

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on February 11, 2003, in Room 123-S of the Capitol.

All members were present.

Committee staff present: Mike Heim, Kansas Legislative Research Department
Lisa Montgomery, Office of the Revisor of Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Kyle Smith, Kansas Bureau of Investigation
Candice Shively, SRS
Kathy Porter, Office of Judicial Administration
Senator Steve Morris
Terry Mass, Hugoton
Gary Baker, County Commissioner, Stevens County
Edward G. Collister, Attorney, Lawrence

Others attending: see attached list

Final Action on:

Confirmation of Roger Werholtz as Secretary of Corrections

Chairman Vratil called for discussion and final action on the confirmation of Roger Werholtz as Secretary of Corrections. There being no questions or points of discussion, Senator Goodwin moved to recommend the confirmation of Secretary Werholtz. The motion was seconded by Senator Donovan, and the motion carried.

SB 64 - Clarification of Kansas Offender Registration Act

Chairman Vratil opened the hearing on **SB 64**. Conferee Smith testified in support of **SB 64**, and said that the proposed bill updates the Kansas Offender Registration Act with three amendments. He explained the first amendment as striking the term "resident" as it no longer accurately describes all persons who register. He said the second amendment relates to section 2 and hopefully clarifies the penalty section, which should help the offenders as well as the courts. The third amendment is reflected in language repeated in sections 3, 4, and 5 to make sure new registrants are specifically informed of the change last year requiring students at institutions of higher education, who have such convictions, to register. (Attachment 1)

There being no other conferees or questions from the Committee, the Chair closed the hearing on **SB 64**.

SB 71 - Kansas payment center; removal of sunset provision

Chairman Vratil opened the hearing on **SB 71**. Conferee Shively testified in support of this requested bill by SRS. She said the bill amends the basic statute governing the Kansas Payment Center (KPC) by deleting subsection (h), the sunset provision. She stated that currently the statute was scheduled to sunset on July 1, 2003. Ms. Shively gave some background information on the Kansas Payment Center's formation and operation. She also shared some issues SRS foresees if the measure is not enacted and the statute is allowed to sunset July 1. She concluded her testimony by noting that enactment of this bill created no new fiscal impact upon SRS. (Attachment 2)

Conferee Porter testified in support of **SB 71**, and stated that the collection and disbursement of support-related payments has been effectively turned over to the KPC. She urged the Committee to pass this bill out. (Attachment 3)

General questions and discussion followed regarding whether the Oversight Commission should still be in

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 11, 2003 in Room 123-S of the Capitol.

place since the KPC is running effectively and there is no need to have meetings, complaint calls are no longer being received with any frequency by legislators on the operations of the KPC, but was requested that legislators receive a copy of the SRS report that goes to the federal government on this issue.

The Chair closed the hearing on **SB 71**.

SB 91 - Law enforcement training center, qualifications and officer training requirements

Chairman Vratil opened the hearing on **SB 91**. Senator Morris testified in support of this proposed bill which he had sponsored. He gave some background information on Terry Maas who lives in his hometown, and was a Canadian citizen working in law enforcement. He explained that Mr. Maas wants to apply for admission to the Kansas Law Enforcement Training Academy, but has to be a U.S. citizen in order to be accepted for training. Senator Morris stated that this bill changes the statute to allow Mr. Maas to attend the Academy. (Attachment 4)

Conferee Maas testified in support of **SB 91**, and asked the Committee for assistance in gaining admittance to the Kansas Law Enforcement Training Academy in Hutchinson in order to become a certified law enforcement officer. Mr. Maas related his past education and experience in the law enforcement field, and his desire to become a U.S. citizen living and working in Stevens County. (Attachment 5)

Committee questions and discussion concerned the requirements for U.S. citizenship, and the process that Mr. Maas and his wife have had to go through in order to become legal citizens.

Conferee Baker appeared before the Committee to testify in support of **SB 91**. He shared with the Committee the various community and civic activities Mr. Maas has volunteered for in Stevens County. He stated that Mr. Maas was eminently qualified for special consideration needed for his enrollment to the Law Enforcement Training Academy. (Attachment 6)

Conferee Smith testified in opposition on behalf of the Kansas Law Enforcement Training Commission. He stated that the Commission feels that making exceptions in admissions standard for particular individuals is bad public policy, and once an exception is made it would be hard to control. He explained the Commission believed it was reasonable to maintain the standard that persons should first demonstrate a sufficient commitment and dedication to become citizens of the state and nation they will serve. (Attachment 7)

Brief discussion regarded how this bill could be revised to allow the Legislature to handle such requests on a case by case basis. Suggestion was made that possibly the revision could contain a sunset clause regarding the process of obtaining U.S. citizenship.

The Chair closed the hearing on **SB 91**.

SB 54 - Creating the crime of negligent homicide - Further Information

The Chairman directed the Committee's attention to **SB 54**, regarding creating the crime of negligent homicide for further information and discussion.

William E. Westerbeke, Professor of Law, Kansas University School of Law, submitted written comments of his review of **SB 54** per Vice Chairman Pugh's request. Mr. Westerbeke urged the Committee to exercise great caution and listed three specific concerns as well as his recommendations if the Legislature should decide to create the crime of criminal negligence. (Attachment 8)

Edward G. Collister, Lawrence Attorney, and Chairman of the Kansas Bar Association's Legislative Committee spoke briefly to the Committee and explained his opposition to **SB 54**. He said that the lines between civil liability and criminal penalties should not be blurred and that person's should not be held liable criminally for negligent conduct.

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on February 11, 2003 in Room 123-S of the Capitol.

Vice Chairman Pugh furnished some written information to the Committee which he had requested from Allan Hazlett who had appeared before the Committee during the hearing on **SB 56**. (Attachment 9)

The meeting was adjourned at 10:33 a.m. The next scheduled meeting is February 12, 2003.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Tues., Feb. 11, 2001

NAME	REPRESENTING
Sandy Jacquot	LKM
Kyle Smith	KBI
Anonymous Deayh	SRS
Candy Shively	SRS
Jamie Corkhill	SRS
John Baber	SRS
Trista Curzydlo	KS Bar Assn
Ed COLLISTER	" + SELF
Garth Bradford	Inter-Faith Ministries
ADAM GASPER	SEN. ADKINS.
Vickie Jackson	KCKCC - Student
Bobbie McClain	Student @ KCKCC
Mary Beth Kidd	QQA
John Kew	Han Law Firm
Rethy Rinta	Judicial Branch
Robert Chocomanski	
James Owen	Sen. Goodwin
Joe Herold	KSC
Ray Baker	Stevens Co. Comm.



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

Testimony in Support of SB 64
Before the Senate Judiciary Committee
Kyle G. Smith
Director of Public and Governmental Affairs
Kansas Bureau of Investigation
February 10, 2003

Chairman Vratil and Members of the Committee,

I appear in support of SB 64, which updates the Kansas Offender Registration Act. The Offender Registration Act requires persons convicted of certain felonies, primarily violent sex offenses and murder, to register with their local sheriff. The information is maintained by the KBI in a database that is available to both investigators and the public.

SB 63 makes basically three amendments to the act;

First, the term 'resident' is struck as no longer accurately describing all persons who register. Last year the Act was amended to require some nonresidents, such as students, to register where they attend school, even if they are legally residents of another state. The changes in section 1 at page 1, line 42 and at page 4, line 10-11 merely clarifies the definitions.

Second, section two hopefully clarifies the penalty section, which should help the offenders as well as the courts. The act currently makes violating the provisions of the act a level 10 nonperson felony. While that language seems clear enough, some courts have had difficulty with it and been unsure whether the duty to update information, is also a violation. It makes little sense to require and enforce registration but then to allow the registration to become meaningless.

Third, repeated language in sections 3, 4 and 5 makes sure new registrants are specifically informed of the change last year requiring students at institutions of higher education, who have such convictions, to register. While ignorance of the law is not an excuse, we should do everything we can to alert those affected by the law.

I'd be happy to stand for questions.

