indiana, Missouri, Nebraska, and Ohio provide that the father who fails to timely file implies consent to adoption.[48] Illinois and Minnesota provide that failure to timely file constitutes grounds to terminate parental rights.[49] Finally Idaho and New Hampshire bar the filing of a paternity action for the father who fails to timely file.[50] Though Senator Landrieu's bill does not require it, public policy should favor requiring fathers who would impede an adoption to become legally established fathers who could be held responsible for custodial and financial care of their children.

Some states do currently require a father to not only file with the putative father registry but to file a paternity action as well.[51] The unwed father's filing with the putative father registry ensures legal notice to him;[52] his filing a paternity action ensures the child of a biological father on the line to assume custodial and financial responsibilities. The unmarried father's failure to timely file/establish paternity enables the child to have a permanent placement with adoptive parents where the mother's rights have

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[45] *Id.* at 1041.

[46] *See* Proud Father Act, S. 3803 § 444(h)(2).

[47] CONN. GEN. STAT. ANN. §§ 45a-716(b), 45a-717(a) (West 2004 & Supp. 2007); MINN. STAT. ANN. § 259.52, subdiv. 8 (West 2005).

[48] ALA. CODE § 26-10C-1(i) (LexisNexis Supp. 2006); ARIZ. REV. STAT. ANN. § 8-106.01 (2004); *see* IND. CODE ANN. § 31-14-20-2 (West Supp. 2007); MO. ANN. STAT. § 453.030(3) (West 2003 & Supp. 2007); NEB. REV. STAT. § 43-104.04 (2004); OHIO REV. CODE ANN. § 3107.07 (West 2005).

[49] 750 ILL. COMP. STAT. ANN. 50/12.1(h) (West 2004); MINN. STAT. ANN. § 259.52, subdiv. 8 (West 2005).

[50] IDAHO CODE ANN, § 16-1513(4) (2001); N.H. REV. STAT. ANN. § 170-B:6(I)(c) (LexisNexis Supp. 2006).

[51] For example MO. ANN. STAT. § 453.030(3)(2)(c); *see infra* Appendix 1 for descriptions of all states.

[52] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. § 440(4) (2006).

been voluntarily relinquished or involuntarily terminated.[53] Public policy favors the legal establishment of paternity because children benefit from fathers' involvement and support.[54] Senator Landrieu's national registry bill authorizes child support enforcement units to use putative father registry filings as rebuttable evidence in child support recovery actions.[55]

The proposed PROUD FATHER ACT did not require a provision extending the registration time for putative fathers defrauded by mothers. Some states codify such a fraud exception and others carve it out in case law.[56] Justice requires that the father's time limit to file with the registry and to file a paternity action be extended where mothers have intentionally deceived or thwarted fathers.

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[53] For example Missouri requires a father to file a paternity action and to file with the putative father registry during the pregnancy or within 15 days of birth. MO. ANN. STAT. § 453.030(3)(2)(c).

[54] The National Center for Fathering, *supra* note 8.

[55] The Proud Father Act would require states, in order to receive funds, to create a means by which a putative father is informed that the registry may be used to establish a child support obligation. S. 3803, § 444(d)(3); MO. ANN. STAT. § 192.016(5) (West 2003 & Supp. 2007) ("An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.").

[56] An example of a codified fraud exception is found in Missouri Revised Statute § 192.016(6) "Lack of knowledge of the pregnancy does not excuse failure to timely file pursuant to paragraph (b) or (c) of subdivision (2) of subsection 3 of section 453.030, RSMo." MO. ANN. STAT. § 192.016(6).

> Failure to timely file pursuant to paragraph (b) or (c) of subsection 3 of section 453.030, RSMo, shall waive a man's right to withhold consent to an adoption proceeding unless: (1) The person was led to believe through the mother's misrepresentation or fraud that: (a) The mother was not pregnant when in fact she was; or (b) The pregnancy was terminated when in fact the baby was born; or (c) After the birth, the child died when in fact the child is alive; and (2) The person upon the discovery of the misrepresentation or fraud satisfied the requirements of paragraph (b) or (c) of subsection 3 of section 453.030, RSMo, within fifteen days of that discovery.

MO. ANN. STAT. § 192.016(7). For an example of a fraud exception in case law see, e.g., *In re* Adoption of Baby Boy Doe, 717 P.2d 686, 691 (Utah 1986).

## II. JURISDICTION

The PROUD FATHER ACT requires participating states to amend their long arm statutes to assume personal jurisdiction over any putative father whose child is under that state's legitimate jurisdiction and whose paternity registration is transmitted to that state.[57] The National Commission for Commissioners of Uniform State Laws has provided a protocol for similar amendment of long arm statutes in child support and paternity determinations. The Uniform Interstate Family Support Act (UIFSA) has been adopted by all fifty states.[58] It provides for states to amend their long arm statutes to exercise personal jurisdiction over a non resident father if the father has asserted parentage with the state's putative father registry.[59] Borrowing that provision, a national putative father registry would enable assertion of personal jurisdiction over any putative father who asserts parentage by registering in any participating state under a national registry scheme.[60] Such father's registration ultimately authorizes the transmission of his registration from 'his' state to any other participating state searching the national registry, and the searching state is then obligated to provide such father with legal notice of any adoption or dependency action filed.[61] Thus, extrapolating UIFSA policy and procedure, a state participating in the national registry amends its long arm statute and assumes jurisdiction over the non-resident father who registered in any other state and who authorized his registration to be transmitted to the national registry for response to legitimate searches by other states.

Analyzing jurisdiction over the parties in an interstate adoption requires a review of two United States Supreme Court cases and multiple uniform statutes, consideration of what state is best suited to exercise subject matter jurisdiction over the adoption and to exercise personal jurisdiction over the birth parents, and what policies are served by the different choices. The issue is further confounded because commentators disagree whether adoption actions require personal jurisdiction over a putative father or whether providing father with notice and an opportunity to be heard is sufficient.[62] Additionally, the state with preferred subject

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[57] Proud Father Act, S. 3803 § 443(10).

[58] UNIF. INTERSTATE FAMILY SUPPORT ACT Prefatory Note (2001), 9 U.L.A 162 (2005).

[59] *Id.* § 201(a)(7) cmt. (2001), 9 U.L.A. 185–88 (2005).

[60] *Id.* § 201(a)(7), § 310(b) (2001), 9 U.L.A. 185, 217 (2005).

[61] *Id.* §§ 310(b), 605(a) (2001), 9 U.L.A. 217, 247 (2005).

[62] Beck, *supra* note 14, at 1036–37.

matter jurisdiction over the adoption of an older child may be different from that of a newborn.[63]

The applicability of uniform laws to jurisdiction in adoption remains unsettled. The Uniform Child Custody Jurisdiction Act (UCCJA) which was adopted in all fifty states did not list adoption in its custody proceedings.[64] Nonetheless, a majority of courts have applied the UCCJA to determine subject matter jurisdiction in adoption.[65] The Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) succeeded the UCCJA and specifies that it does not govern adoptions but does govern termination of parental rights.[66] The Uniform Interstate Family Support Act (UIFSA) and the Revised Parentage Act of 2002 (RUPA 2002) purport to govern parentage actions.[67]

The UCCJA provides that litigation concerning the custody of children should take place in the home state of the child[68] which is the state with the "closest connection and where significant evidence concerning his care, protection, training and personal relationships is most readily available."[69] The Uniform Adoption Act (UAA) and the UCCJEA have provisions consistent with these old UCCJA principles. The UAA refines the home state definition of the UCCJA to include the state where the child has lived since "soon after birth."[70] For adoption of older children, the UAA provides that the home state may be the adoptive parents' state if it contains "substantial evidence concerning the child's present and future care."[71] In this way, the UAA provides for subject matter jurisdiction in

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[63] Approximately 59% of American adoptions out of the child welfare system typically involve older children. EVAN P. DONALDSON ADOPTION INSTITUTE, *supra* note 1, at 16.

[64] 1 JOAN HEIFETZ HOLLINGER ET AL., ADOPTION LAW AND PRACTICE § 4.07[2][a] (2006). The UCCJA has been adopted in some form by all 50 states and establishes venue for subject matter jurisdiction in interstate child custody disputes. *Id.*

[65] *Id.* at 4-85–4-86 n.11; UNIF. ADOPTION ACT art. 3, pt. 1 cmt. (1994), 9 U.L.A 66 (1999).

[66] UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 103 (1997), 9 U.L.A. 660 (1999).

[67] UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 (2001), 9 U.L.A. 185 (2005); UNIF. PARENTAGE ACT § 601 (2002), 9B U.L.A. 338 (2001 & Supp. 2007).

[68] UNIF. CHILD CUSTODY JURISDICTION ACT § 3(a)(1) (1968), 9 U.L.A. 307 (1999), *available at* http://www.law.upenn.edu/bll/archives/ulc/fnact99/1920_69/uccja68.htm (last visited Apr. 29, 2008).

[69] HOLLINGER, *supra* note 64, § 4.07[2][a].

[70] UNIF. ADOPTION ACT § 3-101(a) (1994), 9 U.L.A. 67 (1999).

[71] *Id.* § 3-101(a)(1), 9 U.L.A. 67.

the state of the adoptive parents' residence which is not necessarily the state which has personal jurisdiction over putative father.

In adoption, the issue of personal jurisdiction over birth fathers versus providing notice and an opportunity to be heard may devolve around whether a termination of parental rights (either by finalization of an adoption or by specified termination order of the court) is such a serious court action that it should require minimum personal contacts with the forum state for personal jurisdiction. If termination of parental rights is a custody action and merits the status exception to personal jurisdiction, notice and an opportunity to be heard may be adequate. Some commentators argue that because adoptions are status or *in rem* actions, they do not require the personal jurisdiction that child support actions require even if they terminate parental rights.[72] Instead these commentators focus on the "serious and permanent consequences of adoption for the status of the children and their families (that) calls for a child centered basis for jurisdiction over the parties as well as over the subject matter."[73] No case law has definitively clarified this issue.[74]

Both UIFSA and RUPA require personal jurisdiction for adjudication of parentage of a person.[75] In contrast, the UCCJEA provides that termination actions are custody proceedings that require only notice and an opportunity to be heard.[76] The child-centered focus of the UCCJEA and

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[72] HOLLINGER, *supra* note 64, § 4.07[3]. In a dependency case, Utah held that the status exception applied to termination of parental rights actions, that Utah had personal jurisdiction over a non resident mother, and that Utah satisfied due process requirements in the absence of minimum contacts. D.A. v. Utah, 63 P.3d. 607, 611–16 (Utah 2005).

[73] HOLLINGER, *supra* note 64, 4-91 § 4.07[3].

[74] See *D.A. v. Utah* for a review of states that have analyzed whether status exceptions to personal jurisdiction apply in termination of parental rights or adoption actions and the need for personal jurisdiction to satisfy the due process requirements of the Fourteenth Amendment. 63 P.3d. at 613–16. *D.A.* is a dependency case. *Id.* at 610.

[75] *See* UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 (2001), 9 U.L.A. 185 (2005); UNIF. PARENTAGE ACT § 604 (2002), 9B U.L.A. 339 (2001 & Supp. 2007). RUPA authorizes a court to adjudicate parentage binding on an individual over whom the court has personal jurisdiction in the absence of jurisdiction over another individual. The comment to this section discusses that while custody and visitation are considered to be status adjudications not requiring personal jurisdiction over both parents, paternity proceedings do require personal jurisdiction. It also discusses the practical approach of enabling courts to make parentage decisions even if they cannot bind all appropriate parties. *Id.* § 604 cmt (2002), 9B U.L.A. 340 (2001 & Supp. 2007).

[76] UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT Prefatory Note 4, § 106 (1997), 9 U.L.A. 651–52, 663 (1999). This provision conflicts with the holding in *May v.*

(*continued*)

the UAA supports applying the substantive law of the state with subject matter jurisdiction over the adoption to consents, relinquishments, and terminations of parental rights.[77] This means giving notice and an opportunity to be heard to putative fathers and not necessarily acquiring personal jurisdiction over them. Under the UCCJEA and UAA system then, notice and an opportunity to be heard is provided to men who have not established legal paternity and/or have not indicated a desire to claim paternity.[78] The UAA is silent on personal jurisdiction.[79]

The United States Supreme Court's decisions do little to clarify the necessity of personal jurisdiction. The Supreme Court held in *May v. Anderson* that personal service on a non-resident legal parent did not accomplish personal jurisdiction in a child custody determination in a dissolution in the forum state.[80] Nineteen years later, the Supreme Court suggested in *Stanley v. Illinois*[81] that notice and an opportunity to be heard were sufficient to resolve a biological father's rights in a custody determination where father had not legally established paternity.[82] The Court required personal jurisdiction over a legal parent in a dissolution but suggested that only notice and an opportunity to be heard was due a genetic but not legally established father in a dependency action. Scholars suggest that a rationale for such a distinction lies in the fact that requiring personal jurisdiction in adoption would destroy adoption practice, especially in cases that involve a father whose identity or whereabouts are unknown.[83]

The reality is that subject matter determinations over adoptions focus on the significant connections that a child and her adoptive or birth parents have with the forum state, and the availability of substantial evidence concerning the minor's present or future care—both of which are elements

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*Anderson*, 345 U.S. 528, 530, 534 (1953) that personal service on a mother did not achieve personal jurisdiction over her for a custody action in another state.

[77] HOLLINGER, *supra* note 64, § 4.07[4].

[78] UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 106 (1997), 9 U.L.A. 663 (1999); UNIF. ADOPTION ACT § 2-402 (1994), 9 U.L.A. 51–52 (1999).

[79] UNIF. ADOPTION ACT § 3-101 (1994), 9 U.L.A. 67–68 (1999).

[80] 345 U.S. 528 (1953).

[81] 405 U.S. 645 (1972).

[82] *See id.* at 648–50.

