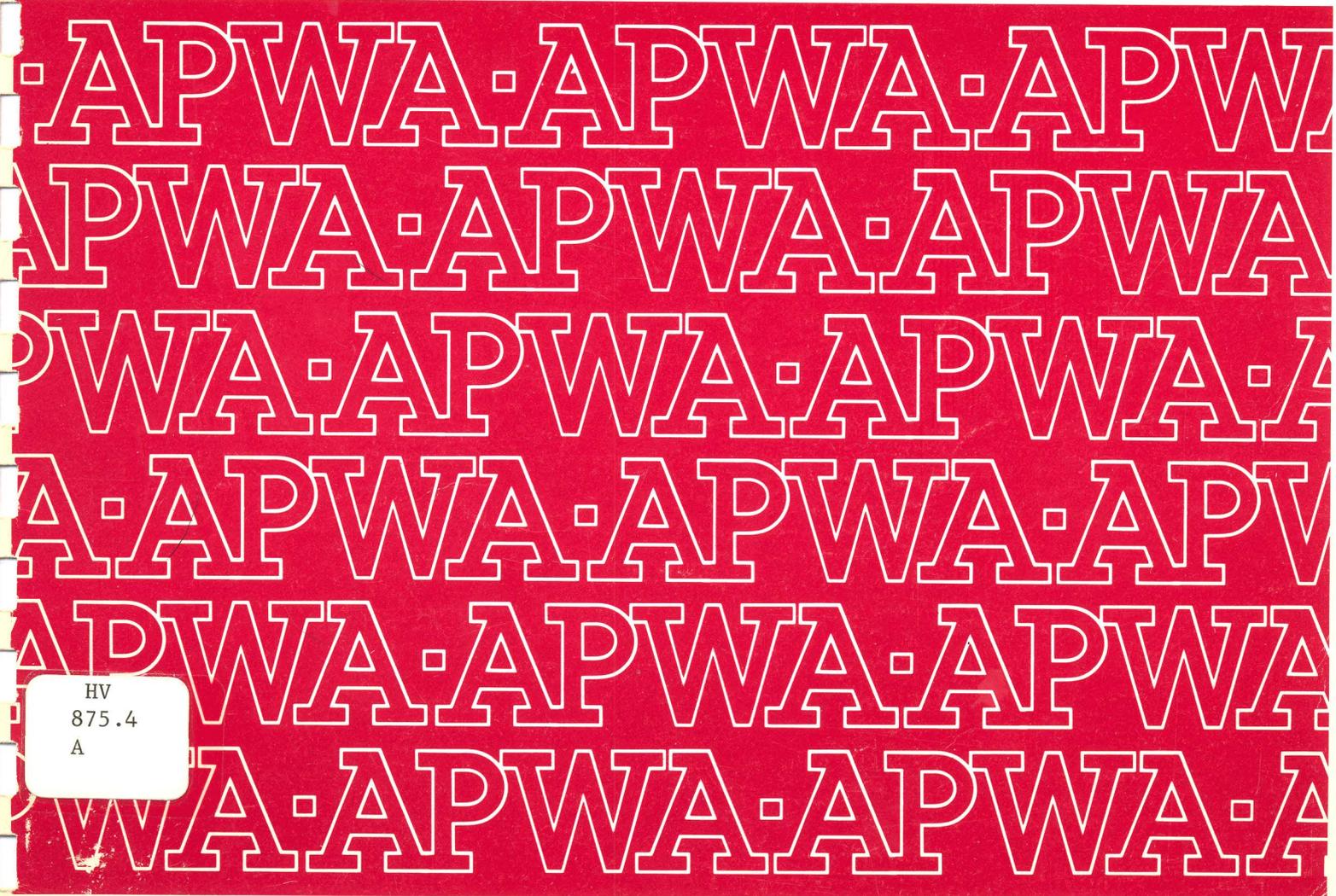
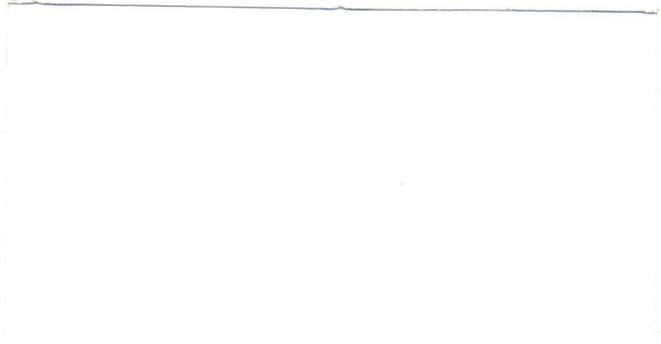


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THE RIGHTS OF PUTATIVE  
FATHERS IN ADOPTION  
PROCEEDINGS: A REVIEW OF  
STATE STATUTES

Prepared under Contract No. 105-78-1100 for the

Children's Bureau  
Administration for Children, Youth, and Families  
Office of Human Development Services  
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Washington, D.C.

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NATIONAL ADOPTION INFORMATION  
CLEARINGHOUSE

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## INTRODUCTION

This report contains the results of a survey of state statutes dealing with putative fathers.\* The survey was completed during the summer and fall of 1980 by staff of The American Public Welfare Association working under HEW Contract No. 105-78-1100, the project to develop model adoption legislation and model adoption procedures.

The purpose of the survey was two-fold:

- To examine existing state law on putative fathers, with a focus on states' approaches to the due process requirements mandated by the Supreme Court cases of the 1970's.
- To identify approaches in existing state statutes which might be useful in making revisions to the proposed Model State Adoption Act.

As a result of these two objectives, this paper focuses on obtaining the answers to two questions.

First, is the consent of the father of a child born out-of-wedlock necessary for the child's adoption? Second, what, if any, notice and opportunity for hearing must be provided to putative fathers whose consent to adoption is not required?

The report is organized into six sections. The first section presents an overview of the major constitutional principles which apply to putative fathers. The next four sections present the results of the survey of state statutes. The final section summarizes the findings of the survey.

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\* The terms "putative" and "unwed" father are used interchangeably in this paper to denote a potential, alleged birth parent for whom paternity has not been judicially established. Unwed fathers may, of course, be legal fathers through acknowledgement of paternity, judicial action, or action of law, but many states use the term "unwed father" to include or to refer primarily to a putative father.

## I. OVERVIEW OF CONSTITUTIONAL PRINCIPLES

The law regarding unwed father's rights has burgeoned since Stanley v. Illinois, 405 U.S. 645 (1972), declared that one such father had due process and equal protection interests in the custody of his children. The Supreme Court's recognition of the rights of a father respecting children "unlegitimized by a marriage ceremony," id. at 651, overturned a tradition with roots in the earliest common law. Originally regarded as non-existent (the child of unmarried parents was legally fillius nullius, a child and heir of no one; no subsequent act could legitimate him), putative fathers had few rights with respect to their children even in the mid-twentieth century United States.<sup>1/</sup> By statute in nearly every state, unwed fathers could legitimate their children, at least for some purposes, by marrying their mother or by other prescribed actions. But unless they chose this action, they had few, if any, legally protected interests in their children.