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Attachment 1-1

Kansas Department of

Social and Rehabilitation Services

Janet Schalansky, Secretary

Senate Judiciary
February 11, 2003

SB 71: Repealing the Kansas Payment Center sunset provision

Integrated Service Delivery
Candy Shively, Deputy Director
785-368-6200

For additional information contact:
Office of Planning and Policy Coordination
Marianne Deagle, Director

Docking State Office Building
915 SW Harrison, 6th Floor North
Topeka, Kansas 66612-1570
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www.srskansas.org

Senate Judiciary

2-11-03
Attachment 2-1

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Judiciary
February 11, 2003

Senate Bill 71: Repealing the Kansas Payment Center sunset provision

Mr. Chairman and members of the committee, I appear before you today to speak in support of Senate Bill 71.

This bill amends the basic statute governing the Kansas Payment Center by deleting subsection (h), the sunset provision. Currently, the statute is scheduled to sunset on July 1, 2003.

Background.

The Kansas Payment Center, or KPC as it is commonly called, began operation in October 2000. The KPC receives, posts, and disburses child support and maintenance payments for nearly all support orders in Kansas. The KPC also maintains payment histories and provides related services to the Kansas courts, to SRS, and to parents in cases handled at the KPC.

Each month, the Kansas Payment Center processes more than 155,000 individual payments, worth a total of \$27 million. In the course of serving over 618,000 parents and children since operations began 28 months ago, the KPC has processed over three-quarters of a billion dollars in support payments.

Title IV-D of the social security act requires the State to operate a centralized unit for collection and disbursement of certain support payments, including income withholding performed by employers. The KPC satisfies this federal requirement and related operational mandates, such as timely disbursement of payments and maintenance of records. SRS, in collaboration with the Office of Judicial Administration, contracted with Tier Technologies, Inc. to operate the KPC on behalf of the State of Kansas.

The 2001 Legislature enacted a sunset provision to insure the KPC would be re-examined by the Legislature following a reasonable period of adjustment to the new procedures for payment processing. An Oversight Commission was also created at that time, to monitor the progress of the KPC. The Oversight Commission has expressed approval of the improvements achieved at the KPC during the past two years, particularly in the areas of customer services and customer satisfaction.

Since that time our experience with the KPC has been marked by significant improvements, particularly as automated solutions have been brought into

production and people have become more familiar with the KPC and its operations. We continue to monitor the KPC closely, to hold the KPC contractor accountable for their errors and to anticipate and prepare for new challenges. Our goal is continual improvement, with error prevention a top priority.

As many of you are aware, the Kansas Payment Center has made it possible to offer parents, the legal community, and public offices a number of valuable services that were not feasible when payments were processed in each county separately. A number of those services are described in the attachment. One of the unexpected benefits of the KPC has been that people traveling or stationed outside the United States may still keep track of their Kansas child support case by reviewing the payment history via the Internet. Care has been taken to make sure the viewable information includes only what has traditionally been in the public record and that more personal information remains private.

Issue.

If this measure is not enacted and the statute is allowed to sunset July 1st, it is difficult to imagine the resulting chaos for SRS, for the judicial branch, and most importantly, for families. The following are some of the issues we foresee:

- Ending the KPC July 1st places Kansas in the position of being found out of compliance with Title IV-D state plan requirements and facing the loss of significant federal funding.
- Two years of development and planning were required before implementation of the KPC. It would be difficult for the judicial branch and SRS to do the level of planning necessary for the courts to resume responsibility for payment processing by July 1st.
- An abrupt, unplanned change in payment procedures would keep district court trustees, CSE staff, and CSE enforcement contractors from completing child support enforcement activities while they deal with organizational issues. This would seriously reduce support collections across the State, and full recovery would be slow in coming.

In closing, I would note that enactment of this bill creates no new fiscal impact upon SRS. Funding for the KPC contract, including federal financial participation (66% of eligible costs), is included in the SRS budget submitted for FY2004.

Since the 2001 Legislative Session, the Kansas Payment Center has proven its value to the citizens of Kansas. I encourage you to support Senate Bill 71.

Special Services of the Kansas Payment Center

The Kansas Payment Center offers parents, the legal community, title searchers, and public offices a number of valuable services.

- The KPC Website at www.kspaycenter.com provides general information about the Kansas Payment Center, including toll free numbers for use by parents and employers. The KPC Website also allows people to review case payment history. Information is limited to items that have traditionally been public records.
- Toll free telephone access to pre-recorded information about the KPC and case specific information through use of a personal identification number is available 24/7. During regular business hours (8 a.m. to 5 p.m. Monday– Friday, except State holidays), parents may call and connect with a customer service representative. The toll free number for parents and general inquiries is 1-877-572-5722.
- Custodial parents who receive payments from the KPC have the option to authorize direct deposits into a bank account, eliminating postal delays and the risk of lost or stolen KPC checks.
- The KPC provides employers a single location where they may send support withheld from wages pursuant to a Kansas support order. Before creation of the KPC, large employers often had to mail checks to several Kansas counties.
- Employers in the US and Canada have 24-hour, toll free telephone access to pre-recorded information that is specifically geared to employers' needs. During regular business hours, an employer may also connect with the KPC customer service unit for personal assistance. The toll free employer number is 1-877-729-6367.
- Employers have the option to transmit support payments to the KPC using EFT (electronic funds transfer). Not only does this improve speed and accuracy at the KPC, it reduces the repetitious tasks and mailing costs for the employer.

Attachment



State of Kansas

Office of Judicial Administration

Kansas Judicial Center
301 SW 10th
Topeka, Kansas 66612-1507

(785) 296-2256

February 11, 2003

Testimony Regarding SB 71 Senate Judiciary Committee

Kathy Porter
Office of Judicial Administration

I am here to testify in support of Senate Bill No. 71, which would amend K.S.A. 2002 Supp. 23-4,118, the statute that authorizes the Kansas Payment Center (KPC), only by removing subsection (h) which provides, "The provisions of this section shall expire on July 1, 2003."

The Office of Judicial Administration (OJA) worked closely with the Kansas Department of Social and Rehabilitation Services (SRS) in the development and the September 2000 implementation of the KPC. Prior to implementation of the KPC, support-related payments were made to the local office of the clerk of the district court or the local court trustee. Cooperation between Tier Technologies (the vendor operating the KPC), SRS, and OJA was necessary to make the transition from the local systems to the centralized system as successful as possible. OJA staff worked with SRS and Tier to establish procedures to streamline the flow of data between the courts of KPC, and to address other issues as they arose.

Although the transition period did contain many challenges, it appears operations at the KPC are running smoothly. During the first several weeks and months of KPC operations, other OJA staff and I fielded numerous calls from Kansas citizens experiencing difficulty or delay in receiving support payments. However, within the last year, I can only recall two or three instances where such contacts were made with our office. In those cases, we contacted KPC staff and these problems were quickly remedied.

The collection and disbursement of support-related payments has been effectively turned over to the KPC. The structures and operations in the local courts which previously performed this function are no longer in place. There is simply no way to go back to the previous methods of collection and disbursement. Therefore, and because the KPC's operations appear effective, I urge the passage of Senate Bill No. 71.

KP:mr

Senate Judiciary

2-11-03
Attachment 3-1

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENT

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VICE-CHAIRMAN: LEGISLATIVE BUDGET
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MEMBER: AGRICULTURE
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CO-CHAIR: COUNCIL OF STATE GOVERNMENTS
AGRICULTURE TASK FORCE

VICE-CHAIRMAN: NATIONAL CONFERENCE OF STATE
LEGISLATURES
AGRICULTURAL AND RURAL
DEVELOPMENT

**Testimony for
Senate Judiciary Committee
Tuesday, February 11, 2003**

**By
Senator Steve Morris**

Re: SB 91

Senator Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to speak to you about an outstanding young man who resides in my home town of Hugoton. Terry Maas is a Canadian citizen who has chosen to make Hugoton, Kansas his home. Terry and his wife have made an excellent addition to our community.

Terry started visiting with me a couple of years ago about his efforts to attend the Kansas Law Enforcement Training Academy so he could continue to work in law enforcement. I understood that you can only work a year before you are required to go to the Academy.

Terry and I concluded that the only way he could attend, before gaining his citizenship, would be a change in the statute, and SB 91 accomplishes that.

I respectfully request your favorable consideration of SB 91.