[83] HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 852 (2d ed., student ed., 1988); HOLLINGER, *supra* note 64, § 4.07[3]. *But see* Herma Hill Kay, *Adoption in the Conflict of Laws: The UAA, Not the UCCJA, Is the Answer*, 84 CAL. L. REV. 703, 739–41 (1996).

defined by the UCCJEA and the UAA.[84] On the other hand, paternity determinations focus on the genetic or legal connections men have with their children.[85] Using the substantive law of the state with subject matter jurisdiction over adoptions is child-centered, making it convenient for the adoptive parents and the child. Using the substantive law of the state with personal jurisdiction over the purported father is father-centered, making it convenient for the father. Conflicts are most acute where adoption litigation proceeds in one state and a parentage action proceeds in another state. Such multi-state litigation is necessarily protracted and may result in conflicting decisions. The question is whether the adoption forum state can constitutionally determine the parental rights of the non-resident father and ultimately foreclose litigation in the state of the father's domicile. The UAA and *Stanley* answer affirmatively;[86] *May*, UIFSA and RUPA 2002 suggest not.[87]

The next question is whether notice and an opportunity to be heard do actually protect a non-resident father's rights. It is doubtful that a forum state's subject matter jurisdiction in an interstate adoption action effectively provides notice to fathers residing in other states unless personal service is obtained. More likely, service is obtained by regular mail at the last known address and/or by publication on non-resident fathers whose exact whereabouts are unknown and who may not know of the mothers' adoption plans. The common practice of publishing service in forum states on non-resident fathers does little to effectively provide notice to fathers and may not establish personal jurisdiction pursuant to the Supreme Court's decision in *May*.[88] The author's experience is that virtually no fathers see published notice in their states of residence much less in newspapers in other states. Such ineffective notice does not protect

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[84] UNIF. CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT § 201 (1997), 9 U.L.A. 671 (1999); UNIF. ADOPTION ACT § 3-101 (1994), 9 U.L.A. 67–68 (1999).

[85] *See, e.g.*, May v. Anderson, 345 U.S. 528 (1953); Stanley v. Illinois, 405 U.S. 645, 658 (1972); Lehr v. Robertson, 463 U.S. 248 261–62 (1983).

[86] UNIF. ADOPTION ACT § 3-101 (1994), 9 U.L.A. 67–68 (1999); *Stanley*, 405 U.S. at 657 n.9, 658.

[87] *May*, 345 U.S. at 533; UNIF. INTERSTATE FAMILY SUPPORT ACT § 201 (2001), 9 U.L.A. 185 (2005 & Supp. 2007); UNIF. PARENTAGE ACT § 604 (2002), 9B U.L.A. 339 (2001 & Supp. 2007).

[88] In *May*, the Court deemed personal service on the mother insufficient to establish personal jurisdiction. 345 U.S. at 533. Intuitively, publication is far less likely to provide notice than personal service. *See, e.g.*, Wiggins v. Wiggins, 135 A.2d 154, 156 (D.C. 1957).

earnest fathers whether or not it meets constitutional muster. And it sets the stage for protracted and costly multi-state litigation which delays permanency for children.[89]

Whether or not adoption only requires notice and an opportunity to be heard, assertion of personal jurisdiction is the safer practice from the standpoint of stable adoptions. Putative Father Registries provide a protocol of providing notice to fathers that actually will reach fathers—at the addresses they have provided to the registry (and may update at will) and long-arm statute amendments will achieve personal jurisdiction in forum states so as to avert litigation in multiple states. While the forum state's assertion of personal jurisdiction over a non-resident father may be inconvenient for him, the assurance of notice under the national registry scheme provides an invaluable tradeoff in its guarantee of his opportunity to be heard.

A national putative father registry scheme indeed remedies the situation from any angle. It provides unsurpassed protection to putative fathers if they register, because they get notice at the address they have provided and may update at will.[90] Simultaneously, it streamlines the resolution of adoption contests, because it requires states to amend their long arm statutes to establish personal jurisdiction over fathers whose registrations are transmitted to the forum states.[91] This allows for the concentration of litigation in one state which resolves faster than dueling multi-state court actions and which assures the child of expedited and stable placement.

## III. PUBLIC POLICY

Public policy related to a national putative father registry must consider the needs of fathers, mothers, children, and the states. The key consideration is that registries provide unwed fathers with an avenue to protect their paternal rights in interstate adoptions and in child abuse and neglect proceedings of which they would otherwise have no notice.[92] No

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[89] *See May*, 345 U.S. at 530–33 (discussing that father brought original custody action in Wisconsin and then sought its enforcement in Ohio).

[90] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. § 444(c)(5) (2006).

[91] *Id.* § 443(10).

[92] Only 20% of fathers whose identity and location were known by child welfare agencies were contacted when a child abuse and neglect case was initiated. Jeffrey Leving & Glen Sacks, *Giving Fathers a Chance*, BOSTON GLOBE, June 8, 2006 at A15; U.S. DEP'T

(*continued*)

mother, adoption agency, or adoption attorney in a participating state can intentionally or unintentionally thwart a father from asserting his parental rights if he files with a putative father registry that transmits his data to the national database which must be searched when an adoption petition or protective custody is filed in a participating state. Fathers have sued for damages for tortious interference with parental rights in cases where mothers relocated and thwarted fathers' efforts to assert parental rights.[93] A national putative father registry would eliminate such tort actions because fathers could ensure notice and an opportunity to be heard no matter where the mother moved within the United States. Only a national registry can resolve this interstate issue.

Additionally, registries protect the privacy of putative fathers in that states would no longer publish service in their names in newspapers, would no longer physically search for them to provide notice, and/or no longer mail letters to them at addresses where their wives (not the mothers of the children) might open them.

Putative father registration is easy and can be done for the cost of postage. It does not require that a man continue a relationship with the mother of his child. And it relieves his need to contact her for information about a pregnancy, to seek alternate sources of information about her, or even to keep track or her whereabouts. And in this way, it is not inconsistent with current social mores concerning casual sexual encounters.[94] However, registration does require the putative father's affirmative action, because nothing requires a mother to locate a putative father to inform him of the pregnancy or of an adoption, to seek his financial or emotional support, or to seek his consent to adoption.

The four biggest drawbacks of a national putative father registry for putative fathers are (1) men's traditional reliance on women to tell them of a pregnancy; (2) their lack of knowledge of a putative father registry and its filing requirement; (3) their uncertainty of paternity; and (4) their potential desire to avoid child support obligations while trying to maintain

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OF HEALTH & HUMAN SERV., WHAT ABOUT THE DADS? 54 (2006), http://aspe.hhs.gov/hsp/06/CW-involve-dads/report.pdf.

[93] Kessel v. Leavitt, 511 S.E.2d 720, 734 (W.Va. 1998); Smith v. Malouf, 772 So. 2d 490, 491–92 (Miss. 1998). For an analysis of these cases *vis à vis* a national putative father registry, see Beck, *supra* note 14, at 1068–69.

[94] Beck, *supra* note 14, at 1051 ("The burden placed on putative fathers under Illinois's new legislation is not necessarily out of step with modern mores or the realities of contemporary heterosexual relationships.") (quoting M.V.S. v. V.M.D., 776 So. 2d 142, 151 (Ala. Civ. App. 1999)).

parental prerogatives. Senator Landrieu's registry protocol, with its requirement for national publicity as well as publicity in every state, addresses birth fathers' traditional reliance on birth mothers and birth fathers' lack of knowledge. With sexual intercourse comes the father's responsibility to either know the woman's name or to inquire of her about the possibility of a pregnancy.[95] Every state offers paternity establishment services pursuant to 42 U.S.C. § 666(a)(5),[96] and every state should publicize how to access that opportunity with the registry and its filing requirement.[97] The last drawback, relating to fathers' support obligations, is a benefit to the child. If a father declines to register in order to avoid that support obligation, then the registry paradigm has effectively culled out the man who does not earnestly wish to assume the responsibilities of parenting.

Mothers benefit from putative father registries, because registries relieve them of the need to notify men of pregnancy or adoption. Nearly one out of every three American women is abused by her male partner;[98] thirty-one percent of deaths of pregnant and postpartum women result from domestic violence, one-third of female homicides result from domestic violence;[99] one out of every five college women is raped,[100] often while

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[95] Proud Father Act, S. 3803, §§ 440(8)–(10)

[96] Requires each state to establish a procedure concerning paternity establishment. 42 U.S.C. § 666(a)(5)(c)(iii) (2000).

[97] Section IV D of the Social Security Act requires states to create paternity establishment plans in order to receive federal Temporary Aid to Needy Families (TANF) funds. The Social Security Act, 42 U.S.C. §§ 654, 666(a)(5)(a) (2000).

[98] "Nearly one-third of American women (31 percent) report being physically or sexually abused by a husband or boyfriend at some point in their lives . . . ." Family Violence Prevention Fund, The Facts on Domestic Violence, http://www.endabuse.org/resources/facts/DomesticViolence.pdf (last visited Apr. 29, 2008) (citing KAREN SCOTT COLLINS, ET AL., HEALTH CONCERNS ACROSS A WOMAN'S LIFESPAN: THE COMMONWEALTH FUND 1998 SURVEY OF WOMEN'S HEALTH 8 (1999) http://www.commonwealthfund.org/usr_doc/Healthconcerns__surveyreport.pdf?section=4039).

[99] JAMES ALAN FOX & MARIANNE W. ZAWITZ, U.S. DEP'T OF JUSTICE, HOMICIDE TRENDS IN THE UNITED STATES, http://www.ojp.usdoj.gov/bjs/homicide/intimates.htm (last visited Apr. 29, 2008).

[100] "During the course of their college career, between 20 and 25 percent of women will be raped . . . ." American Association of University Women (AAUW), *Sexual Assault on Campus*, http://www.aauw.org/advocacy/laf/lafnetwork/library/assault_stats.cfm (last visited Apr. 29, 2008) (citing BONNIE S. FISHER, ET AL., U.S. DEP'T OF JUSTICE, THE SEXUAL VICTIMIZATION OF COLLEGE WOMEN 10 (2000), http://www.ncjrs.org/pdffiles1/nij/182369.pdf).

(*continued*)

impaired.[101] Women have good reason to fear their partners under routine conditions, and pregnancy escalates abuse.[102] Pregnant women rightly fear telling their partners of a pregnancy because of the prevalence of domestic violence and homicide—especially in this age in which states automatically enforce child support obligations for women receiving Medicaid or cash welfare payments.[103] Additionally, a birth father may push a woman toward abortion, and she may not want that pressure. Child support obligations may evoke men's violence against women, although Congress enabled women to conceal paternal identity in the presence of domestic violence when applying for welfare in order to protect them from just such abuse.[104] Additionally, the almost routine date rape of impaired young women and the frequency with which young men and women have multiple sexual partners means that some mothers cannot identify the

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The "between 20 and 25 percent" estimate is based on a study that found one in 36 women (2.8%) were raped over 6.91 months. FISHER, ET AL., *supra*, at 10. Projecting the results to a longer period of time is problematic, and thus it would be necessary to follow students over a longer period of time to accurately predict the risk of rape during college. *Id.* at 37 n.18. Projecting from these results, it could show 5% of college women are raped each year, and thus the risk over five years might climb to 20–25%. *Id.* at 10.

[101] "75% of the time, the offender, the victim, or both have been drinking." American Association of University Women (AAUW), *Statistics Concerning Sexual Assault on Campus*, http://www.aauw.org/advocacy/laf/lafnetwork/library/assault_stats.cfm (citing Antonia Abbey, et al., *Alcohol and Dating Risk Factors for Sexual Assault Among College Women*, 20 PSYCHOL. WOMEN Q. 147 (1996)).

[102] "Women with unintended pregnancies are two to four times more likely to experience physical violence than women with planned pregnancies." National Coalition Against Domestic Violence, Pregnancy and Domestic Violence Facts, http://www.sc.edu/healthycarolina/pdf/facstaffstu/safety/PregnancyAndDomesticViolence.pdf (last visited Apr. 29, 2008) (citing Julie A. Gazamarian, et al., *Violence and Reproductive Health: Current Knowledge and Future Research Directions*, 4 MATERNAL & CHILD HEALTH J. 79, 80 (2000)).

[103] People who have received assistance under cash assistance programs—Aid to Families with Dependent Children (AFDC), the new Temporary Assistance for Needy Families (TANF), or Medicaid or Federally assisted Foster Care programs—are automatically referred for child support enforcement services. U.S. DEP'T OF HEALTH & HUMAN SERV., HANDBOOK ON CHILD SUPPORT ENFORCEMENT 4 (2005), http://www.acf.hhs.gov/programs/cse/pubs/2005/handbook_on_cse.pdf.

[104] 42 U.S.C.A. § 602(A)(7)(a)(iii) (West 2003) (added in 1996, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 Title I § 103(a)(1), 110 Stat. 2113–15). This statute allows state agencies to waive program requirements (including paternal identification/notification) when screening for domestic violence.

fathers of their children. The mother who was raped may resist identifying the rapist to foreclose his having any rights in an adoption. A mother may choose not to identify a father, may not be able to identify a father, or may resist doing so. The bottom line is the father who relies upon a woman to notify him of a pregnancy has misplaced his reliance, and the woman who is relieved of a requirement to notify a father is safer.

The registry provides a woman with knowledge of whether a man wishes to assume custodial and financial responsibility for a child without putting herself in harm's way to ask him. That information assists her in planning for her child—whether for adoption, abortion, or parenting.

The registry protects the privacy of women in that they do not have to identify possible fathers and thus expose their sexual contacts to adoption agencies, courts, or adoptive parents. The registry also eliminates the need for published service on fathers that would broadcast mothers' names and their pregnancy in newspapers or the need to mail such notice letters to homes where this information may be disclosed to persons other than the father.

The biggest drawback to a registry system for mothers is that they cannot thwart—even with interstate travel—the earnest father who is prepared to assume custodial and financial obligations of parenthood and that expedites the placement of children and is their best interests.

The child is the biggest winner in the nationalization of a putative father registry, because either she is assured of an earnest father who wishes to participate in her custodial care and financial support or she is assured of a prompt placement with an adoptive family with a home study attesting to their fitness to parent. It is critical in aiding the child's development that the registry provides for a prompt determination of who will assume the child's permanent parenting.[105]

The states benefit from putative father registries in that their paramount interest in prompt permanency for children is advanced, the parental rights of earnest fathers are protected, the safety rights of mothers are advanced, and the privacy rights of both mothers and father are ensured.