The decision in Stanley is related to a line of cases of the last twelve years in which the Court has invalidated, on equal protection grounds, some of the incidents of "illegitimacy" for children of unwed parents. The equalization of the status of illegitimates began in 1968 in the landmark decisions of Levy v. Louisiana, 391 U.S. 68 (1968), and Glon v. American Guarantee and Liability Insurance Co., 391 U.S. 73 (1968). In those cases, a statutory scheme which gave the right to bring a wrongful death action for legitimate children and their parents, while denying those same rights to illegitimates and their mothers,<sup>2/</sup> was struck down, the Court recognizing that "familial bonds in such cases were often as warm, enduring and important as those arising within a more formally organized family unit." Stanley v. Illinois, supra at 652, quoting Levy v. Louisiana, supra at 71-72. Although the rights asserted

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- <sup>1/</sup> Britain gave fathers of illegitimate children the right to be heard in adoption proceedings in 1959. Legitimacy Act, 1959, (7 & 8 Eliz. II, c. 73), §3.
- <sup>2/</sup> The equalization of the rights of legitimate and illegitimate children has been only roughly paralleled by the equalization of the rights of unwed mothers and putative fathers. While Glon held that there was no "rational basis" for a distinction between mothers of illegitimates and mothers of legitimates as possible plaintiffs in a wrongful death action, the later case of Parham v. Hughes, 441 U.S. 347 (1979), refused to invalidate a Georgia statute depriving unwed fathers of a wrongful death action unless the deceased child had been legitimated.

in Stanley were those of the father, earlier legal commentators had begun to acknowledge a potential relationship between the rights of the unwed father in adoption and the interests of his illegitimate child.<sup>3/</sup>

The two major questions raised by the Stanley ruling were whether an unwed father's consent is constitutionally required for his child's adoption, and what type of notice, if any, must be given such a father before his parental rights are terminated. Some state legislatures responded to these questions with new laws which required notice to, and consent or termination of rights of, all unwed fathers before adoption. Other states interpreted Stanley more narrowly, and enacted legislation which required only notice to unwed fathers (not their consent to their children's adoption); some required notice only where the putative father had demonstrated some interest in the child or other fitness as a parent.

Since Stanley, the Supreme Court has decided two other important cases which provide guidance on the subject of a putative father's right to consent to his child's adoption. See Quilloin v. Walcott, 434 U.S. 246 (1978); Caban v. Mohammed, 441 U.S. 380 (1979). In each of these cases, as in Stanley, a statutory presumption which excluded unwed fathers (but not mothers) from controlling custody and adoption of their children was challenged. While Stanley and Caban taken together recognize the constitutional right of an involved and otherwise suitable unwed father to consent to his child's adoption, Quilloin declined to recognize such a right for an unwed father who had not exercised parental responsibilities toward a child that was being adopted by its stepfather.

To the extent that requiring a putative father's consent to adoption makes it necessary to give him notice of the proceedings and an opportunity to be heard, Quilloin and Caban were "notice" cases. But since the petitioners in both of those cases had been given actual notice of the proceedings (and were thus not challenging notice procedures), the question of what type of notice must be attempted for different classes of putative fathers was not directly addressed. Hence, with respect

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3/ See Note, "Father of an Illegitimate Child--His Right to be Heard," 50 Minn. L. Rev. 1071, 1074 (1966) ("Some recognition has been given to the intangible natural bond between blood relatives as justifying custody in the out-of-wedlock father [citations omitted]"); M. Embrick, "The Illegitimate Father," 3 J. Fam. Law 321, 329 (1963) ("The best interest of the child of unwed parents is under certain conditions best served by a recognition of the existence of a conditional right of custody in the father").

to the notice issue, Stanley raised some questions which remain unanswered.

If an unwed father has never established significant contacts with his child, and thus under Caban has no right to veto his child's adoption,<sup>4/</sup> does he nonetheless have a right to notice of adoption proceedings? Stanley had declared that "all Illinois parents are constitutionally entitled to a hearing on their fitness before their children are removed from their custody." 405 U.S. at 658 [emphasis added]. When a putative father does not have custody (for example, when the child in question is a newborn) and he has not established enough of a relationship with his child to deserve a veto power over adoption (also common when the child is a newborn), does he nonetheless deserve notice and a hearing before the child is adopted and his parental rights terminated? This question, which is a crucial one for designers of a model adoption act, has not been answered by the Supreme Court. Only one case which has reached the Court involved a constitutional claim by the putative father of a newborn. When the Supreme Court decided that case, Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan, 405 U.S. 1051 (1972), it issued no opinion. The question in the case as it had been posed by the Wisconsin Supreme Court was whether the consent of putative fathers was necessary before adoption or termination of parental rights. See State v. Lutheran Social Services of Wisconsin and Upper Michigan, 178 N.W. 2d 56, 61-62 (1970). In vacating and remanding the Wisconsin decision that a putative father "does not have any parental rights," id. at 63, the Supreme Court cited Stanley and counseled "due consideration for the completion of the adoption proceedings and the fact that the child [by then nearly 4 years old] has apparently lived with the adoptive family for the intervening period of time." Rothstein, supra.

Rothstein has been interpreted to mean that the Court has extended Stanley's notice and hearing right to all cases of "unwed fathers who desire and claim competence to care for their children." Stanley at 657 n. 9 (dictum). See R. Gutekunst, "An Analysis of the Unwed Father's Adoption Rights in Light of Caban v. Mohammed", 25 Villanova L. Rev. 317 at 330 n. 103 (1979-80). Such an interpretation can lead to the conclusion

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<sup>4/</sup> As the Court stated, "in those cases where the father never has come forward to participate in the rearing of his child, nothing in the Equal Protection Clause precludes the State from withholding from him the privilege of vetoing the adoption of that child." Caban v. Mohammed 441 U.S. 380, 392 (1979).

that an unknown or unidentified unwed father (hence one not desiring or claiming competence to care for his children) does not have a substantial enough interest in his newborn child to justify delaying adoption proceedings while notice is attempted. Id. at 335. See also Uniform Parentage Act, Sec. 25(d) and comment thereto.

The fact that the Supreme Court has not directly addressed the question of what, if any, notice must be given to "uninvolved" fathers, specifically fathers of newborns, leaves a gap in the law regarding the rights of putative fathers and their children. Because the issues are complex and the competing interests are several and important, the Court may delay answering this question until state law on the subject has more fully developed in light of the constitutional principles thus far articulated by the Court. (In Caban the Court pointedly declined to express a view as to whether the difficulties of locating and identifying unwed fathers immediately after a child's birth "would justify a statute addressed particularly to newborn adoptions, setting forth more stringent requirements concerning the acknowledgment of paternity or a stricter definition of abandonment." Caban, supra at 392 n. 11.