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Senate Bill No. 91 testimony by Terrance Richard Maas

I come here today to ask for your help in gaining admittance to the Kansas Law Training Center in Hutchinson, and becoming a certified law enforcement officer.

I meet all of the requirements to become a certified law enforcement officer as outlined in the statute, K.S.A. 74-5605, with the exception of being a United States Citizen. I currently hold a United States Permanent Residency card and I am awaiting United States Citizenship, which I will be eligible for in approximately 2 ½ years. I have the opportunity to accept employment with the Stevens County Sheriff's Department as a Deputy Sheriff; however, under the current statute, and its requirement for citizenship, it prevents me from fulfilling my goal to become a certified officer. I have served under Sheriff Russ DeWitt for five years as a Corrections Officer in charge of the day to day operations of the jail. In July of 2002, I was appointed by the Hugoton City Council, with a recommendation by Chief of Police Fred Hagman, to Hugoton's new Reserve Officer Program.

As a City Reserve Officer, we are not paid a salary and serve as volunteers. We are not required to attend the KLETC, and under this statute, this allows me to hold this position. At this time, I would like to serve the citizens of Stevens County in a much larger capacity as a full time law enforcement officer.

With my five years experience with the Stevens County Sheriff's Department and my time as a reserve officer I gained considerable knowledge of law enforcement techniques. Being a Corrections Officer in Stevens County, I

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have had the opportunity to study the criminal elements that law enforcement officers deal with on a regular basis. Additionally, working with the citizens of Stevens County in several capacities, I have gained the respect and trust of my peers and the citizens I serve. This is apparent by the numerous letters, phone calls, and e-mails to Senator Morris' office from the residence of Stevens County. For these reasons, I feel I am a viable candidate for the Kansas Law Enforcement Training Center.

I can't express enough the importance of this bill to the advancement of my career in law enforcement. I thank you for your time and consideration in this matter.

Respectfully,

Terrance Richard Maas

Testimony in Support of Terrance Richard Maas

My name is Gary Baker. I am a resident of Stevens County and a current County Commissioner. I am self employed as a Water Right Consultant and also work special assignments, or provide technical assistance for the Kansas Water Office.

Today, I would like to offer testimony in support of Terry Maas. I first met Mr. Maas during a county commissioner meeting two years ago. He came to us seeking assistance in support of the fireworks display during the July 4th celebration that year. He returned the following year for the same thing. He has since volunteered to serve on the Hospital Board on two separate occasions. He was recently selected to the Leadership Stevens County class for 2003. He is presently a fire department volunteer.

He has special interests in law enforcement and is qualified and certified in many aspects in police work. However, before he can work in this environment it is necessary that he be allowed to certified by the Kansas Law Enforcement Training Center. We believe this man is eminently qualified for special consideration needed for his enrollment. He is currently awaiting citizenship status from Stevens County from the Federal government, however, in Stevens county, we consider him and his wife good citizens. Thank you.

Gary L. Baker
PO Box 247
Hugoton, KS 67951

620-544-8064

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Attachment 6-1

Kansas Law Enforcement Training Commission

Testimony in Opposition to SB 91

Before the Senate Judiciary Committee

Kyle G. Smith

On behalf of

Kansas Law Enforcement Training Commission

February 11, 2003

Chairman Vratil and Members of the Committee,

I appear today on behalf of the Kansas Law Enforcement Training Commission, to express opposition regarding SB 91.

While we appreciate the difficulty in attracting quality applicants in some areas of the state and the valuable contribution resident aliens make to Kansas, there are concerns with changing the standards for being a law enforcement officer. I do not know whom the person that this bill is apparently crafted to impact, and I don't doubt the Sheriff feels they would be a good deputy. The Kansas Law Enforcement Training Commission, is the entity charged with enforcing standards for law enforcement officers. The Commission, which includes sheriffs and chiefs from of small, medium and large jurisdictions, feels that making exceptions in standard for individuals is bad public policy. Once an exception is created it is hard to control

Since September 11, 2001 all of American society has had to review much of what we took for granted regarding our domestic security. Law enforcement in Kansas, as elsewhere, has been very active in meeting the challenges we now face. Law enforcement officers have access to alerts, information, databases, task forces, training and operational information which would be of interest or assistance to our enemies. SB 91 and on the other side, HB 2041, would seem to run counter to our efforts to increase security by allowing citizens of foreign countries to become law enforcement officers in Kansas. We realize the vast majority of such persons are not such a risk but we must also realize that some are.

To be a law enforcement officer is to hold a position of great public trust. You are literally entrusted to with the power of life and death. You are sworn to defend the constitution and laws of the Untied States and the state of Kansas. We believe it is reasonable to maintain the standard that such persons first demonstrate a sufficient commitment and dedication to become citizens of the state and nation they will serve.

Thank you for your attention, I would be happy to try and answer your questions.

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Attachment 7-1

The University of Kansas

School of Law

February 10, 2003

The Honorable Edward W. Pugh
Senator, 1st District
Room 128-S Capitol Building
Topeka, KS 66612

RE: Senate Bill No. 54

Dear Senator Pugh:

Dean Stephen McAllister passed on to me your inquiry concerning Senate Bill No. 54. This bill would criminalize as a felony certain aggravated negligent conduct.

At the outset, I have great sympathy for the Crane family. Twenty years ago I was coaching a little league baseball team, and one of the children was killed in virtually identical circumstances – a loaded hunting rifle was left in an unlocked closet and discharged while three children played with it. The child who was killed was the twelve-year-old son of one of my colleagues on the law faculty, and I fully appreciate the devastation that such an event has on a family. It was an experience that I hope and pray never to repeat, and I certainly understand what the Crane family must be feeling.

Nevertheless, I would urge the Judiciary Committee to exercise great caution in this matter. I have three specific concerns.

First, as a general rule, Kansas and the other states impose criminal penalties only for intentional and reckless conduct, not for negligence. The only exception is vehicular homicide, K.S.A. 21-3405, and it constitutes only a misdemeanor, not a felony. Indeed, it is my understanding that at the time of the comprehensive revision of the Criminal Code in 1993 the vehicular homicide provision was adopted after heated debate only because highway fatalities are so commonplace and because other states had also adopted such a limited and narrowly-focused provision. However, my field is tort law, not criminal law, and I have no knowledge of any specific problems that prosecutors may have experienced with the vehicular homicide statute in Kansas or elsewhere.

Second, Senate Bill No. 54 appears to adopt a “gross negligence” standard in an attempt to avoid criminalizing all negligent conduct. Unfortunately, there is no concept of “gross negligence” in tort law, although the phrase occasionally finds its way into legislation [*see, e.g.*, K.S.A. 75-6104(o) (“gross and wanton negligence” in the recreational use immunity)]. Moreover, attempts to

define and apply "gross" negligence as distinguished from "ordinary" negligence on the one hand and from "willful, wanton or reckless" conduct on the other hand have proven unsuccessful. A century ago Kansas and Illinois both attempted to mitigate the harshness of the contributory negligence defense by judicially subdividing negligence into "slight negligence," "ordinary negligence" and "gross negligence." The inability of courts to define clearly and apply consistently those concepts led to an endless stream of appeals and eventually to judicial abandonment of those subcategories of negligence. I suspect that the introduction of a "gross negligence" standard for criminal law purposes would resurrect the same difficulties, compounded by the legal obligation to have a higher standard of proof and greater clarity about offenses in criminal law. The end result would be a substantial increase in case loads and thus burden on our appellate courts.

Third, Senate Bill No. 54 proposes that criminal negligence constitute a felony. In my opinion, "felony" is a serious matter that should require greater culpability. The loss of the right to vote and other civil disabilities should not result from negligent conduct.

I should also note that civil liability for negligence is a remedy, although not a criminal remedy. Kansas courts have been quite strict in finding liability against owners of weapons who do not store and secure them in a responsible manner. See, e.g., *Wood v. Groh*, 269 Kan. 420, 7 P.3d 1163 (2000); *Long v. Turk*, 265 Kan. 855, 962 P.2d 1093 (1998).

If the Legislature should decide to recognize criminal negligence, I would recommend that the Legislature (1) enact the narrowest possible provision, such as one limited to the failure to store, secure or use a firearm in a responsible manner, (2) follow the language of the vehicular homicide statute as closely as possible, and (3) to limit any violation to a misdemeanor. However, I fear that once the door has been opened, the pressure will mount to keep adding other specific acts of negligence to the Criminal Code.