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[105] Maternal-infant bonding begins developing within the first few days of birth. P.G. Mertin, *Maternal Infant Attachment: A Developmental Perspective*, 26 AUSTL. & N.Z. J. OF OBSTETRICS AND GYNECOLOGY 280 (1986), abstract *available at* http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=3469995&dopt=Abstract (last visited Apr. 29, 2008).

States also benefit because the putative father registry scheme typically compels fathers to establish paternity and assume parental responsibility or risk losing parental rights.[106] Putative father registries allow states to thus prioritize the established father who can enroll his child in school, purchase her health insurance through his employment, authorize her health care; and who can be held responsible for her regular and continued financial support and custody.[107]

Traditionally, states have intended that putative father registries operate in voluntary adoptive placements initiated by mothers typically for newborns.[108] A second act for putative father registries will be their implementation in dependency cases where mothers' are voluntarily or involuntarily losing parental rights for children under the jurisdiction of a juvenile court.[109] Earnest unwed fathers can be identified quickly and cheaply instead of searching for, publishing on, and genetic testing multiple possible fathers of children in foster care. Where a man is not a presumed, acknowledged, or adjudicated father or is not a putative father registered with the putative father registry, the state social services department need expend no further time and money searching for that father when the child's mother is willing to relinquish the child to adoption or when the state is involuntarily terminating her parental rights. A major factor impeding foster children adoptions is that they get too old to attract adoptive parents while waiting for the system to resolve their biological parents' rights.[110] Application of the putative father registry to unwed fathers in dependency cases would expedite the resolution of parental rights and considerably speed the process of moving foster children into permanent adoptive homes, because state agencies will not have to publish on John Doe, won't have to search for named father(s), won't have to serve them personally or by publication to terminate parental rights they have not

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[106] Beck, *supra* note 14, at 1052.

[107] *Id.* at 1055.

[108] *Id.* at 1039.

[109] URBAN INSTITUTE OF CHILD WELFARE RESEARCH PROGRAM, TRENDS IN U.S. FOSTER CARE ADOPTION LEGISLATION: A STATE BY STATE ANALYSIS 2 (2006), http://www.urban.org/UploadedPDF/411380_foster_care.pdf [hereinafer TRENDS IN U.S. FOSTER CARE ADOPTION LEGISLATION]; Leving & Sacks, *supra* note 92.

[110] TRENDS IN FOSTER CARE AND ADOPTION, *supra* note 25. In 2005, 513,000 children were in foster care. *Id.* In 2005, 114,000 children in the U.S. foster care system were waiting to be adopted. TRENDS IN U.S. FOSTER CARE ADOPTION LEGISLATION, *supra* note 109, at 1. Children waiting to be adopted are older (8.6 versus 6.7 years) than their adopted counterparts and have been in care for three and a half years on average. *Id.*

established, and won't have to do genetic testing of multiple men where mother is unsure of the father's identity. This represents a considerable cost saving to the state but more importantly represents a huge benefit to the children, because courts will expedite their placement with a permanent family so they will not age out of the system without ever acquiring a family. In addition to cost considerations, states benefit from this because moving foster children into permanent homes is associated with their better adjustment, education, and health.[111]

## IV. CASE LAW REVIEW

Case law decisions regarding putative father registries over the past five years continue to uphold putative father registry requirements while carving out and clarifying exceptions.[112] Courts granted exceptions where fathers had been provided with defective paperwork and where fathers had established protected legal statuses. In determining the sufficiency of fathers' legal statuses, courts analyzed the timing of adoption action filings *vis à vis* paternity action filings *vis à vis* putative father registry filings as well as the relationships fathers had or had not developed with their children. A few courts have also extended putative father registry requirements to child dependency cases and a few courts have examined interstate jurisdictional issues involving registries.

This case law section is organized around cases upholding putative father registry requirements operating both for and against unmarried biological fathers, exceptions to the putative father registry requirements, and jurisdictional issues.

### *A. Putative Father Registry Requirement Cases*

Fathers lost adoption contests—or in other words, courts implied fathers' consents to adoption from their conduct—where they did not file with putative father registries. Some courts first analyzed whether such fathers had developed relationships with their children or otherwise protected their interests. Arkansas terminated parental rights of a father where he failed to register with the putative father registry or maintain

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[111] NORTH AMERICAN COUNCIL ON ADOPTABLE CHILDREN, A GUIDE FOR LIMITING THE USE OF LONG TERM FOSTER CARE AS A PERMANENT PLAN, http://www.nacac.org/adoptalk/exec_long_term_foster_care.html (last visited Apr. 29, 2008).

[112] *See* Beck, *supra* note 14, at 1056–70 (providing a review of case law prior to 2003).

contact with or financially support his son despite father's argument that he had not, at the relevant time, been determined to be the father.[113]

Illinois waived a father's right to intervene in an adoption, barred him from filing a paternity action, and waived his right to notice of an adoption where he filed a paternity action timely but did not file with the putative father registry.[114] Illinois found against another father appealing the termination of his parental rights in a dependency case where father was not a presumed father, had not established paternity, and had not registered with the putative father registry.[115] In that case, Illinois held that the father did not fall within any Illinois category of 'parent' and therefore was not entitled to notice of a proceeding to terminate the parental rights of his child's parent.[116]

An Indiana father lived with the birth mother and the child for about 21 months before he was arrested for domestic battery.[117] The court rejected that father's appeal of a stepparent adoption of his child even though he had filed a paternity action prior to the adoption action, because he had not filed with the putative father registry nor followed through with the paternity action he had filed.[118] The Indiana court described the putative father registry statute as a non-claim statute that imposes a condition precedent (registration with the putative father registry) to enforcement of a right (right to file a paternity action) which is not subject to an equitable exception.[119]

Ohio implied father's consent to a stepparent adoption where father did not register with the putative father registry.[120] In another case, Ohio implied a father's consent to a stepparent adoption where father did not file with the putative father registry and did not follow through with a paternity petition he had filed.[121]

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[113] Murphy v. Stone, No. CA 02-1066, 2003 WL 21186553, at *3 (Ark. Ct. App. May 21, 2003).

[114] *In re* D.J.A.C., No. 5-05-0369, slip op. at 11 (Ill. App. Ct. Feb. 27, 2006), *vacated by* 863 N.E.2d 261 (Ill. 2007) *and* 873 N.E.2d 942 (Ill. 2007).

[115] *In re* Rodney T., 816 N.E.2d 741, 746 (Ill. App. Ct. 2004).

[116] *Id.*

[117] Mathews v. Hansen, 797 N.E.2d 1168, 1169–70 (Ind. Ct. App. 2004).

[118] *Id.* at 1172–73.

[119] *Id.* at 1171–72 n.3.

[120] *In re* K.M.S., 2005-Ohio-4739, ¶¶ 5–10, 2005 WL 2179297, at *2 (Ohio Ct. App. Sept. 9, 2005).

[121] *In re* the Adoption of A.N.L., 2005-Ohio-4239, ¶ 51, 2005 WL 1949678, at *7 (Ohio Ct. App. Aug. 16, 2005). The father filed an action on November 12, 2002 seeking to *(continued)*

New York dismissed father's paternity petitions and his application to vacate an adoption order where father claimed his lack of awareness of the pregnancy and childbirth caused him to file four years after the birth and one month after the adoption was finalized.[122] The New York court's rationale was that father "had not sought to contact the child's mother or to learn if their sexual relationship may have resulted in a pregnancy until after the child's adoption."[123]

New Hampshire implied a father's consent where father failed to file with the New Hampshire or Arizona putative father registries for a child born in Arizona and adopted in New Hampshire.[124] The Arizona father established his genetic paternity after the adoption action was filed.[125]

These cases reflect courts holding putative fathers to registry requirements, determining whether the fathers have developed relationships sufficient to protect their paternal rights or established legal relationships in a timely manner, and vesting fathers with the duty to investigate conception.

Fathers lost adoption contests where they filed late with registries. Some courts did first evaluate evidence of relationships that fathers may have developed with children that could have trumped failure to file with the putative father registry. In Alabama, father's determination of genetic but not legal paternity did not retract his implied consent to adoption for failure to file timely with the registry.[126] A Florida dependency court terminated father's parental rights, because he filed late with the putative father registry.[127] Florida also implied a father's consent where father—who claimed not to know of the pregnancy—provided some supplies and made some visits to the child in the child's first three months of life, but

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establish paternity, set child support, and allow time to act as a parent. *Id.* ¶ 3, 2005 WL 1949678, at *1. By December 18, 2003 A.N.K.'s mother, Lori, sought dismissal on the grounds that the father had not commenced to counseling, verified his income, or paid any amount of child support. *Id.* ¶¶ 5–6, 2005 WL 1949678, at *1.

[122] *In re* Cassidy YY, 802 N.Y.S.2d 520, 521 (N.Y. App. Div. 2005).

[123] *Id.*

[124] *In re* Baby Girl P., 802 A.2d 1192, 1198 (2002).

[125] *Id.* at 1194.

[126] L.C.S. v. J.N.F., 941 So. 2d 973, 978–80 (Ala. Civ. App. 2005). The father filed in probate court within 30 days of the final publication of notice of the adoption proceeding. *Id.* at 975.

[127] A.F.L. v. Dep't of Children and Families, 927 So. 2d 101, 102 (Fla. 2006).

did not file with the putative father registry until nine months after birth and did not file a paternity action until one year after birth.[128]

Ohio terminated father's parental rights despite his late filing with the registry and his visits with the child in the custody of the maternal grandmother, because neither action established a relationship with the child adequate to protect his parental interest.[129]

In Arkansas, father who claimed not to know of the pregnancy lost his right to notice because he filed late with the registry.[130] The Arkansas father lost his right to consent to the adoption for his failure to legitimate the child despite his attempts to determine his genetic connection and to file a paternity action, because he filed both after the adoption was filed.[131] Thus, Arkansas delineated father's right to notice and father's right to consent. A concurring opinion stated that father had the "obligation to track [the mother]'s condition after he had unprotected sex with her if he ever planned to claim notice of an adoption . . . ."[132]

These cases reflect policies of implying fathers' consents to adoption if they assert their paternity after registration deadlines or after the filing of an adoption action, of assigning fathers with the responsibilities to investigate the possibility of conception and to establish paternity, and of relieving mothers of bracing fathers with news of a pregnancy.

Putative father registries also operate to protect fathers, and thus fathers won adoption contests where courts upheld registration statutes. In Georgia, a court upheld father's parental rights where he filed with the putative father registry pre-birth and moved to legitimate his child pre-birth, but did not provide support.[133] In a similar case, Ohio protected a father's rights where he filed with the putative father registry and provided some maternity clothes and diapers to the mother and gave her some money.[134] Thus, fathers' registrations can save their parental rights despite failure to provide what the court deemed to be adequate prenatal support in both Georgia and Ohio.

Another Ohio appellate court remanded a case to determine if father's consent was necessary where Indiana father registered timely with the

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[128] J.S. v. S.A., 912 So. 2d 650, 660–63 (Fla. 2005).

[129] *In re* Cameron, 795 N.E.2d 707, at 712–13 (Ohio 2003).

[130] Escobedo v. Nickita, 231 S.W.3d 601, 605, 608 (Ark. 2006).

[131] *Id.* at 605.

[132] *Id.* at 608 (Brown, J., concurring).

[133] Bowers v. Pearson, 609 S.E.2d 174, 178 (Ga. Ct. App. 2005).

[134] *In re* Adoption of Baby F., 2004-Ohio-1871, ¶¶ 2, 10, Nos. 13AP-1092, 03AP-1132, 2004 WL 771575, at *1, 3 (Ohio Ct. App. Apr. 13, 2005).

Indiana putative father registry for a child born in Indiana but did not file in Ohio where the adoption was filed.[135] Thus, father's filing with the registry in the state of conception stopped Ohio from implying his consent to adoption for failure to file in the forum state.[136]

While the United States Supreme Court has held that putative fathers must develop consistent and substantial relationships with their children in order to trigger constitutional protection of their parental rights,[137] these Georgia and Ohio opinions protected paternal rights for satisfaction of registry requirements even in the absence of otherwise sufficient relationships with their children.[138]

*B. Putative Father Registry Requirement Exception Cases*

Courts have elucidated exceptions to putative father registry requirements including one for defective paperwork. Minnesota upheld father's parental rights where he timely filed with the putative father registry but did not file his paternity action within that state's thirty day time limit, because the required notice sent to father for filing with the putative father registry was defective.[139] The notice misstated the 30-day time limit to file a paternity action.[140] Similarly, Ohio upheld a father's rights where father filed timely with the registry but did not file objections to the adoption petition within that state's 14-day limit, because the notice of the adoption did not contain the existence of the 14 day time limit requirement.[141]

Florida upheld a putative father registry scheme and a father's rights where an adoption agency notified a father of an adoption plan but did not include notice of the registry and instructions on fulfilling its

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[135] *In re* Adoption of Lichtenberg, 2003-Ohio-1014, ¶¶ 15–16, No. CA2002-11-125, 2003 WL 868306, at *3–4 (Ohio Ct. App. Mar. 5, 2003).

[136] *Id.*, 2003 WL 868306, at *3–4.

[137] Lehr v. Robertson, 463 U.S. 248, 266–67 (1983).

[138] *See, e.g., In re Adoption of Baby F.*, 2004-Ohio-1871, ¶ 11, 2004 WL 771575, at *3 (finding that prospective adoptive parents failed to establish that putative father willfully abandoned birth mother and child despite his being sent to jail for violation of mutually agreed upon protective order and being imprisoned for theft at time of baby's birth).

[139] Sundboom v. Keul, No. C4-02-26, 2002 WL 1613866, at *3 (Minn. Ct. App. July 23, 2002).

[140] *Id.* at *1.