The constitutional principles which bear upon the question are numerous; they include at least three issues of equal protection and the appropriate level of judicial scrutiny to be used in determining whether justifiable distinctions are being drawn between (1) unwed mothers and unwed fathers,<sup>5/</sup> (2) unwed fathers and other fathers, for example, divorced fathers,<sup>6/</sup> and perhaps most significantly, between (3) legitimate and illegitimate children. It is, after all, parental rights with regard to "illegitimate" children which have been the subject of the above-discussed cases. Recognizing that the legal treatment of putative fathers necessarily affects the biological parent-child relationship, thus very directly affecting the children involved, courts might arguably need to apply a high level of

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5/ At least where a father has established a significant parental relationship with his older child, Caban dictates that any differential treatment of unwed mothers and fathers must bear a substantial relationship to the state's objective; and exclusive maternal veto of adoption proceedings does not pass muster.

6/ Such a distinction as applied in Quilloin was allowed "under any standard of review." 434 U.S. 246, 256 (1978). However, if the biological father in Quilloin had played the role of a responsible parent, as had the father in Caban, the Supreme Court would have had to face an argument which it did not reach in Caban--whether there was an adequate basis for distinguishing between divorced fathers and involved, responsible unwed fathers in allowing a paternal veto of adoption.

scrutiny to determine whether any particular treatment of putative fathers effectively promotes a valid state objective, or instead places illegitimate children at a disadvantage vis-a-vis children born in marriage. Assuming that the adoption statutes are primarily intended to serve the interests of the child, it is critical to ask what specific end the state is seeking--an equal chance for these children to become members of a "normal," "healthy" family unit, or an equal chance (as equal as possible) to be reared by one, if not both, biological parents or their relatives. Whether either of these objectives is valid, and how well the states differential treatment of legitimate and illegitimate children in adoption effectively serves the stated purpose, will be crucial questions in a determination of whether a particular statute is constitutional.

In addition to the equal protection questions raised by the notice and consent dilemma are other issues which could be of constitutional stature. One is the right of privacy of both mother and father. The potential for embarrassment and injustice is great when the subject at hand is illegitimate parenthood. Many persons might well prefer less assiduous protection of their parenthood and more respect for their privacy.<sup>7/</sup> The balancing of these two constitutionally-protected interests has become complete in establishing procedures for adoption of infants.

Closely related to the issue of a parent's right to privacy is the question whether children have a constitutionally-protected interest in the biological parent-child relationship per se. If the Supreme Court declares that an uninvolved unwed father has no right to notice or hearing regarding adoption procedures for his newborn

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<sup>7/</sup> While much solicitude exists for the plight of the unwed mother or father whose identity might become publicized as a result of extensive notice procedures, few policy makers seem to have balanced this plight against that of the illegitimate child whose biological parentage and potential adoption is at issue. One exception is the Uniform Parentage Act, which contains provisions for extensive inquiry of the mother and for requiring her testimony, if necessary under threat of civil contempt. See Uniform Parentage Act §§ 10(b), 25(b). These provisions are justified by the Act's principal draftsman on the ground that "the guiding principle [of the UPA] is full equality for all children, legitimate and illegitimate in their legal relationship with both parents. Moreover, the Act emphasizes the right in question is the right of the child--not the right of his mother as current state laws insist. Accordingly, the mother may not stand in the child's way and, if necessary, may be compelled to testify as to the father's identity and whereabouts--just as any other witness." Krause, "The Uniform Parentage Act," 8 Fam. L.Q. 1, 8 (1974). See also Doe v. Norton,

child, does that necessarily foreclose his child's right to have the biological father identified and notified of the proceedings? The answer may be that there is no legally protected relationship between a child and its father based solely on genetic ties.<sup>8/</sup> However, beyond a relationship interest, the child's right to medical and genetic information regarding his father is not protected by a statute which addresses notice and consent issues only within the context of the unwed father's or unwed mother's parental rights.

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7/ (Cont'd.) 305 F. Supp. 65 (D. Conn. 1973), vacated on other grounds) sub nom. Roe v. Norton 422 U.S. 391 (1975); Doe v. Shapiro, 302 F. Supp. 761 (D. Conn. 1969). The Norton case involved a constitutional challenge to a Connecticut statute which required unwed mothers to name the fathers of their children, under threat of fine or imprisonment. A three-judge district court upheld the constitutionality of the statute despite claims that it violated the mother's right of privacy and the equal protection rights of mothers and their children. The Supreme Court vacated the decision on the basis of the Supremacy Clause (the Social Security Act had been changed to disallow procedures like Connecticut's in cases of children receiving AFDC) and principles of abstention. Hence the constitutional questions of privacy and equal protection were not reached. The Shapiro decision striking down a similar Connecticut Statute was also grounded in principles of federal supremacy in dictating eligibility for statutory entitlement programs.

8/ As judge Lohr remarked in his dissent in R. McG. and C.W. v. J.W. and W.W. 6 Fam. L. Rep. 2834, 2836 (Colo. Sup. Ct. Aug. 11, 1980), "it requires more imagination than I can summon to find any legitimate expectation of a legally recognized relationship based solely on the blood ties between the child conceived of an adulterous relationship and the natural father of that child." He quoted Mr. Justice Stewart's dissent in Caban v. Mohammed, supra: "Parental rights do not spring full blown from the biological connection between parent and child. They require relationships more enduring." 99 S. Ct. 1960, 1771.

II. STATES IN WHICH ANY PUTATIVE FATHER HAS THE RIGHT TO  
CONSENT TO ADOPTION

States which have interpreted Stanley broadly and hence take a liberal approach to putative fathers' rights provide that no adoption may occur until any unwed father's consent is obtained or his parental rights are terminated. In four of these jurisdictions--Arizona, the District of Columbia, Iowa, and Washington--he is not distinguished from other parents. In the others, there are specific provisions for parental consent where a child has been born out of wedlock. In several states the problems of locating or identifying the unwed father are confronted in special notice procedures directed at putative fathers.

A. "Neutral" Statutes (No Special Procedures for Adoption of  
Illegitimate Children)

The four jurisdictions which do not distinguish among types or sexes or parents have, <sup>9/</sup> surprisingly, straightforward consent and notice requirements.--

In Arizona, consent or termination of rights of each parent is required for adoption. The required consent of a parent may be waived by the Court, on grounds of the child's best interests, after a hearing on actual notice to the party in question. Ariz. Rev. Stat. §8-106 (West Supp. 1979). Notice of termination proceedings must be given to both parents, and notice of an adoption hearing must be given to anyone whose consent is required (including a parent whose rights have not yet been terminated). Ariz. Rev. Stat. §§8-111, 8-535 (West Supp. 1979). Grounds for terminating parental rights include no "effort to maintain a parental relationship," lack of effort being presumed after six months of non-support or non-communication. Ariz. Rev. Stat. §8-106 (West Supp. 1979).