I apologize for the rushed nature of this letter, but I understand that there is a hearing on the bill scheduled for tomorrow. If you or other members of the Judiciary Committee have any additional questions, please do not hesitate to write or call me.

Yours truly,



William E. Westerbeke
Professor of Law

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February 10, 2003

Sen. Edward W. Pugh
Capitol Building
Topeka, KS 66612

In re: S.B. 56

Dear Senator Pugh:

Thank you for taking an interest in this legislation. As I promised, I am enclosing a copy of the Minnesota putative father registry statutes and the Minnesota Supreme Court decision concerning it. I spoke with one of members of the drafting committee in Minnesota. He told me that they patterned their statutes after those in Indiana and Illinois. He is quite confident that the Minnesota statutes, if there is to be a registry, are as sound as possible. I'm inclined to trust his intellectual analyses since when he was in law school, he found himself with enough spare time to also get a Master's Degree in History.

I think that you understand that I, and most other adoption practitioners, don't believe the registries are a valuable tool and give a false sense of security. I took the liberty of having Jill Bremyer-Archer send you information she has acquired from throughout the country.

After the hearing, it occurred to me that the statistic that there are 31 states with putative father registries is indeed misleading. Kansas is included in that number as a result of the statutes here that provide for the registry, but are not the type of registry this legislation creates. Many of the other states are also in that category.

For two reasons the outreach by SRS would be an abundant waste of money. There has been a tremendous amount of money spent educating the public as to how to prevent pregnancies. Obviously, it hasn't worked with the people we would want to target. Additionally, no matter how much education there is, the men we want to receive the message are much more likely to listen to their friends than they are SRS.

As I told you, the person most knowledgeable about the history you requested and

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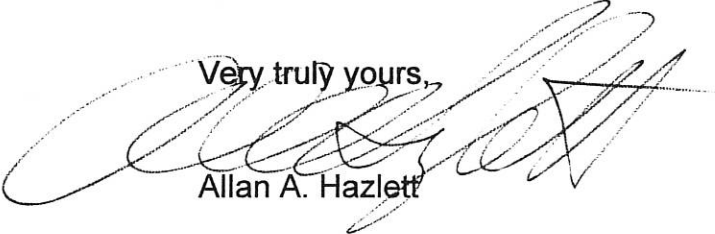
putative father registries in general would be:

Joan H. Hollinger
440 Boynton Avenue
Berkeley, CA 94707
Phone: (510) 525-4202
Fax: (510) 643-2673
Email: Jhollinger@adoptionattorneys.org

She is always most accommodating and I am confident she would be willing to talk with you. Even though she is a law professor, she is also an honorary member of the American Academy of Adoption Attorneys. She always attends our conferences and has at least a sense of the practical aspects of adoption. With a little persuading, she would probably be willing to analyze Senate Bill 56. You may feel free to tell her that I suggested you call.

If you need any further information or I can be of assistance, please do not hesitate to contact me.

Very truly yours,


Allan A. Hazlett

CHANGE OF NAME, ADOPTION

a designated on the birth before the child's birth or d's birth;

e person designated on the th;

ent;

i 30 days after the child's

e signed a declaration of 1995, which has not been 257.75, which has not been

ry;

notice, has timely filed an rance form under section

option registry notice has own, he is unable to do so ed by the putative father in or paternity establishment ad

ubdivision 3, if the child is

o a person listed in this inated. The notice of the other interested party by a d duly acknowledged. The efore the matter is heard.

within or without the state, e manner provided by law personal service cannot be

The petitioner or petition- ne effort that was made to he known kin of the child. ally, the court shall order blication to be at least ten rice is made by publication as it deems just. If, in the that the interests of justice id require that such notice i the course of proceedings

CHANGE OF NAME, ADOPTION

§ 259.52

the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. Service, guardian only. Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

Amended by Laws 1997, c. 218, § 8; Laws 1998, c. 382, art. 2, § 3, eff. April 21, 1998; Laws 1999, c. 139, art. 4, § 2; Laws 2001, 1st Sp., c. 9, art. 15, § 32.

Historical and Statutory Notes

Laws 1997, c. 218, § 14 provides, in part, that § 8, amending subd. 1 of this section, is effective for births occurring on or after January 1, 1998.

Laws 2002, c. 379, art. 1, § 113, provides: "2001 First Special Session Senate File No. 4, as passed by the senate and the house of repre-

sentatives on Friday, June 29, 2001, and subsequently published as Laws 2001, First Special Session chapter 9, is reenacted. Its provisions are effective on the dates originally provided in the bill."

259.51. Repealed by Laws 1997, c. 218, § 13

Historical and Statutory Notes

Laws 1997, c. 218, § 14 provides, in part, that § 13, repealing this section, is effective for births occurring on or after January 1, 1998.

259.52. Putative fathers' adoption registry

Subdivision 1. Establishment of registry; purpose; fees. (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 under section 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health may establish informational material and public service announcements necessary to implement this section. Any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7). The commissioner of health has no independent obligation to gather or update the information to be maintained on the registry. It is the registrant's responsibility to update his personal information on the registry.

(b) The fathers' adoption registry must contain the following information:

- (1) with respect to the putative father, the:
 - (i) name, including any other names by which the putative father may be known and that he may provide to the registry;
 - (ii) address at which he may be served with notice of a petition under this chapter, including any change of address;

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(iii) social security number, if known;

(iv) date of birth; and

(v) if applicable, a certified copy of an order by a court of another state or territory of the United States adjudicating the putative father to be the father of this child;

(2) with respect to the mother of the child:

(i) name, including all other names known to the putative father by which the mother may be known;

(ii) if known to the putative father, her last address;

(iii) social security number, if known; and

(iv) date of birth;

(3) if known to the putative father, the name, gender, place of birth, and date of birth or anticipated date of birth of the child;

(4) the date that the commissioner of health received the putative father's registration, which is the date the registration is postmarked or the date it was delivered by means other than mail to the address on the registration form; and

(5) other information the commissioner of health determines by rule to be necessary for the orderly administration of the registry.

(c) The commissioner of health shall notify the mother of the child whenever a putative father has registered with the father's adoption registry under this section. Notice shall be sent to the name and address submitted by the putative father under paragraph (b), clause (2). If no current address for the mother is submitted by the putative father under paragraph (b), clause (2), the commissioner of health shall not notify the mother. The commissioner of health has no independent obligation to locate the mother. The notice shall be mailed within 14 days of the date that the commissioner received the putative father's adoption registration unless a search has been requested under subdivision 2. There shall be no charge to the birth mother for this notice.

(d) The commissioner of health shall set reasonable fees for the use of the registry; however, a putative father shall not be charged a fee for registering. Revenues generated by the fee must be deposited in the state government special revenue fund and appropriated to the commissioner of health to administer the fathers' adoption registry.

Subd. 2. Requirement to search registry before adoption petition can be granted; proof of search. No petition for adoption may be granted unless the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report required under section 259.53, subdivision 1, requests that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of an adoption petition. The search required by this subdivision must be conducted no sooner than 31 days following the birth of the child. A search of the registry

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may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search no registration of a putative father in relation to a child who is or may be the subject of an adoption petition could be located. Certification that the fathers' adoption registry has been searched must be filed with the court prior to entry of any final order of adoption. In addition to the search required by this subdivision, the agency supervising the adoptive placement, the birth mother of the child, or, in the case of a stepparent or relative adoption, the county agency responsible for the report under section 259.53, subdivision 1, may request that the commissioner of health search the registry at any time.

Subd. 3. Search of registry for child support enforcement purposes. A public authority responsible for child support enforcement that is attempting to establish a child support obligation may request that the commissioner of health search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a child support obligation. A search of the registry may be proven by the production of a certified copy of the registration form or by a certified statement of the commissioner of health that after a search, no registration of a putative father in relation to the child could be located. No fee may be charged to the public authority for use of the registry.