[141] *In re Adoption of Baby F.*, 2004-Ohio-1871, ¶¶ 16–19, 2004 WL 771575, at *4–5.

requirements.[142] Florida law did not then require the agency to so notify such a father.[143]

Courts elucidated the parameters of relationships with children that would confer on fathers rights to consent to adoptions in absence of fulfilling putative father registry requirements. The parameters of such relationships may include financial and emotional support including during the prenatal period or the timely legal establishment of paternity. Utah terminated a North Carolina father's parental rights pursuant to an adoption filed in Utah where father had lived with the birth mother and child for five months in North Carolina without establishing parental rights to the child.[144] The North Carolina father knew mother planned to relinquish the child to adoption in Utah, but he did not take steps to protect his rights in Utah and instead filed a paternity and custody action in North Carolina after birth mother's relinquishment in Utah.[145] Utah did not credit that father with a protective relationship with the child where they had lived together for five months, because father did not legalize the relationship timely.[146] Thus the Utah decision did not create a registry exception conferring consent rights on a man who had lived with his child but who could not at that time be required to support his child.

Alabama overturned a trial court's determination that father had impliedly consented to adoption of his child where he had filed pre birth with the putative father registry and filed pre birth a paternity action but had arguably abandoned the child during the prenatal period.[147] Alabama law provides that prenatal abandonment of the adoptee is grounds for implied consent and defines abandonment as failure to offer financial and or emotional support for a period of six months prior to birth.[148] In the

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[142] Heart of Adoptions, Inc. v. J.A., 963 So. 2d 189, 201 (Fla. 2007). The Florida Supreme Court discussed the state's new putative father registry scheme and the legislative intent behind it and held that the timely filing of a paternity petition is the functional equivalent of a timely filed claim of paternity with the registry and that an agency must serve known and locatable fathers even though sex is notice of a pregnancy and mother does not have to identify father. *See* FLA. STAT. ANN. §§ 63.062(2), 63.054, 63.088(1) (West 2005 & Supp. 2007).

[143] *Heart of Adoptions*, 963 So. 2d at 201.

[144] Osborne v. Adoption Center Ctr. of Choice, 70 P.3d 58 (Utah 2003).

[145] *Id.* at 60.

[146] *Id.* at 65.

[147] *Ex parte* F.P., 857 So. 2d 125 (Ala. 2003).

[148] *Id.* at 131 (citing Alabama Adoption Code § 26-10A-9 (LexisNexis 1992 & Supp. 2006)).

instant case, the court did not apply the prenatal abandonment statute, because it had not been in effect for the requisite 6-month period.[149] Thus Alabama has a statutory exception such that father's failure to shoulder the responsibilities of prenatal parenthood trumps timely putative father registry filing.

Unlike Alabama, Georgia preserved a father's right to legitimate a child where the father registered pre birth with the Putative Father Registry and filed pre birth a legitimation action despite finding that father failed to provide financial or other assistance to the mother during her pregnancy.[150] Filing with the registry and filing a paternity action trumps prenatal abandonment in Georgia.

Tennessee protected an Ohio father's rights where father requested genetic testing, filed an action to establish paternity, registered with the Ohio putative father registry 26 days after birth, but did not visit or support the child.[151] The Tennessee Court held that the father was a legal father because he had signed a sworn acknowledgement of paternity in filing with the Ohio putative father registry, and held that father's failure to support or visit the child was not willful in that mother and her family had interfered with father's reasonable efforts to support or develop a relationships with his child.[152] The court defined conduct constituting significant restraint with a parent's efforts to support a child or develop a relationship with a child as including "(1) telling a man he is not the child's biological father, (2) blocking access to the child, (3) keeping the child's whereabouts unknown, (4) vigorously resisting the parent's efforts to support the child,

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[149] *Id.* at 136–38. A dissenting judge on the North Carolina Court of Appeals describes facts that refute a claim of prenatal abandonment as

> consistent contact by phone and in person with the biological mother regarding the progress of her pregnancy, leaving school to return home to care for the child, gaining and maintaining employment, attending a prenatal appointment, caring for [her] other two children so that she could attend other prenatal appointments, engaging in conversations regarding the naming of the child, and purchasing a larger car to transport the child.

A Child's Hope, LLC v. Doe, 630 S.E.2d 673, 680 (N.C. Ct. App. 2006) (Jackson, J., dissenting).

[150] Bowers v. Pearson, 609 S.E.2d 174, 174–75 (Ga. 2005).

[151] *In re* Adoption of S.M.F., No. M2004-00876-COA-R9-PT, 2004 WL 2804892, at *2–*4 (Tenn. Ct. App. Aug. 6, 2004).

[152] *Id.* at *7.

or (5) vigorously resisting a parent's efforts to visit the child."[153] Tennessee will protect a father's parental rights where a mother has interfered with his efforts to assert paternity, and thus its case law has created an exception to fulfilling the registry requirements where mother obfuscates father's efforts to develop a relationship with the child.

Missouri remanded an adoption action to determine if a father had abandoned his child where father had not filed timely with the putative father registry nor timely filed a paternity action but had established legal paternity by executing an affidavit acknowledging paternity with the birth mother after her parental rights had been voluntarily terminated pursuant to an adoption action.[154] Because execution of such paternity affidavit is a legal finding of paternity in Missouri[155] and where neither the court nor the adoptive petitioners contested his paternity, the court held that father was entitled to a fitness hearing even though his consent was implied under Missouri law.[156] Thus, Missouri allowed a biological mother who no longer was vested with parental rights to execute an affidavit of paternity with the father, thereby allowing a woman with no legal relationship to the child to establish a man's paternity to that child. The facts of the case are unusual in that the father legally established his paternity after the period of time (pregnancy plus 15 days) in which Missouri law provides for unmarried men to file with the putative father registry, to establish paternity, or to serve the mother with paternity proceedings to protect their parental rights against an adoption.[157] The father's legal rights were established after the adoption action was filed, after the mother's rights were terminated, and after the child's custody was transferred, but before the adoption was finalized.[158] Thus Missouri created a narrow exception to its registry requirements where father establishes legal paternity after the adoption is filed.[159] This holding creates opportunities for defensive legal actions by fathers who would not affirmatively establish paternity but only establish paternity defensively as a last resort to losing their children in adoption. It also opens the door to fraudulent actions by birth mothers who may make an end run around their otherwise irrevocable consents to

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[153] *Id.* at *9.

[154] *In re* Adoption of N.L.B. v. Lentz, 212 S.W.3d 123, 124 (Mo. 2007).

[155] MO. ANN. STAT. § 210.823 (West 2004).

[156] Lentz, 212 S.W.3d at 127–28.

[157] MO. ANN. STAT. § 453.030 (West 2003 & Supp. 2007).

[158] *Lentz*, 212 S.W.3d at 124.

[159] *Id.* at 123.

termination of parental rights by establishing paternity by affidavit in a man who may or may not be the father.

Florida issued a somewhat similar decision where father's consent was not required for an adoption because he did not file with the putative father registry, but the trial court was instructed to rule on father's pending paternity petition before addressing termination and adoption proceedings which were also pending.[160] Thus, one Florida court has required the resolution of a paternity action pending during an adoption action and created an exception to its registry requirements which must mean that the mere filing of a paternity action creates a relationship that protects father's interest in Florida. This decision opens the door to a father's thwarting the adoption of a child where he cannot be legally required to support her.

Illinois held that father's consent was required even though he failed to file with the putative father registry, because he had acknowledged paternity by affidavit such that his name was on the child's birth certificate.[161] Such acknowledgement of paternity was sufficient to establish legal paternity and his consent to the adoption was therefore required.[162]

These decisions elucidating where exceptions lie to putative father registry requirements are varied and include paperwork errors, constitutional sufficiency of father child relationships, the protective effect of legally established paternity, the timing of paternity establishment, the effect of prenatal abandonment, and the effect of mothers' thwarting fathers trying to support and/or develop relationships with children. The opinions assumed that mothers and courts are relieved of the obligation to advise fathers of adoption and of their rights and responsibilities. In a time where 36% of children are born out of wedlock, fairness requires that publicity campaigns work to inform unmarried fathers of what steps are necessary to assume responsibilities for their children born out of wedlock and how to protect their parental rights. Senator Landrieu's PROUD FATHER ACT requires both state and national publicity campaigns.[163]

Courts have analyzed application of putative father registry requirements with reference to the sequencing of relevant filings including

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[160] *In re* Baby R.P.S. J.C.J. v. Heart of Adoptions, Inc., 942 So. 2d 906, 909–10 (Fla. Dist. Ct. App. 2006).

[161] *In re* Reyes, 860 N.E.2d 456, 457–58 (Ill. App. Ct. 2006).

[162] *Id.*

[163] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. §§ 441(b), 442(b)(3)(B) (2006).

putative father registry filings, paternity action filings, and adoption action filings. Illinois preserved a putative father's right to a best interest of the child hearing where he filed a paternity action three years after the birth but prior to the filing of a stepparent adoption action filed by the mother's husband.[164] That putative father had failed to file with the putative father registry at all and Illinois law provides that an unmarried father must file with the registry within 30 days of birth or is barred thereafter from asserting his paternal interest.[165] The court wrote that strict adherence to this law would prevent biological fathers from establishing paternity to any child where the fathers failed to register with the registry even when no adoptions were contemplated and held that such adherence would conflict with Illinois policy to promote the establishment of parental support for every child.[166] The court concluded that a paternity action may proceed where no adoption has previously been filed.[167] However the court held further that the filing of a paternity action for a child with a presumed father does not automatically confer legal rights unless and until a determination is made under a best interests of the child hearing.[168] Since no adoption action preceded the filing of the instant paternity petition, Illinois stayed the stepparent adoption action pending confirmation of putative father's paternity and ordered a best interest of the child hearing to determine what legal rights biological father might have where mother was married to another man.[169] Providing a mechanism for the late filing of paternity actions in the absence of adoption actions promotes the non defensive and affirmative efforts of fathers to establish formal relationships with their children. Such a notion is essentially implicit in the putative father registry statutory scheme because it requires notice to the presumed, acknowledged, or adjudicated father. The paternity of presumed, acknowledged, or adjudicated fathers is legally established. Confusion and litigation occur where the paternity action is not concluded before the adoption action is filed or the adoption action is not finalized when the father files a defensive paternity action.

Minnesota provided no exception to a father who filed timely with the putative father registry but filed a paternity action 22 days late.[170] The

[164] J.S.A. v. M.H., 863 N.E.2d 236, 239 (Ill. 2007).

[165] *Id.* at 247.

[166] *Id.* at 249, 252.

[167] *Id.* at 250–52.

[168] *Id.* at 253.

[169] *Id.* at 253–54.

[170] T.D. v. A.K., 677 N.W.2d 110, 113 (Minn. Ct. App. 2004).

court indicated that father did not show good cause for failing to commence his paternity action timely, thus he was not given an extension of the 30-day limit under Minnesota's statute.[171] The court analyzed the statutory exception holding that father would have had to prove that he "lacked the necessary power, authority, or means" to file timely.[172] Father had claimed that a good cause exception should be provided, because the trial court had wrongly denied him counsel, and that the court breached its duty to correctly inform him of his right to counsel upon proof of indigency.[173] Father argued that had the trial court fulfilled its alleged duty, father would have timely filed his paternity action.[174] The court "found no provision in the fathers'-adoption-registry statute that requires the district court to inform a putative father about his rights under the statute" and held that father's lack of knowledge about his rights does not excuse compliance with the putative father registry requirements.[175]

Florida allowed a paternity action to proceed where father did not file with the registry but did institute a paternity action after the adoption action was filed, because Florida law did not limit the time in which paternity actions could be filed.[176]

Arkansas allowed a father to veto an adoption where he had filed timely with the putative father registry but filed his paternity action after the adoption action was filed.[177] While Arkansas cases describe the filing of the adoption petition as a 'cutoff date' for determining consent rights, Arkansas does not delimit the filing of a legitimation action particularly where father has filed with the registry.[178]

Ohio remanded a case where an Indiana putative father filed timely with the Indiana putative father registry, which was about three weeks after the adoptive petitioners filed an adoption action in their home state of Ohio, because a genuine issue of material fact existed to determine whether the father's consent was required under the Interstate Compact for Placement of Children.[179] This case is an affirmation of the common

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[171] MINN. STAT. ANN. § 259.49(1)(b)(8)(iv) (West 2007); *T.D.*, 677 N.W.2d at 113, 116.

[172] *T.D.*, 677 N.W.2d at 113–14.

[173] *Id.* at 114.

[174] *Id.*

[175] *Id.*

[176] A.S. v. Gift of Life Adoptions, 944 So. 2d 380, 395–96 (Fla. Dist. Ct. App. 2006).

[177] *In re* Adoption of S.C.D., 186 S.W.3d 225, 227, 229 (Ark. 2004).

[178] *Id.* at 227–29.

[179] *In re* Adoption of Lichtenberg, 2003-Ohio-1014, ¶ 15, No. CA2002–11–125, 2003 WL 868306, at *3 (Ohio Ct. App. Mar. 5, 2003).

principle that father can protect his paternity interest by timely filing with the putative father registry but atypical in that putative father never filed in the forum state, and instead filed in state of conception, and filed after inception of the adoption action. A national putative father registry would extend consideration of forum state courts to putative father registry filings in all other participating states and is necessary to protect the rights of men earnestly trying to assume responsibilities for and develop relationships with their children in interstate adoptions. A question will be which state's registration deadline should apply—that of the forum state or that of the state in which conception occurred.

Missouri permitted a putative father to intervene in an adoption where he registered with the putative father registry after the adoption action was filed, because he and the birth mother executed an affidavit of paternity establishing his paternity—also after the adoption was filed and after her parental rights had been terminated.[180] Notwithstanding the validity of the mother's execution of an affidavit of paternity after her parental rights had been terminated and notwithstanding the fact that paternity was established by end run after the adoption action was filed, a man with legally established paternity has and should have rights to consent to an adoption.[181] The court remanded the case for a determination of parental fitness and to determine if father had abandoned the child.[182]

The status of fathers' legal parental rights and the adequacy of fathers' relationships with their children are key to determinations of constitutionally-protected paternal rights. The myriad of fact patterns and different state laws make it hard to develop bright line rules except where fathers validly and legally establish paternity prior to the filing of adoption petitions and/or they develop substantial and consistent relationships with children meriting constitutional protection. Such fathers should prevail in adoption contests absent proven detriment to the child.[183]

An illustration of a confusing fact pattern was considered in New York, where a father was accorded a right to notice but no right to veto an adoption and was allowed to intervene in an adoption only for a determination of the child's best interests.[184] The father had filed with the putative father registry before the adoption action was filed but after a

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[180] *In re* Adoption of N.L.B. v. Lentz, 212 S.W.3d 123, 124 (Mo. 2007).