Like Arizona, Iowa bifurcates adoption into a termination hearing and a later adoption hearing. Since all parents' rights must be terminated before a child is free for adoption (except in step-parent adoptions) Iowa Code Ann. §600.3 (West Supp. 1980), the notice provisions which are of most importance for putative fathers

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<sup>9/</sup> Minnesota has a statute which is gender-neutral; however, that state has separate criteria for parental consent where the adoptee is an illegitimate child. See the discussion under Sections III-A and III-B, infra.

are those governing termination petitions. Both parents are "necessary parties" to a termination petition. Allowable methods of notice are distinguished according to whether the party being notified is "identified" (regular service or certified mail) or "unknown" (publication allowable). Iowa Code Ann. §600A.6 (West Supp. 1980). Grounds for termination include failure to object to termination after having received notice or after "all reasonable efforts" have been made to identify and locate the parent in question. Iowa Code Ann. §600-A.8 (West Supp. 1980).

Another state which has conferred upon unwed fathers the same rights as unwed mothers and other parents, and which couches its consent requirements in gender-free language, is Washington. There, consent must be given by each of an adoptee's living parents. Wash. Rev. Code Ann. §26.32.030(2) (Supp. 1979). However, the consent of uninvolved putative fathers will probably often be waived by the Court under an exception for a "parent [who] has neither acknowledged parentage nor attempted to establish a relationship" with the child. Special notice provisions are required for instances "where the Court has reason to believe or suspect that any person not before the Court is or might be the parent of such child...." Wash. Rev. Code Ann. §26.32.085 (Supp. 1979)

In the District of Columbia, any child is legitimate whether born in or out of wedlock, D.C. Code §16-908 (Supp. 1978), and parental rights under law apply to every parent regardless of the marital status of the parents of the child, D.C. Code §16-2352 (Supp. 1978). Consequently, consent of each living parent is required unless he or she cannot be located, has abandoned the child or failed to provide support for six months, or unless the Court dispenses with consent in the "best interests" of the child. D.C. Code §16-2304 (Supp. 1978).

#### B. Special Consent Provisions for Unwed Fathers

Several states require the consent of all putative fathers (as distinguished from certain putative fathers only), or the termination of their rights, before adoption is possible. These states usually provide special notice and hearing requirements to assure that the putative father's rights are protected. Among these are Illinois and Wisconsin, the states in which the first Supreme Court cases on the subject arose. See Stanley v. Illinois, 405 U.S. 645 (1972); Rothstein v. Lutheran Social Services 405 U.S. 105 (1972).

In Illinois the consent of both parents of a child, legitimate or illegitimate, is required. Ill. Ann. Stat. ch. 4 §9.1-8(a) (Smith-Hurd Supp. 1980). At the request of another interested party, the putative father may be notified of an impending relinquishment and adoption (even before the child's birth) and is thereby given an opportunity to assert parental rights within 30 days or to request further notice of adoption proceedings. A failure to respond to this "12a" notice becomes grounds for the court's finding him to be an "unfit person," waiving his consent to adoption and terminating his parental rights. (Criteria for an "unfit person" include abandonment, no reasonable interest, concern or responsibility, desertion for more than three months prior to the adoption, and no reasonable interest, concern or responsibility for a newborn during its first 30 days of life.) Ill. Ann. Stat. ch. 4 §9.1-1; ch. 705-9.4 (Smith Hurd Supp. 1980); ch 4 §9.1-12a (Smith-Hurd 1975). If the putative father is served with this special notice and responds by filing a disclaimer of paternity or if the putative father's rights are terminated independently from the adoption proceeding, he receives no further notice of adoption proceedings. Putative fathers who have filed a consent, who fail to respond to the "12a" notice, who respond by requesting further notice, or who have never been notified (presumably because unknown), are notified of the adoption proceeding in the same manner as other parties according to service of process for other civil actions. An unknown party may be served by publication. Ill. Ann. Stat. ch. 4 §9.1-7 (Smith-Hurd 1975).

Wisconsin's legislature responded to Stanley and to its own supreme court's decision in Lewis v. Lutheran Social Services, 59 Wis. 2d 1, 207 N.W. 2d 826 (1973) (the remanded Rothstein case), by enacting a new law requiring consent or termination of parental rights of all unwed fathers before adoptions. Wis. Stat. Ann. §48.84 (West 1979). Notice provisions for putative fathers include a requirement that notice be sent to a person who has filed a declaration of interest with respect to a child if the person filing may be the natural father and is living in a familial relationship to the child, or has been adjudicated the natural father, or has been alleged to the court to be the natural father. Wis. Stat. Ann. §48.42 (West 1979). Also, there is a provision allowing the name of the mother to be

included in service by, publication, if the court determines "that such inclusion is essential to give effective notice to the natural father." Wis. Stat. Ann §48.41(1) (West 1979.<sup>10/</sup>

There are a number of other states which do not allow adoption until any putative father consents or his rights are terminated. This group is to be distinguished from those who do not allow adoption until the consent or termination of rights of certain types of unwed fathers (e.g., those who have legitimated their children. See discussion under Section III below.) These include Delaware, where consent is required unless a disclaimer of paternity is filed or unless the court dispenses with consent of an unwed or unlocatable father, who has not lived with the child's mother (Delaware's special notice provisions for hard-to-locate parents apply equally to fathers and mothers), Del. Code titl. 13 §§908, 1106 (Supp. 1977); Rhode Island, R.I. Gen. Laws §15-7-10 (Supp. 1977); and Montana and Michigan.

Michigan and Montana have enacted virtually identical provisions:

- prohibiting placement for adoption of an out-of-wedlock child before release or consent of the natural father is obtained or his rights are terminated;
- allowing the mother to execute an interim release or to delay relinquishment until after determination of the father's rights;
- allowing a putative father to file prior to the child's birth, a notice of intent to claim paternity which establishes a rebuttable presumption of paternity and entitles the putative father to notice of any hearing involving the identity of the child's father and paternal rights;

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<sup>10/</sup> The potential hardship this provision represents for the birth mother is perhaps equaled by the Uniform Parentage Act's requirement that inquiry be made of the mother in an effort to identify the natural father. Uniform Parentage Act §25. (Another section of that Act provides that a failure of a witness to testify in a proceeding to identify a child's parent may be declared civil contempt. Uniform Parentage Act §10(b).)

Montana rejected this provision in enacting the same section of the Uniform Parentage Act, and provides that no mother could be compelled to testify concerning the identity of the father. Rev. Code Mont. §40-6-128(4) (1977).

- allowing a woman pregnant out-of-wedlock to file with the court a notice of intent to release a child for adoption and a request to notify the putative father of his rights;
- directing the court to inform such a putative father of his rights and of the fact that failure to respond with a notice of intent to claim paternity could result in termination of his rights; and
- providing for a hearing at which the putative father must appear unless he denies an interest in the child born out-of-wedlock, and at which the court shall determine, if possible, the identity of the father and whether or not he has shown sufficient interest in the child or its mother that his asserted parental rights should be recognized. See Mich. Stat. Ann. §§27.3178 (555.31) to 27.3178 (555.39) (1978) and Rev. Code Mont. §§40-6-125 to 40-6-130 (1977).