Subd. 4. Classification of registry data. Data in the fathers' adoption registry, including all data provided in requesting the search of the registry, are private data on individuals, as defined in section 13.02, subdivision 2, and are nonpublic data with respect to data not on individuals, as defined in section 13.02, subdivision 9. Data in the registry may be released to:

- (1) a person who is required to search the registry under subdivision 2, if the data relate to the child who is or may be the subject of the adoption petition;
- (2) the mother of the child listed on the putative father's registration form who the commissioner of health is required to notify under subdivision 1, paragraph (c);
- (3) a public authority as provided in subdivision 3; or
- (4) an attorney who has signed an affidavit from the commissioner of health attesting that the attorney represents the birth mother or the prospective adoptive parents.

A person who receives data under this subdivision may use the data only for purposes authorized under this section or other law.

Subd. 5. Criminal penalty for registering false information. A person who knowingly or intentionally registers false information under this section is guilty of a misdemeanor.

Subd. 6. Who may register. Any putative father may register with the fathers' adoption registry. However, any limitation on a putative father's right to assert an interest in the child as provided in this section applies only in adoption proceedings and only to those putative fathers not entitled to notice

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and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7).

Subd. 7. When and how to register. A putative father may register with the department of health before the birth of the child but must register no later than 30 days after the birth of the child. Registrations must be in writing and signed by the putative father. 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.

Subd. 8. Failure to register. Except for a putative father who is entitled to notice and consent under sections 259.24 and 259.49, subdivision 1, paragraph (a) or (b), clauses (1) to (7), a putative father who fails to timely register with the fathers' adoption registry under subdivision 7:

(1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register under subdivision 7 is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights under section 260C.301, subdivision 1.

A putative father who has not timely registered under subdivision 7 is considered to have timely registered if he proves by clear and convincing evidence that:

(i) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within ten days after it became possible for him to file.

A lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register.

Subd. 9. Notice and service for those on fathers' adoption registry who are not otherwise entitled to notice. Any time after conception, an interested party, including persons intending to adopt a child, a child welfare agency with whom the mother has placed or has given written notice of her intention to place a child for adoption, the mother of a child, or any attorney representing an interested party, may serve by certified mail a notice to registered putative father, an intent to claim parental rights form, a denial of paternity form, and a consent to adoption form pursuant to subdivision 11. These documents may be served on a putative father in the same manner as a summons is served in other civil proceedings, or, in lieu of personal service, service may be made as follows:

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(a) The interested party or that party's attorney shall mail to the putative father, at the address provided to the registry, the copy of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form by certified mail, return receipt requested, and shall provide notice of the jurisdiction in which the adoption petition will be filed. The receipt for certified mail must state the name and address of the addressee and the date of mailing and must be attached to the original notice.

(b) The return receipt, when filed with the court, must be attached to the original notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form and constitutes proof of service.

(c) The court administrator shall note the fact of service in a permanent record.

Subd. 10. Response to notice to registered putative father; limitation of rights for failure to respond and upon filing of denial of paternity. Within 30 days of receipt of the notice to registered putative father, the intent to claim parental rights form, the denial of paternity form, and the consent to adoption form, the putative father must file a completed intent to claim parental rights form with the court administrator in the county in which the adoption petition will be filed as provided by the petitioner, stating that he intends to initiate a paternity action within 30 days of receipt of the notice to registered putative father in order to preserve the right to maintain an interest in the child and receive notice during the pending adoption proceeding. Failure to initiate a paternity action within 30 days of receipt of the notice to registered putative father does not act as a bar to receiving notice under section 259.49. If good cause is shown, the putative father must be allowed more time to initiate the paternity action. A putative father who files a completed denial of paternity form and consent to adoption form or who fails to timely file an intent to claim parental rights form with the court:

(1) is barred from later bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered a right to notice of a hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Failure to register is prima facie evidence of sufficient grounds to support termination of the putative father's parental rights.

Subd. 11. Forms. The office of the state court administrator shall develop the following forms:

- (1) notice to registered putative father;
- (2) intent to claim parental rights;
- (3) denial of paternity;

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(4) consent to adoption; and

(5) notice to registered putative father of the county in which the adoption petition will be filed.

Subd. 12. Right to counsel at public expense. Upon proof of indigency, a putative father who has registered with the fathers' adoption registry, has received a notice to registered putative father, and has timely filed an intent to claim paternal rights form with the court administrator, must have counsel appointed at public expense.

Subd. 13. Applicability of Indian Child Welfare Act. In an action involving an American Indian child, sections 260.751 to 260.835, and the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1923, control to the extent that the provisions of this section are inconsistent with those laws. The public acts, records, and judicial proceedings of any Indian tribe that provide an acknowledgment of paternity or that establish paternity pursuant to tribal law or custom shall be given full faith and credit as provided in United States Code, title 25, section 1911(d). Nothing in this section defeats the right of an Indian father who has acknowledged or established his paternity pursuant to tribal law or custom to commence a paternity proceeding, except that no father may file a paternity proceeding after the entry of a final decree of adoption.

Subd. 14. Fees for fathers' adoption registry. The district court administrator in every judicial district shall, in addition to any other filing fees, assess a \$75 adoption filing fee surcharge on each adoption petition filed in the district court for the purpose of implementing and maintaining the fathers' adoption registry. The court administrator shall forward fees collected under this subdivision to the commissioner of finance for deposit into the state government special revenue fund to be appropriated to the commissioner of health to administer the fathers' adoption registry established under this section.

Subd. 15. International adoptions. This section does not apply to international adoptions.

Laws 1997, c. 218, § 9. Amended by Laws 1998, c. 354, §§ 1 to 7, eff. April 4, 1998; Laws 1998, c. 382, art. 2, §§ 4 to 14, eff. April 21, 1998; Laws 1999, c. 122, §§ 1 to 6; Laws 1999, c. 139, art. 4, § 2.

Historical and Statutory Notes

Laws 1997, c. 218, § 14 provides, in part, that effective for births occurring on or after January subd. 14 of § 9, adding this section, is effective 1, 1998.
July 1, 1997, and subsd. 1 to 13 of § 9 are

259.53. Petition; investigations; reports

Subdivision 1. Notice to commissioner; referral for postplacement assessment. (a) Upon the filing of a petition for adoption of a child the court administrator shall immediately transmit a copy of the petition to the commissioner of human services.

(b) The court shall immediately refer the petition to the agency specified below for completion of a postplacement assessment and report as required by subdivision 2.

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Supreme Court of Minnesota.

Dale "J.R." HEIDBREDER, Petitioner, Appellant,

v.

Kathleen Jean CARTON, a/k/a Katie Carton, a/k/a
Kate Carton, Respondent,
M.J.P., et al., Respondents.

No. CO-01-739.

June 13, 2002.

Putative father commenced action to determine paternity of child born out of wedlock. Child's prospective adoptive parents intervened and moved to dismiss paternity action. The District Court, Stearns County, Richard T. Jessen, J., granted summary judgment to prospective adoptive parents, and putative father appealed. The Court of Appeals, Toussaint, C.J., 636 N.W.2d 833, affirmed, and putative father appealed. The Supreme Court, Russell A. Anderson, J., held that: (1) putative father was barred from maintaining paternity action; (2) allegedly fraudulent collusion to conceal mother's location did not relieve putative father of his obligation to register with fathers' adoption registry; (3) mother's concealment of her location did not excuse putative father's failure to register; (4) mother's statement to child's putative father that she would, "never ever" choose adoption did not amount to fraud as matter of law; (5) mother had no fiduciary duty to disclose her location to putative father; (6) as matter of first impression, putative father's substantial compliance with registration requirement was insufficient to preserve his right to assert interest in child; (7) putative father lacked constitutionally protected interest in his relationship with child; and (8) adoption statutes adequately protected putative father's due process right to opportunity to form relationship with child.

Affirmed.

Page, J., dissented and filed an opinion in which Paul H. Anderson and Gilbert, JJ., joined.

Paul H. Anderson, J., dissented with opinion.

West Headnotes

[1] Judgment \Leftrightarrow 185(6)
228k185(6)

Summary judgment is appropriate when the evidence,

viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

[2] Appeal and Error \Leftrightarrow 863
30k863

On appeal from summary judgment, the reviewing court determines whether there are any material issues of fact in dispute and whether the lower courts erred in their application of the law.