[181] *Id.* at 127–28.

[182] *Id.* at 127–29.

[183] Lehr v. Robertson, 463 U.S. 248, 261–62 (1983).

[184] *In re* Adoption of Aaliah, 809 N.Y.S.2d 809, 812–13 (N.Y. Fam. Ct. 2005).

dependency court dismissed a termination of parental rights petition against him when he refused to participate in DNA testing for paternity.[185]

Courts have analyzed the status of fathers and contrasted fathers entitled to notice of adoption proceedings with fathers entitled to consent to adoptions. Indiana implied father's consent to adoption where he filed timely with the putative father registry and was thus given notice of the mother's adoption plan, but was not vested with powers to consent because he did not file a paternity action with the 30-day limit provided by state law.[186] Thus, Indiana contrasted a 'notice father' with a 'consent father' and protected only the father who has formed a legally enforceable relationship.

Florida determined that identification of an incarcerated putative father in a dependency proceeding constituted establishment of the man's legal status as the child's father.[187] The lengthy dissent argued that mere identification of the man in the dependency proceeding without a legal declaration of his paternity, and without father's acknowledgement of paternity in either the dependency proceeding or in affidavit with the Office of Vital Statistics, did not establish legal paternity, plus it conflicted with the Florida Adoption Act.[188] The court's decision halted the adoption on the basis that this father's legal paternity was adequate to require his consent to the adoption.[189] The identification of the putative father in the dependency case would not suffice to require him to pay child support or enable him to authorize the child's health care, enroll the child in school, or provide employee health insurance for the child.[190] Thus, Florida thwarted a child's chance for a stable and permanent adoptive home to accord parental rights to a man who could not be obligated or authorized to provide necessary care and control of that child.

The Florida Supreme Court recently quashed earlier state decisions and held that courts may terminate parental rights of men who have not legally established paternity to or claimed paternity of their children.[191] The Florida case law authorizing the termination of parental rights of men who

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[185] *Id.* at 809–12.

[186] *In re* Adoption of Infant Fitz, 805 N.E.2d 1270, 1273 (Ind. 2004).

[187] B.B. v. P.J.M., 933 So. 2d 57, 60 (Fla. 2006).

[188] *Id.* at 68–69.

[189] *Id.* at 61.

[190] *Id.* at 69. *Cf.* Taylor v. Taylor, 279 So. 2d 364, 366 (Fla. Dist. Ct. App. 1973) ("A man has no legal duty to provide support for a minor child which is neither his natural nor adopted child . . . .").

[191] Heart of Adoptions, Inc. v. J.A., 963 So. 2d 189, 203 (Fla. 2007).

have not legally established rights to terminate is counterintuitive but is similarly authorized in Tennessee.[192]

Alabama implied consent to adoption where father did not file with the putative father registry in either Alabama or Georgia for a child born in Georgia but filed a paternity action in Georgia after being served with notice of the adoption action filed in Alabama where the adoptive parents resided.[193] The birth mother and father disputed the level of the birth father's prenatal support; mother indicated that he paid for a few meals during dates, paid three co-pays for prenatal care, accompanied her to 3 or 4 prenatal visits out of the 15 to 20 she attended, and never visited the child in the hospital of birth or in the three weeks after birth and before relinquishment.[194] Birth father admitted the lack of visits but asserted that he had spent $200 per month during the pregnancy on the mother and that the mother thwarted his visits after the birth.[195] The trial court held that birth father's consent was implied; the appellate court reversed; and the Supreme Court reversed the appellate court and reinstated the trial court's holding, because the trial court had based its judgment on ore tenus evidence and properly applied the law.[196] Thus the Alabama Supreme Court resolved a typical 'he said, she said' situation by adopting the findings of the trial court, because the trial judge listened to actual witnesses and parties and was in the best position to make accurate findings on credibility.[197] In this, the Alabama Supreme Court provides a model for deciphering the truth in cases of conflicting testimony regarding fathers' efforts to develop a relationship and assume parental responsibilities.

### *C. Jurisdictional Issue Cases*

Several states have considered jurisdictional issues arising in interstate adoptions or in dependency cases with an unmarried father. Utah decided two cases. Kentucky had placed W.A. in the temporary custody of his sister under a guardianship, because his parents were incarcerated, and the

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[192] *In re* Adoption of S.M.F., No. M2004-00876-COA-R9-PT, 2004 WL 2804892, at *7 (Tenn. Ct. App. Aug. 6, 2004).

[193] *Ex parte* J.W.B., 933 So. 2d 1081 (Ala. 2006).

[194] *Id.* at 1083–85.

[195] *Id.* at 1083, 1085, 1090.

[196] *Id.* at 1086–92. "The ore tenus presumption of correctness arises because the trial court is in a position to observe the demeanor and behavior of the witnesses and is thus able to evaluate whether their testimony is credible and truthful." *Id.* at 1087.

[197] *Id.* at 1092; BLACK'S LAW DICTIONARY 505 (7th ed. 2001).

sister moved with W.A. to Utah where she turned him over to the Utah Division of Child and Family Services (UT DCFS).[198] The UT DCFS filed a dependency petition for W.A. and ultimately successfully petitioned for the termination of his parents' parental rights.[199] W.A.'s father was incarcerated in Oklahoma and his mother was incarcerated in Texas, and both his parents appealed the terminations of their parental rights on the basis that the trial court lacked personal jurisdiction.[200] The Utah Supreme Court decided both cases in companion opinions and made a two step analysis on whether Utah's long arm statute or any other statute conferred personal jurisdiction and whether such a statutory assertion of jurisdiction comported with the due process requirements of the Fourteenth Amendment.[201] The Court held that Utah statutory law did provide that a child's presence in the state conferred personal jurisdiction over that child's parents.[202] The Court further held (1) that the status exception extended to termination of parental rights cases making minimum contacts unnecessary to meet the due process requirements of the Fourteenth Amendment, (2) that due process requirements were nonetheless met, because Utah's interests were paramount to those of any other state, because the child was present in the state and because information regarding him was easily accessible in Utah, and (3) that Utah statutes amply protected the parent's rights with notice and an opportunity to be heard.[203] While the putative father registry does not play in the Utah analysis, the interstate jurisdictional analysis could apply to adoption actions terminating father's parental rights where father did or did not file with the putative father registry. Under Senator Landrieu's national putative father registry scheme, the forum state would always have personal jurisdiction over a father who filed with a participating state's putative father registry.[204]

Utah terminated a North Carolina father's parental rights for a child born in North Carolina but relinquished in Utah, because the father failed to register with either state's putative father registry and had no legally

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[198] Utah v. E.A., 63 P.3d 100, 101 (Utah 2002); D.A. v. Utah, 63 P.3d 607, 610 (Utah 2005).

[199] *E.A.*, 63 P.3d at 101–02; *D.A.*, 63 P.3d at 610.

[200] *D.A.*, 63 P.3d at 610.

[201] *Id.* at 612.

[202] *Id.*

[203] *Id.* at 616–17.

[204] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. § 443(10) (2006).

cognizable right.[205] Father knew of the Utah proceedings and subsequently filed a paternity action in North Carolina and filed a writ of mandamus with the Utah Court of Appeals challenging Utah's jurisdiction over him.[206] Utah law protects out of state fathers if they comply with the requirements of the state where the mother previously resided, but the father in the instant case failed to take any timely action in any state to protect his rights, and Utah will not "halt adoptions on the mere allegation of biological fatherhood."[207]

Tennessee honored the sworn affidavit that father timely filed with the Ohio putative father registry as evidence of the father's status as a legal parent for a child born in Ohio whose adoptive parents filed for adoption in Tennessee.[208]

Ohio declined to imply father's consent to an adoption filed by adoptive parents in Ohio for a child born in Indiana, because father had filed timely with the Indiana putative father registry.[209] The court's rationale was that both Indiana and Ohio belonged to the Interstate Compact for Placement of Children, and it required that the laws of both the sending (Indiana) and receiving (Ohio) states be considered regarding the determination of consent.[210] In the absence of a national putative father registry, the danger is that the forum states will not know of putative father registry filings in the states of conception. A national putative father registry would alleviate this problem.

New Hampshire did not require father's consent to adoption for a child born in Arizona and adopted in New Hampshire because father had not filed with either state's putative father registry or filed a paternity action prior to the mother's relinquishment or the adoptive parents' filing of the adoption action.[211]

Alabama implied father's consent and denied his contest to an adoption filed in Alabama for a child born in Georgia, because father had

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[205] Osborne v. Adoption Ctr. of Choice, 70 P.3d 58, 65 (Utah 2003).

[206] *Id.* at 59–60.

[207] *Id.* at 64–65.

[208] *In re* Adoption of S.M.F., No. M2004–00876–COA–R9–PT, 2004 WL 2804892, at *7 n.7 (Tenn. Ct. App. Dec. 6, 2004).

[209] *In re* Adoption of Lichtenberg, 2003-Ohio-1014, ¶ 15, No. CA2002–11–125, 2003 WL 868306, at*3 (Ohio Ct. App. Mar. 5, 2003).

[210] *Id.*

[211] *In re* Baby Girl P., 802 A.2d 1192 (N.H. 2002).

not filed with the putative father registry in either state and had not otherwise maintained a significant relationship with the child.[212]

The conclusion that can be drawn from reading the different state cases analyzing interstate issues in adoption and dependency cases is that states are attempting to protect the rights of fathers by searching for putative father registrations in sending states and not just considering the filings in the receiving states, a.k.a. forum states, and are processing the expeditious placement of children in adoption where fathers have not established paternity and/or assumed parental responsibilities. Two purposes of putative father registries are to protect the parental rights of fathers who assume responsibility for their children and to expedite the placement of children whose fathers have not assumed responsibility timely. The erection of a national putative father registry database such as that proposed by Senator Mary Landrieu would require each adoption forum state to search the national registry which would include the state of conception.[213] Earnest registered fathers would thus be protected in any state and children would obtain expeditious placement where their genetic fathers had not assumed parental responsibilities. The national registry would invite voluntary participation[214] so only those states which chose to participate would truly protect the rights of fathers and children in their states.

While putative father registries have traditionally been associated with voluntary placement adoptions, some states are searching registries in dependency actions as well. Florida disallowed a father in a dependency action to establish paternity and contest an adoption where he filed late with the putative father registry.[215] Illinois held that father was not entitled to notice of a termination of his parental rights where he had not filed with the putative father registry or otherwise established paternity or a relationship with the child.[216] Utah held that father had not "preserved his rights as a father of standing or to notice or consent relating to an

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[212] *Ex parte* J.W.B., 933 So. 2d 1081, 1090, 1092 (Ala. 2005).

[213] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. § 444(c)(14) (2006).

[214] *Id.* § 443.

[215] A.F.L. v. Dep't of Children and Families, 927 So. 2d 101, 102 (Fla. Ct. App. 2006) (per curiam), *abrogated by* Heart of Adoptions, Inc. v. J.A., 963 So. 2d 189 (Fla. 2007).

[216] *In re* Rodney T., 816 N.E.2d 741, 746 (Ill. App. Ct. 2004).

adoption"[217] where father did not establish paternity or file a notice to the State Registrar of Vital Statistics.[218]

A national registry could be used to protect fathers in dependency cases as well as in voluntary adoption cases. Another use would include expediting the placement of children in foster care.

## CONCLUSION

This Article concludes with the identification of key components to a national registry and the identification of bright line standards to resolve case law disputes over putative father registries. The listing of both the components and the standards are designed to protect earnest birth parents and to expedite permanency for children. A national registry should list components that states must establish without setting the criteria for those components in order to allow states to maintain their own substantive laws.

The first key component of a national registry starts with a definition of presumed, adjudicated, acknowledged, registered, and putative fathers. The first three categories are listed in the Uniform Parentage Act.[219] A presumed father is one who is married to the mother;[220] an adjudicated father is one who has established his paternity in court;[221] an acknowledged father is one who has executed an affidavit swearing that he is the father of a child which becomes a legal finding of paternity;[222] a registered father is one who has registered with the state's putative father registry; and a putative father is "a man who has had sexual relations with a woman to whom he is not married and is therefore on notice that such woman may be pregnant as a result of such relations."[223]

One exception to these definitions should be the father who executes an acknowledgement of paternity with a mother at a point in time after her consent to termination of parental rights or consent to adoption has become irrevocable under state law. Contrary to the Missouri decision *In re Adoption of N.L.B. v. Lentz*,[224] a woman and man should not be free to

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[217] State *ex rel.* S.H., 119 P.3d 309, 311, 315 (Utah Ct. App. 2005).

[218] *Id.* at 314.

[219] UNIF. PARENTAGE ACT § 102 (1)–(2), (16) (2002), 9B U.L.A. 303–04 (2001 & Supp. 2007).

[220] *See, e.g.*, MO. ANN. STAT. § 210.822 (West 2004).

[221] *See, e.g.*, MO. ANN. STAT. § 210.826(1)–(4 ) (West 2004).

[222] *See, e.g.*, MO. ANN. STAT. § 210.823 (West 2004).

[223] Protecting Rights of Unknowing Dads and Fostering Access To Help Encourage Responsibility (Proud Father) Act of 2006, S. 3803, 109th Cong. § 440(8) (2006).

[224] 212 S.W.3d 123, 124 (Mo. 2007).

establish the man's paternity to a child to whom neither has any legal relationship and for whom an adoption petition has previously been filed. To allow such acknowledgement of paternity fosters end runs around legitimate consent laws and jeopardizes permanency for children.

Any man who is a presumed, adjudicated, or acknowledged father has absolute rights to notice and consent to an adoption. Such a man is both entitled to custody of and obligated to financially support his child. States must protect this father's relationship to his child and this child's relationship with her father.

