AN ACT

RELATING TO ADOPTION; MODIFYING AN UNMARRIED BIOLOGICAL FATHER'S RIGHT TO NOTICE OF AND CONSENT TO ADOPTION OR RELINQUISHMENT OF PARENTAL RIGHTS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-5-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 144, as amended) is amended to read:

"32A-5-17. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED.--

A. Unless provided otherwise in the Adoption Act, consent to adoption or relinquishment of parental rights to the department or an agency licensed by the state of New Mexico shall be required of the following:

(1) the adoptee, if ten years of age or older,

1   except when the court finds that the adoptee does not have the

2   mental capacity to give consent;

3   (2)   the adoptee's mother;

4   (3)   the adoptee's <u>proposed</u> adoptive [father]

5   <u>parent</u>;

6   (4)   the presumed father of the adoptee;

7   (5)   the adoptee's acknowledged father;

8   (6)   the department or the agency to whom the

9   adoptee has been relinquished that has placed the adoptee for

10   adoption or the department or the agency that has custody of the

11   adoptee; provided, however, that the court may grant the

12   adoption without the consent of the department or the agency if

13   the court finds the adoption is in the best interests of the

14   adoptee and that the withholding of consent by the department or

15   the agency is unreasonable; and

16   (7)   the guardian of the adoptee's parent when,

17   pursuant to provisions of the <u>Uniform</u> Probate Code, that

18   guardian has express authority to consent to adoption.

19   B.   In any adoption involving an Indian child,

20   consent to adoption by the petitioner or relinquishment of

21   parental rights shall be obtained from an "Indian custodian", as

22   required pursuant to the provisions of the federal Indian Child

23   Welfare Act of 1978.

24   <u>C.   The consent of an unmarried biological father</u>

25   <u>shall not be required unless he has complied with the</u>

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1   requirements stated in Section 32A-5-19.1 NMSA 1978.

2   [C.] D. A consent or relinquishment executed by a

3   parent who is a minor shall not be subject to avoidance or

4   revocation solely by reason of the parent's minority."

5   Section 2. Section 32A-5-19 NMSA 1978 (being Laws 1993,

6   Chapter 77, Section 146) is amended to read:

7   "32A-5-19. PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE

8   NOT REQUIRED.--The consent to adoption or relinquishment of

9   parental rights required pursuant to the provisions of the

10   Adoption Act shall not be required from:

11   A.   a parent whose rights with reference to the

12   adoptee have been terminated pursuant to law;

13   B.   a parent who has relinquished the child to an

14   agency for an adoption;

15   C.   a biological father of an adoptee conceived as a

16   result of rape or incest; or

17   D.   any person who has failed to respond when given

18   notice pursuant to the provisions of Section [32-5-27]

19   32A-5-27 NMSA 1978 [or

20   E.   any putative father who has failed to register

21   with the putative father registry within 90 days of the child's

22   birth]."

23   Section 3. A new Section 32A-5-19.1 NMSA 1978 is enacted

24   to read:

25   "32A-5-19.1. [NEW MATERIAL] UNMARRIED BIOLOGICAL FATHER'S

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1   RIGHT TO NOTICE AND CONSENT.--

2   A.   An unmarried biological father has an inchoate

3   interest that acquires constitutional protection only when he

4   demonstrates a timely and full commitment to the

5   responsibilities of parenthood, both during pregnancy and upon

6   the child's birth.   The state has a compelling interest in

7   requiring biological fathers to demonstrate that commitment by

8   providing appropriate medical care and financial support and by

9   establishing legal paternity, pursuant to law.

10   B.   An unmarried biological father, by virtue of the

11   fact that he has engaged in a sexual relationship with a woman,

12   is deemed to be on notice that a pregnancy and an adoption

13   proceeding regarding that child may occur, and he has a duty to

14   protect his own rights and interests.   He is therefore entitled

15   to actual notice of a birth or an adoption proceeding with

16   regard to that child if he has registered with the putative

17   father registry as provided in Section 32A-5-20 NMSA 1978.