[3] Children Out-Of-Wedlock \Leftrightarrow 34
76Hk34

Putative father was barred from maintaining paternity action after commencement of proceedings for child's adoption, where he was not entitled to notice of adoption by reason of being named on child's birth certificate as child's father, failed to timely register with state fathers' adoption registry, and did not fall within any category of persons excused from failure to timely register. M.S.A. §§ 259.49, subd. 1(b), 259.52, subd. 8.

[4] Adoption \Leftrightarrow 7.2(3)
17k7.2(3)

Allegedly fraudulent collusion between child's birth mother and placement agency, object of which was to conceal mother's location from child's putative father, did not relieve putative father of his obligation to register with state fathers' adoption registry or commence paternity action in order to be entitled to notice of child's placement for adoption, where registration statute contained no exception for fraud and putative father was not prevented from commencing paternity action in any one of the states in which he believed mother might be residing at time of child's birth, which action would also have preserved his right to notice. M.S.A. §§ 259.49, subd. 1(b), 259.52, subd. 8.

[5] Adoption \Leftrightarrow 7.2(3)
17k7.2(3)

Birth mother's concealment of her location from putative father until after running of statutory period for filing with state fathers' adoption registry did not excuse putative father's failure to register as "not possible," or relieve putative father of fault in connection with his failure to register, for purposes of

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determining putative father's entitlement to notice of child's adoption pursuant to state adoption statutes, where mother's conduct did not amount to fraud or fraudulent nondisclosure as matter of law, and where putative father's ability to register did not depend upon his receipt of information or assistance from mother. M.S.A. § 259.52, subd. 8(i-iii).

[6] Adoption ⇨ 7.2(3)
17k7.2(3)

Concealment by a birth mother of facts related to the pregnancy or birth, such as her location during pregnancy or at the time of birth, does not excuse a putative father's failure to timely register with the state fathers' adoption registry even if he otherwise meets the statutory requirements for excusal. M.S.A. § 259.52, subd. 8(i-iii).

[7] Fraud ⇨ 9
184k9

[7] Fraud ⇨ 16
184k16

Fraudulent misrepresentation may be made by an affirmative statement that is itself false or by concealing or not disclosing certain facts that render facts disclosed misleading.

[8] Adoption ⇨ 7.2(3)
17k7.2(3)

Mother's statements to child's putative father during her pregnancy, to effect that she would "never ever" choose adoption and would not move to Minnesota with her mother, did not amount to fraud on putative father as matter of law, absent any evidence that mother was aware of statements' falsity at time she made them; statements concerned future facts rather than past or present facts, mother moved to Minnesota on the "spur of the moment" and decided to put child up for adoption only after doing so, and statements were not intended to prevent putative father from exercising his rights or to induce him not to protect himself in event she placed child up for adoption. M.S.A. § 259.52.

[9] Fraud ⇨ 16
184k16

Nondisclosure does not give rise to a fraud claim unless there is a legal or equitable obligation to communicate facts to a particular person and that

person is entitled to the information.

[10] Fraud ⇨ 17
184k17

Duty to disclose facts, as an element of a claim of fraud, may exist when a fiduciary relationship exists between the parties or when disclosure would be necessary to clarify information already disclosed.

[11] Adoption ⇨ 7.2(3)
17k7.2(3)

Unmarried birth mother had no fiduciary duty to disclose her location to child's putative father, before or after child's birth, whether or not she was aware that he wanted to know her location and to establish relationship with child, and her conduct in concealing her location from putative father until statutory period for registering with state fathers' adoption registry had run did not amount to fraudulent nondisclosure relieving putative father of his obligation to register in order to preserve his right to notice of child's adoption, especially where putative father could assert his interest in child without any assistance or information from child's mother. M.S.A. § 259.52, subd. 8.

[12] Adoption ⇨ 7.2(3)
17k7.2(3)

Putative father's substantial compliance with requirement that he register with state fathers' adoption registry within 30 days of child's birth in order to preserve his right to notice of petition for child's adoption was insufficient to preserve his right to assert interest in child; fact that statute contained exception for putative fathers able to establish by clear and convincing evidence that filing within statutory period was not possible indicated that legislature did not intend a substantial compliance exception, and creating such exception would undermine permanence and stability of adoptive placements. M.S.A. § 259.49, subd. 1.

[13] Adoption ⇨ 7.2(3)
17k7.2(3)

Adoption registries are intended to balance the putative father's interests with those of the child, the birth mother, and adoptive parents; adoption registries serve the interests of the child and adoptive parents by establishing a clear cut-off date after which there is little risk that a putative father who has failed to timely register and who is not otherwise entitled to notice can

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disrupt the adoptive placement. M.S.A. § 259.52, subd. 1.

[14] Adoption ☞ 7.2(3)
17k7.2(3)

Thirty-day deadline for putative father's registration with state fathers' adoption registry in order to preserve his right to notice of petition for child's adoption was not statute of limitations susceptible of being tolled by mother's allegedly fraudulent concealment of her location; state establishing registration deadline did not provide any remedy to putative father, but rather terminated putative father's substantive rights to child upon filing of adoption petition for failure to timely register. M.S.A. § 259.52, subds. 7, 8.

[15] Limitation of Actions ☞ 165
241k165

Generally, a statute of limitations affects a party's remedy, not his right.

[16] Adoption ☞ 7.2(3)
17k7.2(3)

Assuming that 30-day deadline for putative father's registration with state fathers' adoption registry in order to preserve his right to notice of petition for child's adoption was statute of limitations, such statute was not tolled by mother's concealment of her location from putative father, where mother had no duty to inform putative father of her location or otherwise assist him in protecting his rights. M.S.A. § 259.52, subds. 7, 8.

[17] Estoppel ☞ 85
156k85

[17] Estoppel ☞ 116
156k116

Party seeking to invoke the doctrine of equitable or promissory estoppel has the burden of proving: (1) that promises or inducements were made; (2) that he reasonably relied upon the promises; and (3) that he will be harmed if estoppel is not applied.

[18] Estoppel ☞ 85
156k85

Doctrine of promissory estoppel did not bar mother of child born out of wedlock from seeking dismissal of putative father's paternity action, despite her promise

to putative father before child's birth that she would "never ever" put his child up for adoption, where putative father's continued reliance on such promise after mother ended her relationship with him, moved out of state, and refused to reveal her location was unreasonable.

[19] Equity ☞ 65(2)
150k65(2)

Doctrine of "unclean hands" had no application to situation in which mother of child born out of wedlock sought dismissal of putative father's action to establish paternity, where even if mother acted inequitably in concealing her location from putative father until after statutory period for father's registration with state fathers' adoption registry had run, mother was not seeking equitable relief, and mother's conduct was only tangential to prospective adoptive parents' entitlement to equitable relief.

[20] Equity ☞ 65(1)
150k65(1)

Doctrine of "unclean hands" bars a party who acted inequitably from obtaining equitable relief; it does not bar a party with "unclean hands" from opposing a request for equitable relief by the other side.

[21] Appeal and Error ☞ 893(1)
30k893(1)

Constitutionality of a statute is question of law that is reviewed de novo on appeal.

[22] Constitutional Law ☞ 48(1)
92k48(1)

[22] Constitutional Law ☞ 48(3)
92k48(3)

Statutes are presumed to be constitutional, and the party challenging the constitutionality of a statute must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional.

[23] Constitutional Law ☞ 254.1
92k254.1

[23] Constitutional Law ☞ 277(1)
92k277(1)

Person may not allege a procedural due process violation unless the person has a protected property or

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liberty interest at stake. U.S.C.A. Const.Amend. 14.

[24] Constitutional Law ☞ 274(5)
92k274(5)

Mere existence of a biological connection between a child and a putative father does not confer due process protection on the putative father's parental interests; a putative father's interest in knowing his child is entitled to due process protection only when the father demonstrates a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child. U.S.C.A. Const.Amend. 14.

[25] Children Out-Of-Wedlock ☞ 20.2
76Hk20.2

[25] Constitutional Law ☞ 274(5)
92k274(5)

Putative father lacked constitutionally protected due process interest in his relationship with child born out of wedlock, where he had no custodial, personal or financial relationship with child and did not take any action indicating his commitment to responsibilities of parenthood. U.S.C.A. Const.Amend. 14.