The next component is erection of a registry for putative fathers. States must be required to establish a registry in whatever branch of state government they select which will communicate with the national registry database. Postage-paid registration forms should be freely available to fathers in hospitals, welfare offices, children's services offices, and courts. The registration forms must at least require the father's name, social security number, and address; the mother's name and last known address or whereabouts; the child's name (if known), the child's birth date or expected due date (if known), and the state(s) of possible conception. In establishing a registry, states must provide a registry search result to any woman (searching only in her own name or that of her child), court, adoption agency, state children's services agency, or attorney planning an adoption. Registration with any state's putative father registry should serve as rebuttable evidence in a child support enforcement action.

The next component is a requirement that putative fathers establish paternity within a state-set deadline or prior to the filing of an adoption petition. Paternity establishment prior to the filing of an adoption petition is an exception carved out by Illinois in *J.S.A. et al. v. M.H.*, where the court allowed a father to establish his paternity after Illinois's putative father registry deadline had run but prior to the filing of an adoption action.[225] Such a decision promotes the establishment of paternity by unmarried fathers where no adoption is contemplated and serves public policy to secure parents for children.

States must determine a putative father registration time limit inside of which notice of an adoption is assured. This registration deadline must rationally relate to the state's deadline for establishing paternity which may be the same or different. For example, Missouri provides the same deadline for putative father registry filing and for paternity action filing,[226]

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[225] 863 N.E.2d 236, 249–50 (Ill. 2007).

[226] MO. ANN. STAT. § 453.030(3)(2) (West 2003 & Supp. 2007).

but Minnesota provides 30 days from receipt of a notice of an adoption to father for him to file a paternity action.[227] Missouri's identical deadline for filing with the registry and for filing a paternity action minimizes confusion.

States must establish the consequences of a failure to file with the putative father registry and failure to establish paternity. Different states have taken different approaches (see Appendix 1), and states may mix, combine, or divide the rights to receive notice of an adoption petition (typically associated with filing timely with the putative father registry) with rights to consent to an adoption (typically associated with establishing paternity). Failures both to register and to establish paternity should result in waiver of notice and implied consent to adoption. Arkansas divided the rights to notice from the rights to consent in *Escobedo v. Nickita*.[228] Arkansas also described the filing of an adoption as a "cut off" date,[229] but it allowed Escobedo to file a legitimation action after the adoption action was filed.[230] These two Arkansas approaches confuse the father's status for courts and for adoptive parents and postpone permanency for children. Additionally, allowing men to file paternity or legitimation actions after adoptions are filed should be discouraged because it fosters defensive filing by men who did not affirmatively and timely assume the responsibilities of parenting.

States must serve all men who have established their status as a presumed, adjudicated or acknowledged father prior to the filing of an adoption petition. States may, but are not constitutionally required to, serve putative fathers who have not registered within the state set time limit.[231] Serving only registered fathers preserves the privacy of non registered fathers and allows the putative father to control whether or not he receives service of an adoption petition. Nonetheless, a national putative father registry should authorize states to set the deadlines for filing with the registry and for filing a paternity action, the service protocols, and the consequences to failures to timely file with the registry and establish paternity.

A national registry should require that states protect the privacy and safety of women. As the definition of putative father suggests, states may

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[227] Sundboom v. Keul, No. C4-02-26, 2002 WL 1613866, at *1 (Minn. Ct. App. July 23, 2002).

[228] Escobedo v. Nickita, 231 S.W.3d, 601, 604 (Ark. 2006).

[229] *In re* Adoption of S.C.D., 186 S.W.3d 225, 227 (Ark. 2004).

[230] *Escobedo*, 231 S.W.3d at 602–03.

[231] Lehr v. Robertson, 463 U.S. 248, 267 (1983).

accomplish such protection by relieving a woman of the obligations both to notify a man of her pregnancy by him and to identify the father (or potential fathers) in the course of an adoption. This protects women from domestic abuse which is so common in the United States and allows women to protect privacy in their sexual affairs. Additionally, it avoids the possible misidentification of a man as a father.

Another component of the national registry should be each state's definition of prenatal abandonment. Alabama provides that father must provide financial and emotional support during six months of the pregnancy in order to preserve his parental rights.[232] States have defined prenatal abandonment[233] and in case law,[234] and Utah has defined a failure to register in statutes as prenatal abandonment.[235] The policy behind a definition of prenatal abandonment is the speedy identification of those men who affirmatively assume the responsibilities of parenthood, and that is key to expediting permanency for children.

The national registry should also require states to define that conduct by a mother which constitutes defrauding a birth father with misinformation about a pregnancy and/or thwarting a birth father from developing a relationship with his child and from providing financial support for his child both before and after birth. In addition to defining such conduct, a state should extend the deadlines for filing with the registry and for filing a paternity action for fathers who are so defrauded or thwarted.

Missouri has codified birth mother's fraudulent conduct and its effect on filing with the putative father registry as follows:

> Failure to timely file pursuant to paragraph (b) or (c) of subsection 3 of section 453.030, RSMo, [this describes filing with the putative father registry and filing a paternity action within 15 days of birth] shall waive a man's right to withhold consent to an adoption proceeding unless: (1) The person was led to believe through the mother's misrepresentation or fraud that: (a) The mother was not pregnant when in fact she was; or (b) The pregnancy was

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[232] *Ex parte* F.P., 857 So. 2d 125, 131 (Ala. 2003) (citing Alabama Adoption Code § 26-10A-9 (LexisNexis 1992 & Supp. 2006)).

[233] Beck, *supra* note 14, at 1054–55 n.92.

[234] *Id.* at 1054 n.91.

[235] UTAH CODE ANN. § 78-30-4.14(2)(b) (2002) (current version at UTAH CODE ANN. § 78-30-4.14(6)(c) (Supp. 2007)); Beck, *supra* note 14, at 1055 n.93.

> terminated when in fact the baby was born; or (c) After the birth, the child died when in fact the child is alive; and (2) The person upon the discovery of the misrepresentation or fraud satisfied the requirements of paragraph (b) or (c) of subsection 3 of section 453.030, RSMo, within fifteen days of that discovery.[236]

Tennessee case law defined birth mother's thwarting conduct as "(1) telling a man he is not the child's biological father, (2) blocking access to the child, (3) keeping the child's whereabouts unknown, (4) vigorously resisting the parent's efforts to support the child, or (5) vigorously resisting a parent's efforts to visit the child."[237]

A problem with Tennessee's case law is that it labels as fraudulent a mother's telling a man that he is not the father of her child.[238] A mistake made by a woman in identifying the father of her child is not necessarily intentional and fraudulent. Many women lack the ability to determine the identity of the father of their children because they had multiple sexual partners, because they were raped while impaired, and/or because they have irregular menstrual cycles. From a practical point of view, a man who relies upon a woman to identify his parental rights and protect them misplaces his reliance. A man who wishes to protect his paternal rights should file with the putative father registry if he determines that a woman is pregnant and due to deliver anytime within 10 months of his sexual access to her. He should also offer her financial support and file a paternity action. Where a man cannot determine if a woman became pregnant following his sexual access to her, and he wishes to protect any parental rights he may have, he should register with the registry, file a paternity action, and document that he has made a credible offer to the woman of financial support during the pregnancy. While these obligations may seem unfair to the man who turns out not to be the genetic father of the child, pregnancy is a recognized risk of sexual intercourse and it is necessary for society to identify the man who will promptly assume the responsibilities of parenthood to insure the best interests of children. Additionally, every state is required to provide paternity establishment services to assist men in uncertain situations.[239]

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[236] MO. ANN. STAT. § 192.016(7) (West 2003 & Supp. 2007).

[237] *In re* Adoption of S.M.F., No. M2004-00876-COA-R9-PT, 2004 WL 2804892, at *9 (Tenn. Ct. App. Dec. 6, 2004).

[238] MO. ANN. STAT. § 192.016(7); *S.M.F.*, 2004 WL 2804892, at *9.

[239] 42 U.S.C. § 654 (2000).

Another component of a national registry is the requirement that every state amend its long arm statute to obtain personal jurisdiction over any father who registers with that state's putative father registry and over any father who authorizes his putative father registration to be transmitted to the national registry for responses to searches by other states with legitimate jurisdiction over a child in an adoption. Expanding the reach of state long arm statutes is consistent with the Uniform Interstate Family Support Act[240] and facilitates the concentration of all litigation pertaining to the adoption of one child in one state and that will expedite permanency for children.

A critical feature of the national registry is publicity. The national putative father registry should undertake a national publicity campaign outlining what steps unmarried men must take to protect their parental rights, how the national registry obtains data from state registries for responses to searches by any participating states, and the public policy informing the putative father registration process. Additionally, a national registry should require states to undertake a similar publicity campaign listing exactly what unmarried fathers must do to protect their parental rights in their particular state.

Case law regarding putative father registries typically cite *Lehr v. Robertson* and apply its jurisprudence.[241] Some putative father registry issues are not covered by *Lehr* and several bright line rules might unify decisions.

Fathers who have established legal paternity by presumption, adjudication, or acknowledgement prior to the filing of an adoption petition should retain rights both to notice and consent. Adoption action filings then should provide a "cut off" for putative father registry filings and the establishment of paternity either by adjudication or by acknowledgement. The filing of claims with putative father registries, the filing of paternity actions, or the acknowledgment of paternity after adoption actions have been filed should only prevail if the adoption action was filed prior to the putative father registry and/or paternity action filing deadlines established by the state. To allow otherwise fosters defensive

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[240] UNIF. INTERSTATE FAMILY SUPPORT ACT art. 1, general provisions (2001), 9 U.L.A. 159, 175–84 (2005).

[241] Lehr v. Robertson, 463 U.S. 248, 267 (1983); *In re* D.J.A.C., No. 5-05-0369, slip op. at *9 (Ill. App. Ct. Feb. 27, 2006), *vacated*, 863 N.E.2d 261 (Ill. 2007); *see, e.g.*, *In re* Cameron, 795 N.E.2d 707, 709 (Ohio Ct. App. 2003).

and fraudulent filings by a father who assumes parental responsibility defensively and only as a last resort.

Adoption contests should be denied where an acknowledgement of paternity is executed after the adoption is filed and after the mother's rights are involuntarily terminated or voluntarily and irrevocably relinquished such as in *In re Adoption of N.L.B. v. Lentz*.[242] In *N.L.B.*, the adoption had been filed but not finalized when the birth parents executed their acknowledgment establishing father's legal paternity,[243] but the biological mother's execution of the affidavit was fraudulent, because she no longer was a legal mother. Courts should not allow such end runs around irrevocable consents whereby two persons with no legal relationship to the child establish the father's paternity.

Similarly, adoption contests should be denied where the father files an untimely claim with the putative father registry and/or files a legitimation/paternity action after the adoption is filed such as in *Escobedo v. Nickita*.[244]

Courts should deny adoption contests where father's identity is known but he has not established paternity. This contrasts with Florida's decision in *B.B. v. P.J.M.*,[245] where the juvenile dependency court identified the father but the father did not file acknowledgement of his paternity with either the dependency court or in an affidavit with the Florida Office of Vital Statistics.[246] To halt an adoption because a father has been identified but has not established his legal paternity disserves public policy and the child because such a father has no authority or obligation to provide necessary care and control of the child.

Finally, appellate courts must first implement the law of the state but in evaluating putative father registry exceptions in cases where facts are disputed, courts should follow the lead of Alabama in *Ex parte J.W.B.* where a 'he said, she said' dispute arose.[247] The *J.W.B.* court reinstated the judgment of the trial court because ore tenus evidence was presented to the trial court in the form of actual witness testimony, and the trial court was in the best position to evaluate the credibility of the witnesses.[248]

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[242] 212 S.W.3d 123 (Mo. 2007) (en banc).

[243] *Id.* at 124–25.

[244] 231 S.W.3d 601, 605–06 (Ark. 2006).

[245] 933 So. 2d 57 (Fla. 2006).

[246] *Id.* at 59–61.

[247] 933 So. 2d 1081, 1083–85 (Ala. 2006).

[248] *Id.* at 1087, 1092.

APPENDIX

# SURVEY OF PUTATIVE FATHER REGISTRIES BY STATE

LINDSAY BIESTERFELD[†]

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
|---|---|---|---|---|---|
| **Alabama** | YES | ALA.CODE § 26-10C-1 (1992 & Supp. 2006).<br>The Department of Human Resources established a putative father registry.<br>To be included, the putative father must file an instrument acknowledging paternity with the registry within 30 days. (ALA.CODE § 26-10C-1(i)). | Office of Adoption,<br>Dept. of Human Resources,<br>50 N.Ripley St.<br>Montgomery, AL 36130-4000<br>Tel.: (334) 242-9500 and ask for office of adoption. | | Adoption Attorney Email says that, actually, putative father only has to register prior to the filing of petition for adoption; additionally, putative father must prove that he had a significant custodial, personal, or financial relationship with the minor before adoption petition is filed. |
| **Alaska** | NO | | | | |