It is interesting to note that these two states used almost identical wording until the last section, which guides the court in determining whether to recognize the putative father's claim to the child. Montana provides:

- (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.
- (2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

- (3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out-of-wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes. Rev. Code Mont. §40-6-130 (1977).

In contrast, Michigan requires:

- (1) If the putative father is one who has not established any custodial relationship with the child or who did not provide any support or care for the mother during pregnancy or for either mother or child after the child's birth until notice of the hearing was served upon him, and if the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the best interests of the child will be served by granting custody to him. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.
- (2) If the putative father is one who has established a custodial relationship with the child or has provided support or care for the mother during pregnancy or for either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him, the rights of the putative father shall not be terminated except by proceeding in accordance with section 2 of chapter 12a.
- (3) If the parental rights of the mother are terminated pursuant to this chapter or other law and if the court awards custody of a child out-of-wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes. The judge of probate shall duly record the legitimation in accordance with section 83 of chapter 2. (MCL§710.39) Mich. Stat. Ann. §27.317s (555.39) (1978).

In three states, Delaware, Wyoming and Virginia, any putative father must be notified and either give consent to the adoption or have his rights terminated, except that this notice and consent requirement does not apply where the identity of the putative father is not known.

- In Delaware, if the mother refuses to disclose the father's name, or does not know his name or has never known his address, the court may dispense with his consent in accordance with the child's best interest. Del. Code tit. 13§908(2) (Supp. 1977).
- In Wyoming, a written relinquishment and written consent to adoption shall be filed with a petition to adopt and shall be signed by the mother and putative father of the child if the name of the putative father is known, or by the mother alone if she does not know his name. There are several grounds upon which the court can dispense with the putative father's consent, among them failure to appear at the adoption hearing after having received notice; abandonment or desertion; failure to contribute to the child's support for one year prior to the filing of the petition; allowing the child to be maintained by the Department of Health without contributions; and failure within 30 days, to advise the agency which provided him notice of the child's birth or pending birth, of his interest in, responsibility for, or declaration of paternity regarding the child. Wyo. Stat. §1-22-109,110.
- Consent of the parents of an out-of-wedlock child is necessary for adoption in Virginia. However, the unwed father's consent is not required when his identity is not reasonably ascertainable or, if ascertainable and his whereabouts are known, he fails to object to the adoption within 21 days of the mailing of notice), Va. Code §§63.1-225, 63.1-231(c).

Compare S.D. Laws Ann. §25-6-1.1 (1976) (putative father has no right to service of process unless he is known by the mother or he has asserted paternity.)

### III. STATUTES DISTINGUISHING AMONG UNWED FATHERS FOR PURPOSES OF REQUIRING CONSENT

Many states have interpreted the due process requirements applicable to unwed fathers more narrowly than those already discussed. Some require the consent of an unwed father only when he meets set criteria concerning his involvement with the child or family in question. Some fathers must initiate or respond to notice procedures in order to qualify for further involvement.

#### A. Legitimation of Child; Adjudication of Paternity; Other Involvement

##### 1. The criteria for having authority to consent

Several states require the consent of an unwed father only if he has been adjudicated the father, has legitimated the child, married the mother, or demonstrated a comparable level of involvement with the family.

Alabama has a single criterion for requiring the consent of an unwed father--if "paternity has been established." Ala. Code tit. 26 §10-3 (1977). In Alaska, his consent is required only if he has adopted the child, married the mother, or otherwise legitimated the child. Alaska Stat. §20.15.040 (1975). One basis for dispensing with any parental consent in Alaska is failure to meaningfully communicate with the child for over a year while the child is in the custody of another. Alaska Stat. §20.15.050 (Supp. 1978). Arkansas does not require the consent of or provide notice of the adoption hearing to a father who has not legitimated his child, married the mother, or had custody of the child. Ark. Stat. Ann. §§56-206, 207, 212 (Supp. 1979). Consent in Arkansas may also be dispensed with where a father abandons a child, deserts without leaving means of identification, or, as in Alaska, leaves the child in the custody of another for one year without meaningful communication.

Among the criteria for granting the authority to consent in Florida is that the putative father has provided the child with support in a "repetitive, customary manner," he has filed an acknowledgement of the child with the Department of Health and Rehabilitative Services, or he has adopted the child or been adjudicated the father. Fla. Stat. Ann. §63.062(1)(b) (West Supp. 1980). Here, too, consent may be waived if a parent deserts or abandons the child. Fla. Stat. Ann. 63.072 (West Supp. 1980).

In Georgia, the only way a putative father may obtain authority to veto an adoption is through legitimating the child. Ga. Code Ann. §74-406 (Supp. 1979)

Other states requiring legitimation, adjudication of paternity, marriage to the child's mother, or substantial financial support or care before a putative father's consent to adoption is a prerequisite, are Idaho, Idaho Code §§16-1504, 1510 (1979); Indiana, Ind. Code Ann. §§31-3-1-6, 31-3-1-6.1 (Burns Supp. 1979); Maryland, Md. Ann. Code art. 16 §74; New Mexico, N.M. Stat. Ann. §40-7-6; North Carolina, N.C. Gen Stat. §48-6 (Supp. 1977); North Dakota, N.D. Cent. Code §14-15-05; and, by virtue of a court decision, Kansas. Aslin v. Seamon, 225 K. 77, 587 P.2d 875 (1978).

In Kentucky a putative father has authority to consent to adoption if paternity is established in a legal action or if the father submits an affidavit acknowledging paternity. In addition, the rights of a non-consenting putative father must be terminated if he is known and identified by the mother, he has acknowledged the child within 30 days after its birth, his name is on the birth certificate, he has brought an action claiming parental rights, or he has contributed support to the child, has married the mother, or is living with either the child or mother. Ky. Rev. Stat. §§199.500, 199.607 (Supp. 1978).

The consent of a putative father is required in South Carolina if he has consistently and on a continuing basis exercised rights and performed duties as a parent (but his consent may be dispensed with if his rights are terminated), S.C. Code §15-45-70 (1976). Oklahoma apparently confers parental rights on a putative father only if he has "exercised parental rights and duties" prior to the termination hearing. Okla. Stat. Ann. tit. 10 §1131. Oregon, like Alabama, requires consent only if paternity has been established, but Oregon also requires notice to other putative fathers (see discussion under subsection 2, below). Or. Rev. Stat. §109.312 (1979). In Tennessee, a putative father is not considered a parent for purposes of consent unless he has legitimated his child prior to the mother's signing consent to the adoption; as in Oregon, notice is provided other putative fathers so that they may present evidence as to whether the adoption is in the child's best interest. Even this notice is unnecessary, however, if he is found to have abandoned the child. Tenn. Code Ann. §36-111 (1977).

Minnesota has six criteria for determining whether a parent of an illegitimate child shall be given authority to consent to adoption, all but one of which implies some prior involvement with the child. These are actually criteria for providing notice to putative father, but the right to notice in Minnesota is crucial,

since an unwed parent receiving notice has the right to consent. Notice is given if the person's<sup>11/</sup> name appears on the birth certificate, if he has substantially supported the child, if he was married to the natural mother, he is openly living with the child or mother, he has been adjudicated the child's parent, or he has filed a notice of intent to retain parental rights with the department of health. Minn. Stat. Ann. §§259.26, 259.261 (West Supp. 1979).