18   C.   In order to preserve any right to notice and

19   consent, an unmarried biological father may initiate proceedings

20   to establish paternity pursuant to the provisions of the Uniform

21   Parentage Act.

22   D.   An unmarried biological father may register with

23   the putative father registry any time from conception until the

24   biological mother signs a relinquishment of parental rights and

25   consent to adoption.

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1   E.   An unmarried biological father who has not

2   registered with the putative father registry and has not

3   initiated proceedings to establish paternity under the Uniform

4   Parentage Act is only entitled to notice of an adoption

5   proceeding and is only required to give consent to an adoption

6   if he has established a substantial relationship with the child

7   based on the following requirements:

8   (1)   with respect to a child over the age of six

9   months:

10   (a)   the father must have visited the

11   child at least monthly when physically and financially able to

12   do so, and when not prevented from doing so by the person or

13   authorized agency having lawful custody of the child;

14   (b)   the father must have maintained

15   regular communication with the child or with the person or

16   agency having the care or custody of the child, when physically

17   and financially unable to visit the child, and when not

18   prevented from doing so by the person or authorized agency

19   having lawful custody of the child; or

20   (c)   the unmarried biological father must

21   have openly and continuously lived with the mother and child for

22   six months immediately preceding placement of the child with

23   adoptive parents and openly held himself out as the child's

24   father during that period; and

25   (2)   with respect to a child under the age of

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1   six months, prior to the time the biological mother executes a

2   consent to adoption the unmarried biological father must have

3   done each of the following:

4   (a)   paid a fair and reasonable amount of

5   the expenses related to the pregnancy and birth;

6   (b)   demonstrated a willingness and

7   commitment to contribute to the support of the child in

8   accordance with the child support guidelines of Section

9   40-4-11.1 NMSA 1978;

10   (c)   provided supplies, including

11   nutritional, medical and clothing items, for the benefit of the

12   child; and

13   (d)   provided information and, if

14   appropriate, made payments to any government agency providing

15   benefits, including income support, medical services or

16   nutritional assistance to the child or the child's mother.

17   F.   The subjective intent of an unmarried biological

18   father, whether expressed or otherwise, unsupported by evidence

19   of an act specified in Subsection E of this section shall not

20   preclude a determination that the father failed to meet the

21   requirements of that subsection."

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March 5, 1997

Mr. President:

   Your **JUDICIARY COMMITTEE**, to whom has been referred

SENATE BILL 892

has had it under consideration and reports same with

recommendation that it **DO PASS**, amended as follows:

   1.   On pages 1, 2 and 3, strike Section 1 in its entirety.

   2.   Renumber succeeding sections accordingly.

   3.   On page 3, line 16, strike "or".

   4.   On page 3, line 19, after "[or" insert a closing bracket.

   5.   On page 3, lines 20 through 22, remove brackets and line-through.

Underscored material = new
[bracketed material] = delete

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    6.   On page 3, line 21, strike "90" and insert in lieu thereof "ten".

    7.   On page 3, line 22, strike the period and quotation mark and insert in lieu thereof "; or".

    8.   On page 3, between lines 22 and 23, insert:

        "F.   any alleged father."".

    9.   On pages 3, 4, 5 and 6, strike Section 3 in its entirety and insert in lieu thereof:

    "Section 2.   Section 32A-5-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 147) is amended to read:

    "32A-5-20.   PUTATIVE FATHER REGISTRY--NOTICE--PENALTY.--

        A.   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 adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the

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putative father registry or otherwise acknowledging their

children. <u>A biological father shall file with the putative father</u>

<u>registry within ten days of the birth of child</u>. The registry does

not relieve the obligation of mothers to identify known fathers.