[26] Children Out-Of-Wedlock ☞ 20.2
76Hk20.2

[26] Constitutional Law ☞ 274(5)
92k274(5)

Putative father's actions before and after child's birth did not demonstrate commitment to assuming parental responsibilities sufficient to warrant extending due process protection to his interest in child, where putative father told mother that he would not support adoption, lived with mother for a few weeks, maintained contact with mother through e-mail after she broke off their relationship, consulted attorney concerning his rights to child, and tried to locate mother around her due date; putative father's actions were equally consistent with intent to avoid assuming responsibility of providing for child's emotional and financial needs. U.S.C.A. Const.Amend. 14.

[27] Adoption ☞ 2
17k2

[27] Constitutional Law ☞ 274(5)
92k274(5)

State adoption statutes adequately protected putative

father's due process right to opportunity to form relationship with child, despite putative father's claim that he did not know child's mother was in Minnesota, did not know that Minnesota law required him to register, and was not required to do anything under laws of his home state to preserve his right to notice of termination of parental rights and pending adoption of child; statutory scheme was unlikely to omit most responsible fathers and did not place qualification for notice beyond putative father's control, and registration was not putative father's sole available method for establishing relationship entitled to due process protections. U.S.C.A. Const.Amend. 14; M.S.A. §§ 259.49, 259.52, subd. 7.

[28] Children Out-Of-Wedlock ☞ 30
76Hk30

Putative father resident out of state may protect his interest in a child born in Minnesota by commencing a paternity action in his own state before the child is more than 30 days old. M.S.A. §§ 259.49, subd. 1(b)(6), 259.52.

[29] Adoption ☞ 7.2(3)
17k7.2(3)

[29] Constitutional Law ☞ 224(2)
92k224(2)

Putative father and birth mother of child born out of wedlock were not similarly situated, for purposes of equal protection analysis, with respect to their relationship to child, and putative father was not entitled to same opportunity as birth mother to voice opinion as to child's best interests or to block child's adoption by withholding consent thereto; birth mother had established custodial relationship with child under state law, while putative father did not have established relationship with child and did not avail himself of opportunities provided to him to establish such relationship. U.S.C.A. Const.Amend. 14; M.S.A. §§ 257.541, subd. 1, 259.49, 259.52, subd. 7.

[30] Adoption ☞ 7.2(3)
17k7.2(3)

State can treat unmarried parents differently with respect to their rights in an adoption proceeding based on each parent's relationship to the child.

[31] Constitutional Law ☞ 224(2)
92k224(2)

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Equal protection does not prohibit the state from treating a birth mother with an established custodial relationship with the child more favorably than a putative father who does not have an established relationship. U.S.C.A. Const.Amend. 14.

***359 Syllabus by the Court**

1. Birth mother's concealment of her location until 31 days after birth does not excuse a putative father's failure to register with the Minnesota Fathers' Adoption Registry before child is more than 30 days old as required by Minn.Stat. § 259.52 (2000).

2. Birth mother's failure to disclose her location to putative father does not constitute fraudulent concealment because birth mother does not owe a fiduciary duty to provide such information to putative father and thus putative father's claim that birth mother's fraudulent concealment of her location excuses his failure to timely register with the Minnesota Fathers' Adoption Registry fails as a matter of law.

3. Putative father cannot maintain paternity action involving child who is the subject of a pending adoption proceeding on theory he substantially complied with the requirement in Minn.Stat. § 259.52 that he register with the Minnesota Fathers' Adoption Registry no later than 30 days after birth of child.

4. The requirement in Minn.Stat. § 259.52 that putative father not otherwise entitled to notice of an adoption petition under Minn.Stat. § 259.49 (2000) must register with the Minnesota Fathers' Adoption Registry no later than 30 days after birth of child to assert a claim to a child who is the subject of an adoption petition is not a statute of limitations that can be tolled by fraudulent concealment.

5. Putative father is not entitled to equitable relief on theory of promissory estoppel because any reliance on birth mother's statement early in pregnancy that she would not put child up for adoption was not reasonable in light of fact that ***360** birth mother fled from putative father and refused to disclose her location in final months of pregnancy and alleged "unclean hands" by birth mother did not bar prospective adoptive parents from opposing putative father's request for equitable relief.

6. Minnesota Statutes §§ 259.49 and 259.52 do not violate due process or equal protection as applied to putative father.

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Jill Alise Adkins, Rinke Noonan, et al., St. Cloud, for Carton, respondent.

Wright S. Walling, Walling & Berg, P.A., Minneapolis, for M.J.P. and M.B.P., respondents.

Cheryl Speeter Margoles, Speeter, Johnson, Hamilton & Wurst, Minneapolis, Laura Susan Arvold, Children's Home Society of Minnesota, St. Paul, for amicus curiae Children's Home Society.

Amy M. Silberberg, Afton, for amicus curiae for Lutheran Social Service.

Heard, considered, and decided by the court en banc.

OPINION

RUSSELL A. ANDERSON, Justice.

Appellant Dale "J.R." Heidbreder, an Iowa resident, registered with the Minnesota Fathers' Adoption Registry 31 days after his former girlfriend Kate Carton gave birth to a girl, K.M.C. After registering, Heidbreder commenced a paternity action in Stearns County District Court in an attempt to block the pending adoption of K.M.C. in Minnesota. The prospective adoptive parents, respondents M.J.P. and M.B.P., intervened and moved to dismiss the paternity action under Minn. R. Civ. P. 12.03 on the grounds that Heidbreder's suit was barred under Minn.Stat. § 259.52, subd. 8 (2000), because Heidbreder was not entitled to notice of the adoption petition under Minn.Stat. § 259.49 (2000) and he failed to register with the Fathers' Adoption Registry within 30 days of K.M.C.'s birth. The district court treated the motion as a motion for summary judgment under Minn. R. Civ. P. 56. The district court granted respondents summary judgment and the court of appeals affirmed. We also affirm.

In November 1999, Carton, Heidbreder's girlfriend at the time, informed him that she was pregnant and due in August 2000. At the time, both lived in Fort Madison, Iowa. Carton was 18 years old and had graduated from high school in the spring of 1999. Heidbreder was a year older. According to Heidbreder, he and Carton had one discussion about adoption early in Carton's pregnancy. Carton expressed some interest in exploring adoption but Heidbreder told her he was "absolutely against"

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adoption and that he believed adoption was "not right." Heidbreder testified in his deposition that Carton told him she would "never ever" put his child up for adoption. While respondents dispute whether Carton made an affirmative promise to Heidbreder not to put the child up for adoption, we view the facts in the light most favorable to Heidbreder as the nonmoving party at the summary judgment stage and assume, for purposes of our decision, that Carton did in fact make such a promise to Heidbreder during their discussion of adoption.

In the spring of 2000, Carton moved out of her mother's house and went to Carthage, Illinois, for approximately 2 weeks. She then moved back to her mother's house. In June 2000, Carton and Heidbreder rented an apartment together in Fort Madison. Carton paid the security deposit and the rent for the month of *361 June. Heidbreder occasionally paid for meals for Carton, but he never provided financial support to Carton for pregnancy-related expenses.

While Carton and Heidbreder were living together, Carton learned that her mother was moving to Minnesota. Carton's relationship with her mother was strained because of the pregnancy and because Carton's mother believed Heidbreder did not treat Carton well. Carton told Heidbreder she would not move to Minnesota with her mother. However, Heidbreder knew Carton had other relatives living in Minnesota.

Carton and Heidbreder argued during the time they lived together. In mid-June, Carton decided to leave Heidbreder. Carton testified in her deposition that she left Heidbreder because they were not getting along. Heidbreder testified that he did not know why Carton left but that at the time she left, Carton was "scared and confused."

Carton moved to St. Cloud, Minnesota, and lived with her grandparents for a few days. She then moved to New Beginnings, a home for pregnant teenage girls in St. Cloud. Carton's mother moved to Minnesota in late June or early July.

While Carton maintained contact with Heidbreder through e-mail, she did not tell him where she was and she instructed her family and friends not to give Heidbreder any information about her location. Although Heidbreder asked for information, Carton's family and friends refused to tell him where Carton was. Heidbreder testified in his deposition that he believed Carton had returned to Illinois and he never considered the possibility that Carton was in

Minnesota because of Carton's poor relationship with her mother.