Ohio requires that a father must consent to the adoption of a minor if the minor has been established to be his child by a court proceeding. A putative father's consent is also required if he has been charged in a paternity suit respecting the child, if he has filed an objection to the adoption or an application for custody, or if he signed the child's birth certificate. Ohio Rev. Code Ann. §3107.06 (Page Supp. 1977).

In Connecticut, if a putative father files a claim of paternity which is favorably adjudicated, his rights and responsibilities with respect to the child are equal to the mother's. Unless he does, however, his rights must be terminated at a court hearing, of which he receives notice only if he has demonstrated some interest in the child. (See discussion under Section III-B below). Conn. Gen. Stat. Ann. §§45-61d, i (West Supp. 1980) and P.A. No. 79-592 Sec. 2 (West 1980 Appendix Pamphlet).

## 2. Notice to putative fathers who fail to meet these criteria

Even where a putative father's consent to adoption is not required because he does not meet the "involvement" criteria discussed above, some states provide that notice shall be sent anyway, so that a putative father's objections to an adoption can be heard and considered in the court's decision. Among these states are Alaska, Alaska Stat. §20.15.100 (Supp. 1978), Tennessee, Tenn. Code Ann. §36-111 (1977), and the following other states:

- In Georgia, any putative father, whether or not his consent is controlling, is entitled to notice of the mother's surrender if he is identified and has not surrendered his rights. If his identity

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<sup>11/</sup> The statutory language is completely gender-free, using "the person" instead of "he" or "she."

or location is unknown, a hearing must be held to establish that reasonable efforts have been made to locate and identify him, and that the putative father has not lived with, tried to legitimate, or supported the child or its mother so as to establish a "familial bond" with the child. If a familial bond is found to exist, then the putative father must be given notice and informed of his rights. He still may lose his parental rights unless, once notified, he files a petition to legitimate the child. Ga. Code Ann. §74-406(a)-(c) (Supp. 1979).

- North Dakota requires that notice be sent to "any person identified by the court as a natural parent or possible natural parent upon making inquiry to the extent necessary and appropriate ...." N.D. Cent. Code §14-15-11.
- In Indiana, even if his consent is not required, a putative father whose rights have not been terminated may object to the adoption and be heard by the court at a hearing. Ind. Code Ann. §§31-3-1-6(e), 31-3-1-6.1 (Burns Supp. 1979).
- Reasonable notice of adoption proceedings in Oregon is sent to a putative father ineligible to exercise consent if the petitioner knows or by the exercise of ordinary diligence should have known that the child resided with the putative father at any time during the 60 days immediately preceding the initiation of the adoption proceedings, or if the putative father has contributed--or tried to contribute--to the support of the child during the year immediately preceding. Notice must also be sent to any putative father where a request has been filed with the Bureau of Statistics. Or. Rev. Stat. §§109.096, 109.225 (1979).
- In Oklahoma, a putative father who is not deemed to have parental rights shall be given notice to be given an opportunity to be heard on whether he has exercised parental rights and duties, but where his address is unknown, notice may be waived. Okla. Stat. Ann. tit. 10 §1131.

See also In re Lothrop, 2 Ka. ed 90, 573 P. 2d 894 (1978) (all putative fathers in Kansas deserve notice of adoption proceedings). But see Ohio Rev. Code Ann. §3107.11 (Page) (notice sent only to those whose required consent has not been obtained).

B. Response to Notice as Establishing Right to Consent

Some states, including Nebraska, New Hampshire, Maine, and Virginia, require, as demonstrated interest adequate to warrant his having the power to consent in adoption, a putative father's assertive response to judicial notice or information involving the child.

- In Nebraska, no alleged father's rights are recognized after mother's relinquishment unless the putative father files a notice of intent to claim paternity with the Department of Public Welfare within five days after the child's birth. Neb. Rev. Stat. §43-104-02.
- New Hampshire gives the known natural father notice of the mother's relinquishment or termination of rights, but he loses all his parental rights if he fails to respond to notice informing him of his potential parenthood within 30 days. N.H. Rev. Stat. Ann. §170-BL5,6.
- Maine requires the putative father to meet a two-stage test: either he must be named on the birth certificate or he must be sufficiently involved with the child financially or otherwise to deserve notice of adoption proceedings. If he has not waived notice in writing he will be given "such notice as the judge deems proper" after the mother submits an affidavit naming him. Once notified, he must respond by asserting within 20 days a claim to the child in court and be found to have established parental rights; failure to respond will result in his losing parental rights. Maine Rev. Stat. §§532-2A,2B,C.
- In Virginia, consent of an unwed father is not necessary if his identity is not reasonably ascertainable. If his identity is reasonably ascertainable, then he must object to the adoption proceeding within 21 days of the mailing of notice to him. The court, however, may dispense with his consent--or with anyone else's--in the best interests of the child. Va. Code §63.1-225 (Supp. 1978).

See also N.J. Stat. Ann. §§9:3-46, 9:3-47 (West Supp. 1977) (discussed under Section IV-B, infra).

### C. Registries as Establishing Right to Consent

Some states permit a putative father to assert rights over a child by registering a claim of paternity or parental rights with some agency of government.

In Connecticut, this privilege is evidently available only to a putative father who is aware of his parentage and knows the mother's whereabouts, since the claim must be filed with the probate court in the district where the mother or child reside. His filing triggers a paternity action, and if he receives a favorable ruling he obtains full parental rights, equal to those of the mother. Conn. P.A. No. 79-592 (Conn. Gen. Stat. Ann. West 1980 Appendix Pamphlet). The other states in this group presumably anticipate that a father may not know the location of the mother or even whether she is pregnant, and allow him to register his possible paternity with the state bureau of vital statistics.

Examples of registry systems which allow a putative father to assert parental rights to the child so that his consent to adoption may be required are those of Utah and Minnesota. In Utah, consent to adoption is required of each living parent having "rights in relation to the child." A putative father may register a notice of his willingness and intent to support the child; registration may be prior to birth and must be prior to the mother's relinquishment or to the filing of the adoption petition by the persons with whom the mother has placed the child. The father's failure to register constitutes an abandonment of the child and his consent is not required. Utah Code tit. 78 §30-4(i).

Minnesota provides that the filing within 60 days of the child's birth or 90 days of the child's placement, of a notice of intention to retain parental rights entitles a putative father to notice of adoption proceedings. He thereby obtains the right to consent to the child's adoption, because consent to the adoption is required of anyone entitled to notice. However, the father's assertion of parental rights via affidavit to the division of vital statistics may be challenged by the mother or any other interested party within 60 days of notice of its filing. Minn. Stat. Ann. §§259.26, 259.261 (West Supp. 1979).