          B.   A putative father registry shall be established by

the department of health to record the names and addresses of:

          (1)   any person adjudicated by a court of this state

to be the father of a child;

          (2)   any person who has filed with the registry,

before or after birth of a child out of wedlock, a notice of

intent to claim paternity of the child;

          (3)   any person who has filed with the registry an

instrument acknowledging paternity; or

          (4)   any person adjudicated by a court of another

state or territory of the United States to be the father of an

out-of-wedlock child, when a certified copy of the court order has

been filed with the registry.

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C.   A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include in the notice the following:

(1)   his name;

(2)   his current address;

(3)   the mother's name and any other identifying information requested by the department of health; and

(4)   the child's name, if known, and any other identifying information requested by the department of health.

D.   If the person filing the notice of intent to claim paternity of a child or acknowledgment changes his address, the person shall notify the department of health of his new address in the manner prescribed by the department of health.

E.   A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed.   Upon receipt by the registry of the notice of revocation, the revoked notice of intent to claim

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Underscored material = new
[bracketed material] = delete

paternity shall be deemed a nullity nunc pro tunc.

F.   No registration fee shall be charged for registering the intent to claim paternity of a child or acknowledgment of paternity.   The department of health may charge a reasonable fee as prescribed by regulation for processing searches of the putative father registry.

G.   An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party in any proceeding in which that fact may be relevant.

H.   The department of health shall, upon request, provide the names and addresses of persons listed with the registry to any court, the department, an agency, the petitioner's attorney or the mother of the child.   The information shall not be divulged to any other person, except upon order of the court for good cause shown. If the registry has not received a notice of intent to claim paternity or an acknowledgment of paternity, within ten days of the child's birth, the department of health shall provide a written statement to that effect to the person making the inquiry. The person making inquiry shall provide a self-addressed, stamped envelope to the department of health for the department's response

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to the inquiry.

        I.   The department of health may promulgate any
regulations or forms necessary to implement the provisions of this
section.

        J.   Any person who intentionally and unlawfully releases
information from the putative father registry to the public or
makes any other unlawful use of the information in violation of
the provisions of this section is guilty of a petty misdemeanor
and shall be sentenced pursuant to the provisions of Section 31-
19-1 NMSA 1978."".

                              Respectfully submitted,

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

SJC/SB 892   Page 13

_____

Fernando R. Macias, Chairman

Adopted_____   Not Adopted_____

            (Chief Clerk)   (Chief Clerk)

                    Date _____

The roll call vote was __7__ For __1__ Against

Yes: 7

No: Payne

Excused: None

Absent: None

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FORTY-THIRD LEGISLATURE   **SB 892/a**

FIRST SESSION, 1997

March 5, 1997

Mr. President:

    Your **JUDICIARY COMMITTEE**, to whom has been referred

SENATE BILL 892

has had it under consideration and reports same with

recommendation that it **DO PASS**, amended as follows:

    1.   On pages 1, 2 and 3, strike Section 1 in its entirety.

    2.   Renumber succeeding sections accordingly.

    3.   On page 3, line 16, strike "or".

    4.   On page 3, line 19, after "[or" insert a closing bracket.

    5.   On page 3, lines 20 through 22, remove brackets and line-through.

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6.   On page 3, line 21, strike "90" and insert in lieu thereof "ten".

7.   On page 3, line 22, strike the period and quotation mark and insert in lieu thereof "; or".

8.   On page 3, between lines 22 and 23, insert:

"F.   any alleged father."".

9.   On pages 3, 4, 5 and 6, strike Section 3 in its entirety and insert in lieu thereof:

"Section 2.   Section 32A-5-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 147) is amended to read:

"32A-5-20.   PUTATIVE FATHER REGISTRY--NOTICE--PENALTY.--

A.   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 adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the

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putative father registry or otherwise acknowledging their
children. <u>A biological father shall file with the putative father</u>
<u>registry within ten days of the birth of child</u>. The registry does
not relieve the obligation of mothers to identify known fathers.