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| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Arizona** | YES | ARIZ. REV. STAT. ANN. § 8-106.01 (1999 & Supp. 2007) (Registration provides notice that the putative father must file a paternity action and serve the mother within 30 days):<br><br>A person who is seeking paternity, who wants to receive notice of adoption proceedings and who is the father or claims to be the father of a child shall file notice of a claim of paternity and of his willingness and intent to support the child to the best of his ability with the state registrar of vital statistics in the department of health services. . . .<br>(B) The notice of a claim of paternity may be filed before the birth of the child but shall be filed within thirty days after the birth of the child. | Return forms to:<br>Office of Vital Records,<br>Putative Father Registry<br>P.O. Box 3887<br>Phoenix, Arizona 85030<br><br>Tel.: (602) 364-1300 | Forms available at office of clerk of the board of supervisors of each county; hospitals; license child placement agencies; the department of economic security; jails and prisons; state department corrections facilities; and, the department of juvenile corrections facilities. | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Arkansas** | YES | ARK. CODE ANN. § 9-9-212 (2002 & Supp. 2007), 20-18-701, 702; § 9-9-224 (2002) (Putative father must register prior to the filing of petition for adoption):<br><br>When information concerning the child is contained in the putative father registry at the time of the filing of the petition for adoption, notice of the adoption proceedings shall be served on the registrant unless waived by the registrant in writing signed before a notary public. | Obtain form from, and return completed form to:<br><br>Vital Records Amendment Section, Slot 44<br>4815 W. Markham St.<br>Little Rock, AR 72205-3867<br><br>Tel.: (501) 661-2174<br>Fax: (501) 661-2869 | Putative fathers may contact the Legal Department of the Department of Health's Division of Vital Records, Amendments Section at (800) 637-9314 ext. 2174 and obtain a form to be filled out and returned to the Department of Health. | The adoption code notice and consent provisions and the putative father registry law was amended in 2005 to require that not only must the putative father register prior to the filing of a petition for adoption, but he must also prove that he had a "significant custodial, personal, or financial relationship. . . . with the minor before the petition for adoption is filed."<br><br>Kaye H. McLeod k.mcleod@adoptionattorneys.org or kayemc@aol.com |
| **California** | NO | CAL. FAM. CODE § 7611 (West Supp. 2007) lists the circumstances under which a man may be considered a putative father. | | | |
| **Colorado** | NO | | | | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Connecticut** | YES | CONN. GEN. STAT. ANN. § 46b-172a(a) (West 2004 & Supp. 2007) (The putative father must file a claim for paternity no later than 60 days after receiving notice of TPR proceedings).<br><br>CONN. GEN. STAT. § 45a-716(b) (West 2004 & Supp. 2007):<br><br>The court shall cause notice of the hearing to be given to the following persons, as applicable:<br>(1) The parent or parents of the minor child, including any parent who has been removed as guardian on or after October 1, 1973, under section 45a-606;<br>(2) the father of any minor child born out of wedlock, provided at the time of the filing of the petition . . .<br>(B) he has acknowledged in writing that he is the father of such child. | Dept. of Public Health<br>Vital Records Office<br>410 Capitol Ave.<br>MS#11VRS<br>P.O. Box 340308<br>Hartford, CT 06134-0308<br><br>Tel.: (860) 509-7700<br>Fax: (860) 509-7964 | | |
| **Delaware** | YES | DEL. CODE ANN. tit. 13, § 8-402 (1999 & Supp. 2006): The putative father must register in the Registry of Paternity before the birth of the child or within 30 days after the birth of the child. | Delaware Health and Social Services,<br>Office of Vital Statistics<br>1901 N. Du Pont Highway, Main Bldg.<br>New Castle, DE 19720<br><br>Tel.: (302) 255-9040 or (302) 744-4700 | | Adopted as part of Uniform Parentage Act in 2004 |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **District of Columbia** | NO | | | | |
| **Florida** | YES | FLA. STAT. ANN. § 63.054 (West 2005 & Supp. 2008):<br><br>In order to preserve the right to notice and consent to an adoption under this chapter, an unmarried biological father must, as the "registrant," file a notarized claim of paternity form with the Florida Putative Father Registry maintained by the Office of Vital Statistics of the Department of Health and shall include therein confirmation of his willingness and intent to support the child for whom paternity is claimed in accordance with state law. The claim of paternity may be filed at any time prior to the child's birth, but a claim of paternity may not be filed after the date a petition is filed for termination of parental rights. | Office of Vital Statistics,<br>P.O. Box 210<br>Jacksonville FL 32231<br><br>Tel.: (904) 359-6900 ext. 1086, 1068, or 1081;<br><br>http://www.doh.state.fl.us/planning_eval/vital_statistics/Putative.htm. | | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Georgia** | YES | GA. CODE ANN. 19-11-9(d)(2) (2004):<br><br>The putative father registry shall include . .<br>(A) Persons who acknowledge paternity of a child or children before or after birth in a signed writing; and<br>(B) Persons who register to indicate the possibility of paternity without acknowledging paternity.<br><br>GA. CODE ANN. 19-8-12 (2004 & Supp. 2007):<br><br>[putative fathers] shall be notified of adoption proceedings regarding the child . . .<br>(2) If he is a registrant on the putative father registry who has acknowledged paternity of the child in accordance with subparagraph (d)(2)(A) of Code § 19-11-9;<br>(3) If he is a registrant on the putative father registry who has indicated possible paternity of a child of the child's mother during a period beginning two years immediately prior to the child's date of birth in accordance with subparagraph (d)(2)(B) of Code § 19-11-9. | Putative Father Registry<br>Vital Records<br>2600 Skyland Dr. NE<br>Atlanta, GA 30319-3640<br><br>Tel.: (404) 679-4701 or (404) 679-4780<br><br>Fax: (404) 679-4730<br><br>phvitalrecords@gdph.state.ga.us | A putative father may file either an acknowledgment of paternity; or the putative father may choose to simply indicate a possibility of paternity. | |
| **Hawaii** | YES | HAW. REV. STAT. § 578-2(d)(5) (2006) (If the mother relinquishes the child for adoption, the putative father must file within 30 days of child's birth, or prior to mom's valid consent to adoption, or prior to child's placement with adoptive parents in order to get notice): | Department of Health<br>1250 Punchbowl St.<br>Honolulu, Hawaii 96813<br><br>Tel.: (808) 586-4400<br>Fax: (808) 586-4444 | The putative father is the presumed father if he registers with the Department of Health, and the mother does not dispute his | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| | | A man is the presumed father if . . . (5) He acknowledges his paternity of the child in writing filed with the department of health, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health. . . . If the acknowledgment is filed and not disputed by the mother and if another man is not presumed under this section to be the child's father, the department of health shall prepare a new certificate of birth in accordance with chapter 338. | | acknowledgment of paternity; Larry Jenkins informed us via email that in order to search the 'registry', one must have a court order and the birth mother's consent. lsjenkins@woodcrapo.com | |
| **Idaho** | YES | IDAHO CODE ANN. § 16-1513 (Supp. 2007) (The putative father's registration presumes commencement of establishment of paternity proceeding. The putative father must register before adoption or TPR proceedings):<br><br>A person who is the father or claims to be the father of a child born out of wedlock may claim rights pertaining to his paternity of the child by commencing proceedings to establish paternity under § 7-1111, Idaho Code, and by filing with the vital statistics unit of the department of health and welfare notice of his commencement of proceedings to establish his paternity of the child born out of wedlock. | Vital Statistics Unit<br>Idaho Dept. of Health and Welfare<br>450 W. State St., 1st Floor<br>P.O. Box 83720<br>Boise, ID 83720-0036<br><br>Tel.: (208) 334-5988 | | "Imputed notice" statute enacted in 2000. IDAHO CODE ANN. § 16-1505(2) (Supp. 2007). |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Illinois** | YES | 750 ILL. COMP. STAT. ANN. 50/12.1 (West 1999 & Supp. 2007) (waives notice and consent or surrender of PF, and establishes basis for termination of rights if no registration (and paternity action is filed) within 30 days of child's birth.):<br><br>A putative father may register with the Department before the birth of the child but shall register no later than 30 days after the birth of the child. All registrations shall be in writing and signed by the putative father. | Department of Children and Family Services;<br><br>Obtain the form from: www.putativefather.org (print form out, complete, sign, and mail the form in)<br>Return form to:<br>The Illinois Putative Father<br>10 W. 35th Street, Suite 9F7-1<br>Chicago, IL 60616<br><br>Tel.: (312) 808-9040 or toll free (866) 737-3237<br><br>Fax: (312) 808-9052 or (312) 808-9061 | | |
| **Indiana** | YES | IND. CODE ANN. § 31-19-5-12 (West Supp. 2007) (The putative father must register within 30 days of the child's birth or filing of adoption petition):<br><br>(a) To be entitled to notice of an adoption under IC 31-19-3 or IC 31-19-4, a putative father must register with the state department of health under section 5 [IC 31-19-5-5] of this chapter not later than:<br>(1) thirty (30) days after the child's birth; or<br>(2) the date of the filing of a petition for the<br>(A) child's adoption; or<br>(B) termination of the parent-child | Obtain the form from and return the form to:<br><br>Indiana State Dept. of Health<br>2 North Meridian Street<br>Indianapolis, IN 46204<br><br>Tel.: (317) 233-1325<br>Fax: (317) 233-1289 | Email response said that Indiana's registry cannot be used for child support purposes. | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| | | relationship between the child and the child's mother; whichever occurs later.<br>(b) A putative father may register under subsection (a) before the child's birth. | | | |
| **Iowa** | YES | IOWA CODE ANN. § 144.12A (West 2005): The putative father must register prior to the child's birth and no later than the date of the filing of the petition for termination of parental right. | Vital Records Bureau<br>Paternity Registry<br>Iowa Dept. of Public Health<br>Lucas Building<br>321 East 12th<br>Des Moines, IA 50319-0075<br>Tel.: (515) 281-4944 | | |
| **Kansas** | NO | KAN. STAT ANN. § 38-1101 *et seq* was repealed by L. 1985, ch. 114, § 30. | Tel.: (785) 296-3237 | | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
|---|---|---|---|---|---|
| **Kentucky** | NO | KY. REV. STAT. ANN. § 625.065 (West 2007) makes a putative father a party to adoption and TPR proceedings if the putative father asserts paternity to the custodial agency or the party bringing the action within 60 days of the child's birth. KY. REV. STAT. ANN. § 625.065(1)(b).<br><br>The Cabinet for Family and Children maintains a registry for the receipt of information which "directly relates to the identity or location of absent parents" and which can, in limited circumstances, be used to establish paternity of putative fathers. KY. REV. STAT. ANN. § 205.730 (West 2006).<br><br>Additionally, a putative father can file an affidavit stating that the affiant is the father of the child. *See* KY. REV. STAT. ANN. § 199.480(3) (West 2006); KY. REV. STAT. ANN. § 199.490(1)(f) (West 2006); KY. REV. STAT. ANN. § 199.500(1) (West 2006). | | | While KY. REV. STAT. ANN. §§ 199.480(3), 199.490(1)(f) and 199.500(1) indicate that a putative father can file an affidavit stating that the affiant is the father, the requirements for filing this affidavit are not specified. |
| **Louisiana** | YES | LA. REV. STAT. ANN. § 9:400(2) (2000 & Supp. 2008):<br><br>The Department of Health and Hospitals, office of preventive and public health services, shall establish a putative father registry which shall record the names and addresses of the following: (1) Any person adjudicated by a court of this state to be the father of the child. | Obtain form from:<br>State of Louisiana,<br>Dept. of Health and Hospitals, Office of Public Health, Vital records Registry,<br>PO Box 60630<br>New Orleans, LA 70160<br><br>Return form to:<br>Putative Father Registry<br>PO Box 60630<br>New Orleans, LA 70160 | Form and relevant information available at http://www.dhh.louisiana.gov/offices/publications/pubs-252/PACKET15.pdf | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Maine** | NO | | | | |
| **Maryland** | NO | | | | |
| **Massachusetts** | YES | MASS. GEN. LAWS ANN. ch. 210, § 4A (West 2002):<br><br>Whenever the mother of a child born out of wedlock has surrendered the child in accordance with section two, or whenever the right of such mother to withhold consent for adoption has been terminated in accordance with section three, notice of such surrender or termination and a right to petition for adoption shall be afforded to any person who, prior to such surrender or termination, has filed a declaration seeking to assert the responsibilities of fatherhood, hereinafter called a parental responsibility claim. | Dept. of Social Services<br>24 Farnsworth Street<br>Boston, MA 02210<br><br>(617) 748-2000 | | Must be an admission of paternity, not a possibility |
| **Michigan** | YES | MICH. COMP. LAWS ANN. §§ 710.33, 710.34, 710.36 & 710.37 (West 2002):<br><br>Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the court in any county of this state. . . . On the next business day after receipt of the notice the court shall transmit the notice to the vital records division of the department of public health. If the mother's address is stated on the notice, the vital records division shall send a copy of the notice by first-class mail to the mother of the child at the stated address. | General Address for Michigan Department of Community Health is<br><br>Capitol View Building<br>201 Townsend Street<br>Lansing, Michigan 48933<br><br>Tel.: (517) 373-3740 | | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| **Minnesota** | YES | MINN. STAT. ANN. § 259.52 (West 2007):<br><br>(a) The commissioner of health shall establish a fathers' adoption registry for the purpose of determining the identity and location of a putative father interested in a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of the adoption proceeding to the putative father who is not otherwise entitled to notice. . . . A registration is timely if the date the registration is postmarked or the date it was delivered by means other than mail to the address specified on the registration form is not later than 30 days after the birth of the child. | Obtain the form from:<br>http://www.health.state.mn.us/divs/chs/registry/registrationform.pdf<br><br>or from:<br>Minnesota Dept. of Health,<br>85 E. 7th Place<br>St. Paul, MN 55164-0882<br>Tel.: (888) 345-1726<br><br>or by contacting:<br>Fathers' Adoption Registry<br>Minnesota Dept. of Health<br>PO Box 64882<br>St. Paul, MN 55164-0882 | Mail the form to:<br>Fathers' Adoption Registry<br>Minnesota Dept. of Health<br>P.O. Box 64882<br>St. Paul, MN 55164-0882 | The registry is called the 'fathers' adoption registry'; the registry can be used for child support enforcement purposes. MINN STAT.ANN. § 259.52 subdiv. 3 |
| **Mississippi** | NO | | | | Putative Father Registry Legislation contemplated |
| **Missouri** | YES | MO. ANN. STAT. §§ 192.016, 453.030 (West 2003, 2004 & Supp. 2007): The putative father may file prior to the child's birth, or within 15 days after the child's birth, a notice of intent to claim paternity or an acknowledgment of paternity form. | Missouri Dept. of Health and Senior Services<br>Bureau of Vital Records<br>Attn: Putative Father Registry<br>P.O. Box 570<br>Jefferson City, MO 65102<br><br>Tel.: (573) 522-3233 | http://www.dhss.mo.gov/BirthAndDeathRecords/PutativeFatherRegistry-Pamphlet04.pdf | |