These registries leading to a right to consent by the putative father should be compared to two other types of registries-- those which entitle the registrant only to notice of adoption proceedings, and those which simply expedite notice procedures that will occur anyway. Examples of "notice only" registries are those of Massachusetts, (Mass. Gen. Laws Ann. ch. 210 §4A (1978), and New York, N.Y. Soc. Ser. Law §§372-c, 384-c (McKinney Supp. 1979). In Massachusetts, a putative father's filing of a declaration seeking to assert responsibilities of fatherhood entitles him to notice only. Upon receipt of notice he has 30 days in which to seek custody or adoption of the child; if he fails to do this, he loses the right to notice of further proceedings. In any event, his consent is not required for adoption of the child by someone else.

Examples of registries which expedite the adoption proceedings are Michigan, Mich. Stat. Ann. §§27.3178 (555.31)-27.3178 (555.39) (1978), and Montana, Rev. Code Mont. §§40-6-125, 40-6-130 (1977). In these two states a father may also register an intent to claim paternity before the child's birth, and is thereby entitled to notice of further proceedings. Consent or termination of his rights is required in any event, however, and he automatically is entitled to notice of the hearing terminating his rights, whether or not he has registered or done anything else to protect his rights.

#### D. Concept of "Presumed Father," Other Hierarchy

A few states, among them three which have enacted portions of the Uniform Parentage Act, establish a hierarchy of preferences in according rights to putative fathers.

In California, the consent of a "presumed father" is required for adoption unless, as any parent, he has deserted, relinquished or surrendered the child or been permanently deprived of custody. Even the required consent of a parent, however, may be dispensed with if the other parent has had custody and the parent in question has willfully failed to communicate with and support the child for a year. Any other "alleged" father's rights must be terminated prior to adoption. A "presumed father" is one who meets the requirements of Evidence Code §621 (i.e., the irrebuttable presumption is that the child of an intact marriage where the husband is not sterile is a child of the marriage), or who marries the mother within certain time limits before or after the child's birth (rebuttable presumption of paternity), or receives the child into his home and represents the child as his own (rebuttable presumption of paternity). To identify a natural father in order

to send notice of the proceedings,<sup>12/</sup> the court must make detailed inquiry of the mother and others. Notice must be sent to the natural father or a possible natural father according to rules for other civil actions, except that publication is not required; however, notice of the proceedings need not be sent to an alleged father who has not responded to a previously sent notice of his potential paternity. See Cal. Civ. Code §§224, 7004, 7017 (West Supp. 1980).

Colorado's statute is taken largely from the Uniform Parentage Act. The definition of "presumed father" is taken from that act, as is the major distinction between "presumed" and other putative fathers: A presumed father has a right to be notified when the mother relinquishes a child. Adoption proceedings are bifurcated (except for stepparent adoptions, all parents' rights are terminated prior to adoption, so that no consent is necessary) and any presumed or other putative father's rights must be terminated prior to adoption. Detailed inquiry of the mother is required in attempts to identify an unknown father; once identified, notice is served in accordance with civil action rules or as the court directs, with publication being one option. Failure to identify a father after diligent efforts constitutes grounds for termination. Colo. Rev. State. §§19-4-107, 125, 126 (1978 Repl.).

In Hawaii, the father's consent to adoption is required if he is a "legal," "adjudicated," "presumed," or "concerned natural" father. The definition of "presumed father" is taken from the Uniform Parentage Act. A "concerned natural father" is one who:

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<sup>12/</sup> California is one of several states which require that specific questions be asked of the mother to assist in identifying a putative father. See, e.g. Cal. Civ. Code §7017 (West Supp. 1980); Colo. Rev. State. §19-6-126 (1978 Repl.); Haw. Rec. Stat. §584-24(a)(c) (1976 Repl.); Rev. Code Mont. §40-6-128(3) (1977); N.D. Cent. Code §14-17-24. See Uniform Parentage Act Sec. 25(b) ("In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child").

has demonstrated a reasonable degree of interest, concern and responsibility as to the welfare of a child, either (a) during the first thirty days after such child's birth; or (b) prior to the execution of a valid consent by the mother of the child; or (c) prior to the placement of the child with adoptive parents, whichever period of time is greater.

Haw. Rev. Stat. §578-2(a)(5) (1976 Repl.). The consent of a presumed, adjudicated, or concerned natural father may be dispensed with if the stepfather is adopting and has lived with the child for a year, if the putative father has not filed a petition to adopt the child, or if the putative father is not a fit and proper person or is not financially or otherwise able to give the child a proper home and education. Notice must be given to any natural father who has exercised parental duties, obligations, and concern for the child, and an adoption hearing may not occur until notice is given. Separate notice procedures are given for resident and non-resident putative fathers. See Haw. Rev. Stat. §§578-2,6,7 (1976 Repl.).

In West Virginia, the written consent of a "determined father" (one who has been adjudicated the father or has supported the child, lived with the mother, or otherwise admitted his paternity) is required for a child's adoption. A determined father has the same notice rights as the mother, and if an adoption occurs without his receiving notice, he may petition the court to vacate the decree within one year. W. Va. Code §48-4-1 (Supp. 1978).

Finally, Nevada, which has enacted portions of the Uniform Parentage Act, requires that, when a mother proposes to relinquish an out-of-wedlock child, a hearing be held to terminate the rights of any non-identifiable father or to "determine whether a parent-child relationship [involving a known father] exists, and if so, if it should be terminated." Nev. Rev. Stat. §127.150 (1979). Nevada also uses the concept of a presumed father and the provision from the Uniform Paternity Act regarding notice and termination of his rights. Id.

#### IV. STATES ALLOWING PUTATIVE FATHERS NOTICE AND AN OPPORTUNITY TO BE HEARD, BUT NO AUTOMATIC RIGHT TO BLOCK THE ADOPTION

Several states which have revised their adoption statutes since Stanley have interpreted that decision narrowly as requiring that

the putative father of a child shall have only a right to be heard on the subject of whether his child should be adopted.<sup>13/</sup> To the extent that these laws use only the sex of the child's parent to determine who must consent to adoption, and include no criteria (such as identifiability or previous involvement) for determining who shall receive notice but have no right of consent, they undoubtedly would be found unconstitutional under Caban v. Mohammed, supra. Nevertheless, they will be described in this survey since they presently appear in the state statutes.

A. Notice to All Putative Fathers Automatic

In Texas, an identifiable alleged or probable father of a child who is the subject of a suit seeking termination of parental rights must receive notice of the filing of the suit. Tex. Fam. Code Ann. §11.09 (8) (Vernon). Although a putative father has no further rights in adoption, Texas allows the father of a child who is not the legitimate child of another man to bring suit to establish his paternity within one year of the child's birth. Tex. Fam. Code Ann. §13.01 (Vernon).

Under Louisiana law a mother's abandonment or surrender for adoption of an illegitimate child is dispositive of the putative father's rights; there are special notice provisions for abandonment proceedings, and in those cases the department is to make "every effort" to locate a living parent to determine his attitude toward his child's adoption. La. Rev. Stat. Ann §§9.402, 404 (1965); §§9:422.4, 422.8 (Supp. 1980). The only other way for a putative father (i.e., one who is not named on the child's birth certificate) to assert any rights in adoption is for him to acknowledge or legitimate the child before entry of an adoption decree. La. Rev. Stat. Ann §9:422.10 (Supp. 1980).