      B. A putative father registry shall be established by
the department of health to record the names and addresses of:

      (1) any person adjudicated by a court of this state
to be the father of a child;

      (2) any person who has filed with the registry,
before or after birth of a child out of wedlock, a notice of
intent to claim paternity of the child;

      (3) any person who has filed with the registry an
instrument acknowledging paternity; or

      (4) any person adjudicated by a court of another
state or territory of the United States to be the father of an
out-of-wedlock child, when a certified copy of the court order has
been filed with the registry.

C. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include in the notice the following:

     (1) his name;

     (2) his current address;

     (3) the mother's name and any other identifying information requested by the department of health; and

     (4) the child's name, if known, and any other identifying information requested by the department of health.

D. If the person filing the notice of intent to claim paternity of a child or acknowledgment changes his address, the person shall notify the department of health of his new address in the manner prescribed by the department of health.

E. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed. Upon receipt by the registry of the notice of revocation, the revoked notice of intent to claim

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4   paternity shall be deemed a nullity nunc pro tunc.

5

6   F.   No registration fee shall be charged for registering

7   the intent to claim paternity of a child or acknowledgment of

8   paternity.   The department of health may charge a reasonable fee

9   as prescribed by regulation for processing searches of the

10   putative father registry.

11

12   G.   An unrevoked notice of intent to claim paternity of a

13   child may be introduced in evidence by any party in any proceeding

14   in which that fact may be relevant.

15

16   H.   The department of health shall, upon request, provide

17   the names and addresses of persons listed with the registry to any

18   court, the department, an agency, the petitioner's attorney or the

19   mother of the child.   The information shall not be divulged to any

20   other person, except upon order of the court for good cause shown.

21   If the registry has not received a notice of intent to claim

22   paternity or an acknowledgment of paternity, <u>within ten days of</u>

23   <u>the child's birth</u>, the department of health shall provide a

24   written statement to that effect to the person making the inquiry.

25   The person making inquiry shall provide a self-addressed, stamped

     envelope to the department of health for the department's response

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to the inquiry.

I.   The department of health may promulgate any
regulations or forms necessary to implement the provisions of this
section.

J.   Any person who intentionally and unlawfully releases
information from the putative father registry to the public or
makes any other unlawful use of the information in violation of
the provisions of this section is guilty of a petty misdemeanor
and shall be sentenced pursuant to the provisions of Section 31-
19-1 NMSA 1978."".

Respectfully submitted,

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

SJC/SB 892   Page 20

_____

Fernando R. Macias, Chairman

Adopted_____   Not Adopted_____

(Chief Clerk)   (Chief Clerk)

Date _____

The roll call vote was _7_ For _1_ Against

Yes: 7

No: Payne

Excused: None

Absent: None

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FORTY-THIRD LEGISLATURE

FIRST SESSION

March 7, 1997

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 892, as
amended

Amendment sponsored by Senator Cisco McSorley

1.   Strike Senate Judiciary Committee Amendment 3.

2.   On page 1, line 13, strike "AND ENACTING".

3.   On page 3, line 16, strike the second "or".

_____

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Cisco McSorley

Adopted _____   Not Adopted _____

         (Chief Clerk)   (Chief Clerk)

                    Date _____

Underscored material = new
[bracketed material] = delete

.118506.1   - 22 -

State of New Mexico
House of Representatives

FORTY-THIRD LEGISLATURE

FIRST SESSION, 1997

March 20, 1997

Mr. Speaker:

Your **JUDICIARY COMMITTEE,** to whom has been referred

SENATE BILL 892, as amended

has had it under consideration and reports same with

recommendation that it **DO PASS.**

Respectfully submitted,

_____

Thomas P. Foy, Chairman

1

2 Adopted _____   Not Adopted _____

3   (Chief Clerk)

4   (Chief Clerk)

5   Date _____

6

7 The roll call vote was_7_ For_0_ Against

8 Yes: 7

9 Excused: Alwin, Luna, Mallory, Rios, Sanchez, Stewart

10 Absent: None

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