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| **Montana** | YES | MONT. CODE ANN. § 42-2-202 (2007): The putative father registry is established within the Vital Statistics Bureau of the Department of Public Health and Human Services.<br><br>MONT. CODE ANN. § 42-2-206 (2007): In order to be entitled, because of registration, to receive notice of a termination of parental rights proceeding, a putative father's registration form complying with the requirements of 42-2-205 must be received by the department not later than 72 hours after the child's birth. | Bureau of Vital Statistics<br>Dept. of Public Health and Human Services<br>111 N. Sanders, Room 205<br>Helena, MT 59620<br><br>Tel.: (406) 444-4228<br>Fax: (406) 444-1803 | | |
| **Nebraska** | YES | NEB. REV. STAT. § 43-104.01 (2004 & Supp. 2007): The Department of Health and Human Services shall establish a biological father registry;<br><br>NEB. REV. STAT. § 43-104.02 (2004 & Supp. 2007):<br>A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the biological father registry under section 43-104.01 on forms provided by the Department of Health and Human Services<br>(1) within five business days after the birth of the child or<br>(2) if notice is provided after the birth of the child<br>(a) within five business days after receipt of the notice provided under section 43-104.12 or<br>(b) within five business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier.<br>Such notice shall be considered to have been filed if it is received by the department or postmarked prior to the end of the fifth business day as provided in this section. | Obtain form from:<br>Nebraska Dept. of Health and Human Services<br>Vital Records<br>1033 "O" Street<br>Suite 130<br>P.O. Box 95065<br>Lincoln, NE 68509-5065<br><br>http://www.hhs.state.ne.us/adoption/biofather.htm | Return form to:<br>Nebraska Dept. of Health and Human Services<br>Dept. of Finance and Support<br>Vital Records<br>1033 "O" Street<br>Suite 130<br>P.O. Box 95065<br>Lincoln, NE 68509-5065. | Called a biological father registry. |

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| **Nevada** | NO | | | | Putative father registry legislation contemplated |
| **New Hampshire** | YES | N.H. REV. STAT. ANN. § 170-B:6(I)(c) (LexisNexis Supp. 2006):<br><br>Notice of adoption shall be given to: (c) A person who claims to be the father and who has filed notice of his claim of paternity with the office of child support services in what shall be known as the New Hampshire putative father registry or in the putative father registry of the state where the child was born. . . . [The notice form] may be filed prior to the birth of the child but shall be filed prior to the birth mother's parental rights being surrendered pursuant to RSA 170-B:9 or involuntarily terminated. Failure to file the notice prior to this time shall bar the alleged father from thereafter bringing an action to establish his paternity of the child, and shall constitute an abandonment of said child and a waiver of any right to a notice of hearing in any adoption proceeding concerning the child. | Affidavit of Paternity is available from DCSS, the hospital where the child was born, or the town clerk's office;<br><br>Division of Children Services street address:<br>129 Pleasant St.<br>Concord, NH 03301-3857<br><br>Mailing Address:<br>All Mail: NH DHHS<br>Division of Child Support Services<br>129 Pleasant Street<br>Concord, NH 03301-3857 | | |
| **New Jersey** | NO | | | | |
| **New Mexico** | YES | N.M. STAT. ANN. 32A-5-20(A) (1999 & Supp. 2003):<br>The purpose of the putative father registry is to protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered and to expedite | Bureau of Vital Records,<br>New Mexico Health Services<br>P.O. Box 26110<br>Santa Fe, NM 87502 | | |

| STATE | PFR? | STATUTE | CONTACT INFO | ADDITIONAL CONTACT INFO | NOTES |
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| | | adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the putative father registry or otherwise acknowledging their children. The registry does not relieve the obligation of mothers to identify known fathers.<br>N.M. STAT. ANN. 32A-5-19 (1999):<br>The consent to adoption or relinquishment of parental rights required pursuant to the provisions of the Adoption Act [Chapter 32A, Article 5 NMSA 1978] shall not be required from: . . . E. an alleged father who has failed to register with the putative father registry within ten days of the child's birth and is not otherwise the acknowledged father. | | | |
| **New York** | YES | N.Y. SOC. SERV. LAW § 372-C (McKinney 2003):<br>The Department shall establish a putative father registry which shall record the names and addresses of . . .(d) any person who has filed with the registry an instrument acknowledging paternity.<br>N.Y. DOM. REL. LAW § 111-a (McKinney 1999);<br>N.Y. SOC. SERV. LAW § 384-c (McKinney 2003):<br>Persons entitled to notice, pursuant to subdivision one of this section, shall include: (h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child; (c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child. | NYS OCF/PFR<br>Capital View Office Park<br>52 Washington St.<br>Room 323<br>Rensselaer, N.Y. 12144-2796 | | |

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| **North Carolina** | NO | | | | |
| **North Dakota** | NO | | | | Putative Father Registry Legislation contemplated; previously introduced unsuccessfully |
| **Ohio** | YES | OHIO REV. CODE ANN. § 3107.062 (West 2005):<br><br>The Department of Job and Family services shall establish a putative father registry. To register, a putative father must complete a registration form prescribed under § 3107.065 of the Revised Code and submit it to the department. The registration form shall include the putative father's name; the address or telephone number at which he wishes to receive, pursuant to § 3107.11 of the Revised Code, notice of a petition to adopt the minor he claims as his child; and the name of the mother of the minor. A putative father may register before or not later than thirty days after the birth of the child. No fee shall be charged for registration. | Dept. of Human Services,<br>Dept. of Job and Family Services,<br>Ohio Putative Father Registry<br>255 East Main St., 3rd Floor<br>Columbus, OH 43215-5222<br><br>Tel.: (888) 313-3100 or (614) 466-9274<br><br>Fax: (614) 728-2604 | | |

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| **Oklahoma** | YES | OKL. ST. ANN. tit.10, § 7506-1.1(B) (West 2007): The father or putative father of a child born out of wedlock may file: (1) A notice of desire to receive notification of an adoption proceeding concerning the minor pursuant to Section 7503-3.1 of this title;<br><br>OKL. ST. ANN. tit. 10, § 7503-3.1(B)(3)(b) (West 2007): if the form is received by the Paternity Registry of the Department of Human Services or the attorney or child-placing agency sending it within thirty (30) days of the date of service of the Notice of Plan for Adoption, and it indicates that any of the options specified in subparagraphs a, b and c of paragraph 2 of this subsection have been chosen, the notified person shall have a right to receive notice of any adoption proceedings or any termination of parental rights proceedings that may be filed regarding the minor | Paternity Registry of the Department of Human Services (405) 522-5871.<br><br>Obtain form from website: http://www.oscn.net/Forms/DHS_Forms/MicrosoftWord/dhsform.doc<br><br>Return form to: Oklahoma Dept. of Human Services—Adoptions P.O. Box 25352 Oklahoma City, OK 73125 | | |
| **Oregon** | YES/ NO | OR. REV. STAT. §§ 109.096, 109.175, 109.225 (2005) (The putative father must file notice before the child is placed in physical custody of a person for purpose of adoption by them). The putative father must first file with the court a petition to establish paternity, which requires information about the mother. Then the putative father files form 45-115 with the department of Vital Records. | Bureau of Vital Records P.O. Box 14050 Portland, OR 97923-0050 Tel.: (503) 731-4492 | | While there is a process for a putative father to file a writing, this process is similar to adjudication of paternity as he must first file a paternity petition; Further putative father registry legislation contemplated. |

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| **Pennsylvania** | YES | 23 PA. CONS. STAT. ANN. § 5103(b) (2001):<br><br>(b) CLAIM OF PATERNITY—If the mother of the child fails or refuses to join in the acknowledgment of paternity provided for in subsection (a), the Department of Public Welfare shall index it as a claim of paternity. The filing and indexing of a claim of paternity shall not confer upon the putative father any rights as to the child except that the putative father shall be entitled to notice of any proceeding brought to terminate any parental rights as to the child.<br>. . . .<br>(g) RECISSION—[Either party may rescind the voluntary acknowledgement of paternity within the earlier of:] (i) sixty days;(ii) the date of an administrative or judicial proceeding relating to the child.<br>. . . .<br>(2) After the expiration of the 60 days, an acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact. | Call the state Bureau of Child Support Enforcement free at (800) 932-0211.<br><br>Claim of Paternity forms can be found at any birthing hospital, any child support agency (called domestic relations sections, and the bureau of child support.<br><br>If you call the 1-800 number, they will mail you one. | The forms should be returned to: Commonwealth of Pennsylvania, Department of Public Welfare, Bureau of Child Support Enforcement, Harrisburg, PA 17105 | |
| **Rhode Island** | NO | | | | |
| **South Carolina** | NO | | | | |
| **South Dakota** | NO | | | | Putative father registry legislation contemplated. |

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| **Tennessee** | YES | TENN. CODE. ANN. § 36-2-318 (2005) (The putative father must file within thirty days of the birth of the child):<br><br>The Department of Children's Services shall establish a putative father registry, which shall be maintained by the department's adoptions unit in the department's state office in Nashville. | Putative Father Registry<br>Tennessee Dept. of Children's Services<br>Cordell Hull Building 8th Floor<br>436 Sixth Avenue North<br>Nashville, TN 37243-1290<br><br>Tel.: (615) 741-9699 or (615) 532-5637<br><br>See also form online at http://state.tn.us/youth/adoption/notice_cs-0439.pdf | | |
| **Texas** | YES | TEX. FAM. CODE. ANN. § 160.402 (Vernon 2002):<br><br>A man who desires to be notified of a proceeding for the adoption of or the termination of parental rights regarding a child that he may have fathered may register with the registry of paternity:<br>(1) before the birth of the child; or<br>(2) not later than the 31st day after the date of the birth of the child. | Physical address:<br>Bureau of Vital Statistics<br>Texas Dept. of Health<br>1100 West 49th Street<br>Austin, TX 78756<br><br>Mail requests to:<br>Texas Vital Statistics<br>Dept. of State Health Services<br>P.O. Box 12040<br>Austin, TX 78711-2040<br><br>Tel.: (888) 963-7111 ext. 7782 or (512) 458-7782 | | Adoption attorney response said that Texas' putative registry is only a fall-back registry in the event the attorney or agency is unable to identify or locate the putative father. We still require a diligent search, affidavit of the diligent search and *ad litem* appointed to protect the man. |

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| **Utah** | YES | UTAH CODE ANN. §§ 78-30-4.13 (2002 & Supp. 2007); 78-45g-404 (Supp 2007).<br><br>Notice must be given to any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption, which voluntary declaration of paternity is considered filed when entered into a database that can be accessed by the Department of Health.<br><br>The putative father is entitled to actual notice of a birth or adoption proceedings if he has initiated proceedings to establish paternity prior to child's birth, prior to the mother's execution of consent, or prior to her relinquishment of the child.<br><br>Upon receiving notice, the putative father has 30 days in which to respond or he waives any future right to notice. | State of Utah, Dept. of Health<br>Office of Public Health Data<br>Bureau of Vital Records<br>288 North 1460 West<br>P.O. Box 141012<br>Salt Lake City, UT 84114-1012<br><br>Tel.: (801) 538-6380 or (801) 538-6363 | | |
| **Vermont** | YES | VT. STAT. ANN. tit. 15A, § 1-110 (2002):<br><br>(a) At any time, a parent or alleged parent of a child born in this state may file in any probate court in this state a notice of intent to retain parental rights. The notice shall specify the name and address of the person | File with the probate court. | | |

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| | | filing it, the name and last known address of the other parent of the minor, the name of the minor, if known, and the date or approximate date of the minor's date of birth.<br>(b) Each probate court shall forward a notice filed with that court under subsection (a) of this section, to the probate court in the district of Chittenden, which shall serve as a central repository for all such notices.<br>(c) When a petition to adopt a minor is filed in this state, the register of the probate court in which it is filed shall determine as of the date of the petition whether or not a notice has been filed under this section with respect to the minor to be adopted.<br>(Added 1995, No. 161 (Adj. Sess.), § 1.). | | | |
| **Virginia** | YES | VA. CODE ANN. § 63.2-1250 (2007):<br>[A] man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, a child that he may have fathered shall register with the Putative Father Registry before the birth of the child or within 10 days after the birth. | Mail form to:<br>The Virginia Putative Father Registry<br>Virginia Dept. of Social Services<br>7 North Eighth St.<br>Richmond, VA 23219-3301<br>or register online at:<br>https://www.dss.virginia.gov/family/ap/putative_registry/cgi<br>(877) 433-2339<br>PutativeFather@dss.virginia.gov | | |

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| **Washington** | NO | WASH. REV. CODE ANN. §§ 26.26.101; 525; 530; 26.33.110 (West 2005). Washington has no registry, but an alleged father is entitled to notice of a petition for termination.<br><br>The alleged father must file claim of paternity in civil court within 20 days of the notice. Prior to such notice, a man may file a claim of paternity at any time, unless there is a statutorily "presumed father".<br><br>If there is a "presumed father", the man must file within two years of child's birth.<br><br>A man who claims to be a child's father may also sign an acknowledgement of paternity with the child's mother. | Administrative Office of the Courts<br>1206 Quince St SE<br>PO Box 41170<br>Olympia, WA 98504<br><br>Tel.: (360) 753-3365<br><br>http://www.courts.wa.gov | | PFR legislation has previously been introduced unsuccessfully. |
| **West Virginia** | NO | | | | |
| **Wisconsin** | YES | WIS. STAT. ANN. § 48.025 (West 2003 & Supp. 2006):<br><br>(1) Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803 and whose paternity has not been established may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting the child. | A form is available from the Department of Health and Family Services or at http://dhfs.wisconsin.gov/forms/DCFS/CFS0019a.pdf<br><br>Send the form to:<br><br>Division of Children and Family Services<br>Bureau of Programs and Policies | | |

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| | | (2) (a) A declaration under sub. (1) may be filed at any time before a termination of the father's parental rights under subch. VIII.<br>(b) A declaration under sub. (1) may be filed at any time before the birth of the child or within 14 days after the birth of the child, except that a man who receives a notice under § 48.42(1g)(b) may file a declaration within 21 days after the date on which the notice was mailed. | P.O. Box 8916<br>Madison, WI 53708-8916<br>Tel.: (608) 266-2744 | | |
| **Wyoming** | YES | WYO. STAT. ANN. § 1-22-117 (2007). The Putative Father Registry includes names of "[a]ny person who has filed with the registry before or after the birth of a child out-of-wedlock." | Dept. of Family Services, Adoption Services<br>Hathaway Bldg. 3rd Floor<br>2300 Capitol Ave.<br>Cheyenne, WY 82002<br>Tel.: (307) 777-3570 or (307) 347-6181 | | |