In Michigan and Montana, discussed under Section III, supra, attempts must be made to serve notice on any putative father at some point in the process of freeing the child for adoption--either before the mother's release of the child (if she so notifies the court, the putative father will be sent notice of her

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<sup>13/</sup> Many states provide notice and an opportunity to be heard to any known putative father so that those who do not meet statutory criteria which would entitle them to block their children's adoption can nonetheless be heard on the issue of what would be in the child's best interests. See III-A, "Notice," supra.

intention to release), or at the time a hearing is held to terminate his rights. See Mich. Stat. Ann. §§27.3178 (555.33)-27.3178 (555.37) (1975); Rev. Code Mont. §§40-6-125, 40-6-129 (Supp. 1977).

Missouri, which provides that there shall be no legal relationship between a father and child unless he has acknowledged the child, nevertheless provides that a known parent who can be personally served shall be so served and made a party to the proceedings. Ann. Mo. Stat. §211.442 (Vernon's Supp. 1980).

#### B. Notice to Certain Putative Fathers Only

A number of states in which putative fathers deserve only notice and an opportunity to be heard also require the alleged fathers to take some action or demonstrate some suitability before they qualify to receive notice.

The Vermont statute, which has been administratively ruled constitutionally infirm, see 1974 Vt. Op. Atty Gen. 230, provides that the father of an out-of-wedlock child may receive notice of adoption proceedings only if the parents have intermarried and the father has recognized the child as his and contributed to the child's support. Vt. Stat. Ann. tit. 15 §441. However, because of the Attorney General's ruling, a child may not be adopted in Vermont without there being proof that a person named as a putative father has been served notice or that the identity of the child's natural father was not known or able to be established through reasonable inquiry. 1974 Vt. Op. Atty. Gen. 230.

In Connecticut a putative father's rights must be terminated prior to adoption, but he is given notice of the termination hearing only if he has been adjudicated the father, he has acknowledged paternity, he has contributed regularly to the child's support, his name appears on the child's birth certificate, or he is in the process of judicially establishing his paternity. Conn. Gen. Stat. Ann. §45-61d(z) (West Supp. 1980).

In Massachusetts, notice of a mother's surrender or termination of parental rights with respect to an out-of-wedlock child is sent only to a father who has legitimated the child or who has filed a "parental responsibility claim" with respect to the child. Once notice is mailed, the putative father must file a petition for adoption or custody of the child within thirty days or he loses the right to notice of further proceedings. Even if he follows all the necessary steps for full notice and he seeks to adopt his child, he must be approved by the Department of Social Services. Mass. Gen. Laws Ann. ch. 210 §§2, 2A, 3 (West 1978).

Minnesota law entitles only certain putative fathers to notice of adoption proceedings, but once notified, they have a right to consent to the child's adoption. The putative father must meet at least one of six criteria before he is entitled to notice of a hearing on an adoption proceeding. See Section III-A, supra.

In New Jersey, putative fathers who have been involved with their children are entitled to notice. In that state, an adoption court must order personal service upon any putative father if "at any time during the proceedings it appears from the report of the agency or in any other way that [he] has maintained a relationship with the child, financial or otherwise." N.J. Stat. Ann. §9:3.45 (West Supp. 1978). This right to notice is closely related to a right of consent, since the court is prevented from decreeing an adoption "over an objection of [a] parent communicated to the court by personal appearance or by letter unless the court finds that such parent has substantially failed to perform the regular and expected parental functions of care and support of the child, which shall include maintenance of an emotional relationship with the child." N.J. Stat. Ann. §9:3.45 (West Supp. 1978).

New York's statute was struck down by the Supreme Court in Caban v. Mohammed, supra, for sex discrimination in requiring only the mother of any out-of-wedlock child to consent to adoption. The statute does not require the putative father's consent for adoption; moreover, it requires that only certain putative fathers need be given notice: those who have been adjudicated the father, have registered an intent to claim paternity, have openly lived with the child and mother, have been identified by the mother, have married the mother, or have been recorded as the father on the child's birth certificate. N.Y. Soc. Ser. Law §384-c (McKinney Supp. 1979).

Another "notice only" statute which leave some putative fathers out completely and is therefore of doubtful constitutionality under Caban, is that of South Dakota, which states that the father of an illegitimate child shall, as a requirement of due process, have no right to the service of process in adoption proceedings unless he is known and identified by the mother or unless he has acknowledged the child as his own within sixty days of the child's birth. S.D. Codified Laws Ann. §25-6-1,1 (1976).

V. STATES WHOSE STATUTES GIVE PUTATIVE FATHERS NO RIGHTS  
IN ADOPTION PROCEEDINGS

The state legislative process is in some places rather slow. Hence there are some jurisdictions which have not yet amended adoption statutes which are clearly inadequate under Stanley v. Illinois. These statutes give no right of notice or opportunity to be heard nor any right of consent to putative fathers who wish to assert custodial or parental rights with respect to their children.

Mississippi's statute provides that the father or an out-of-wedlock child is not deemed a parent for purposes of adoption. Miss. Code Ann. §93-17-5. And Pennsylvania provides that, in the case of an illegitimate child, the consent of the mother only shall be necessary; the natural father of such a child shall be required to consent only where the mother and father married after the child's birth and the mother's rights were subsequently terminated. Pa. Stat. Ann. tit. 1, §411 (Purdon Supp. 1978).

VI. SUMMARY

At present, approximately 13 states have shaped their statutes regarding the rights of the unwed father in adoption on a broad interpretation of Stanley v. Illinois. 405 U.S. 645 (1972). In general such statutes resemble the provisions in the Model Act in that they prohibit the adoption of a child from going forward until the birth parents have consented to the adoption on their parental rights have been judicially terminated. As the survey shows, states vary widely on notice requirements to putative fathers, actual or constructive, as well as how diligent the efforts to effectuate notice must be. Some states require only that notice be sent by registered mail to the putative father at his last known address, while others mandate publication over a specified number of weeks with the last publication occurring ten or twenty days before the scheduled hearing on termination of parental rights.

The survey shows that states are modifying their statutes in light of recent Supreme Court decisions which indicate that the substantive due process interest of the putative father is a variable one based on the parent's degree of involvement in the child's

welfare. Approximately 14 states require notice to an unwed father only if he has demonstrated interest in the child or assumed some parental responsibilities. A number of other states have taken a narrower interpretation of Stanley and required that notice for purposes of consent to adoption be given only if there is an adjudication of paternity or other legitimation of the child. Some of these states further restrict the uninvolved father's rights to notice of a hearing in order to place before the court any objections he might have to adoption of the child in question.

Finally, a handful of state statutes are of dubious validity in that they give putative fathers no rights at all in adoption proceedings or limit such rights on grounds which might be challenged as gender-based distinctions.