According to Heidbreder, after Carton left he met with an attorney in Iowa to discuss visitation and child support. Heidbreder testified he did not discuss his rights in the event Carton put the child up for adoption because he did not believe Carton would do that. However, he also testified that the attorney told him that his child could not be adopted in Iowa without his consent. The attorney and Heidbreder considered hiring a private detective to find Carton, but never did so, and other than talking to Carton's family and friends, Heidbreder did not take any steps to locate Carton. Nor did Heidbreder take any steps to commence a paternity action, to register with the Iowa Declaration of Paternity Registry under Iowa Code § 144.12A (2001), or to learn whether the laws of Illinois--where Heidbreder believed Carton was--required him to do anything to preserve his parental rights. [FN1] Heidbreder explained in his deposition that he did not take any action after talking to the attorney because he and the attorney "figured [Carton] would * * * send [Heidbreder] papers."

FN1. Minnesota law regarding when putative fathers are entitled to notice of a pending adoption and when they are required to register with the state's adoption registry is almost identical to the law of Illinois. See 750 Ill. Comp. Stat. Ann. 50/7 (notice), 50/8 (consent), 50/12.1 (Illinois Putative Father Registry) (West 1999). As in Minnesota, a putative father not entitled to notice of an adoption petition has no right to make a claim to a child who is the subject of a petition for adoption in Illinois unless he registered with the Illinois Putative Father Registry before the child is more than 30 days old. See *id.*

While living at New Beginnings, Carton decided to give her child up for adoption. Through the Children's Home Society (CHS), Carton selected the couple she wanted to adopt K.M.C., respondents M.J.P. and M.B.P. During a meeting with a representative from CHS, Carton expressed concern that Heidbreder would stop the adoption. The representative explained *362 to Carton that under Minnesota law, she was not required to name Heidbreder on the birth certificate and that if he was not named on the birth certificate, Heidbreder could not prevent the adoption unless he registered with the Minnesota Fathers' Adoption Registry no later than 30 days after the birth of the child.

Carton gave birth to a girl, K.M.C., on August 12, 2000. Carton did not identify a father on K.M.C.'s

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birth certificate and the space for identifying K.M.C.'s father was left blank. K.M.C. left the hospital with respondents on August 14, 2000, and respondents filed a petition to adopt K.M.C. in Washington County District Court.

On September 12, 2000, 31 days after K.M.C.'s birth, Heidbreder learned from a third party that Carton was in Minnesota, had given birth to a girl and had put her up for adoption. Heidbreder contacted Carton by e-mail. That night, Carton told Heidbreder over the telephone that she had given birth and had put the child up for adoption. She also told him it was too late for him to stop the adoption. The same day, Heidbreder found a website with information on the Minnesota Fathers' Adoption Registry and completed and mailed the necessary forms. The forms were postmarked September 12, 2000, 31 days after K.M.C.'s birth.

Heidbreder then commenced a paternity action in Stearns County District Court seeking a paternity adjudication and custody of K.M.C. Carton counterclaimed for custody in the event Heidbreder's attempt to block the adoption of K.M.C. was successful. Pursuant to a stipulation between Heidbreder, Carton, and respondents, the district court allowed respondents to intervene. Action on respondents' adoption petition was stayed pending resolution of Heidbreder's paternity action. K.M.C. has remained in respondents' care throughout these proceedings.

Respondents moved to dismiss Heidbreder's paternity action on the grounds that Minn.Stat. § 259.52, subd. 8, barred Heidbreder from asserting parental rights to K.M.C. because he failed to register with the Minnesota Fathers' Adoption Registry before K.M.C. was more than 30 days old and he was not otherwise entitled to notice of an adoption petition under Minn.Stat. § 259.49, subd. 1(b) (2000). Heidbreder argued that his failure to timely file should be excused because Carton engaged in fraud by failing to disclose her location. He also challenged the constitutionality of Minn.Stat. §§ 259.49 and 259.52.

The district court treated respondents' motion to dismiss as a motion for summary judgment under Minn. R. Civ. P. 56. See Minn. R. Civ. P. 12.03 (allowing district court to treat motion to dismiss as motion for summary judgment if matters outside the pleadings are presented). The district court granted respondents summary judgment.

The district court held that Heidbreder could not

proceed with his paternity action because he was not entitled to notice of an adoption proceeding under any of the criteria listed in Minn.Stat. § 259.49, subd. 1(b), and he failed to timely register with the Minnesota Fathers' Adoption Registry under Minn.Stat. § 259.52. It concluded that Heidbreder's failure to timely register was not excused under Minn.Stat. § 259.52, subd. 8, because Heidbreder had not demonstrated by clear and convincing evidence that it was "not possible" for him to register before K.M.C. was more than 30 days old or that his failure to timely register was "through no fault of his own." The court concluded that it was possible for Heidbreder to timely register in Minnesota because he knew Carton was due in August 2000, knew she was hiding from him, and knew that there were a limited number of places where she could *363 be: in Iowa with her father, in Illinois where she lived in the spring of 2000, or in Minnesota where her mother and other family lived. The court concluded that because Heidbreder did not take steps to protect his rights in any of the states where Carton could have been, there was not clear and convincing evidence that it was "not possible" for Heidbreder to timely register or that his failure to register was "through no fault of his own."

The court also found that Carton had not engaged in any fraud that deprived Heidbreder of the opportunity to timely register in Minnesota and that Carton had no duty to disclose her location to him. Finally, the court held that Minn.Stat. §§ 259.49 and 259.52 did not violate due process or equal protection as applied to Heidbreder under the United States Supreme Court's decision in *Lahr v. Robertson*, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983).

Heidbreder appealed and the court of appeals affirmed. We granted review to address Heidbreder's claims that (1) his failure to comply with the requirements of Minn.Stat. §§ 259.49 and 259.52 is excused due to fraud by Carton; (2) he should be permitted to pursue his paternity action because he substantially complied with Minn.Stat. § 259.52; (3) the deadline for registration with the Minnesota Fathers' Adoption Registry is a statute of limitations that is tolled by Carton's fraudulent concealment of her location; (4) equitable estoppel bars respondents and Carton from challenging the timeliness of his registration; and (5) Minn.Stat. §§ 259.49 and 259.52 as applied to Heidbreder violate due process and equal protection.

I.

[1][2] Summary judgment is appropriate when the

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evidence, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn.2001). On appeal from summary judgment, the court determines whether there are any material issues of fact in dispute and whether the lower courts erred in their application of the law. *Id.*

II.

Historically, most states, including Minnesota, did not recognize a putative father's [FN2] parental rights to a child and did not require that the putative father be given notice of the filing of a petition for adoption or that he consent to an adoption. See Minn.Stat. § 259.24, subd. 1(a) (1971); Comment, *The Emerging Constitutional Protection of the Putative Father's Parental Rights*, 70 Mich. L.Rev. 1581, 1581-84 (1972) (reviewing state laws concerning treatment of putative father's parental rights).

FN2. A "putative father" is a man who may be the child's father but who was not married to the birth mother on or before the date of birth and has not established paternity in a court proceeding. Minn.Stat. § 259.21, subd. 12 (2000).

In 1972, the United States Supreme Court recognized that a putative father with an established relationship with his children has a liberty interest in the "companionship, care, custody, and management of his * * * children" and that this interest warrants protection absent a "powerful countervailing interest." *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). The court invalidated an Illinois statute that had the effect of presuming all putative fathers unfit to parent and rejected Illinois' assertion that because "most unmarried fathers *364 are unsuitable and neglectful parents," it could deem all putative fathers unfit. *Id.* at 654, 92 S.Ct. 1208. The court held that Illinois' interest in convenience did not justify denying a putative father a hearing on his fitness. *Id.* at 656-57, 92 S.Ct. 1208.

Following *Stanley*, the Minnesota Legislature amended the adoption laws to recognize the rights of a putative father. Act of Feb. 21, 1974, ch. 66, §§ 1-10, 1974 Minn. Laws 89, 89-94; see also *In re Welfare of Larson*, 312 Minn. 210, 215 n. 3, 251 N.W.2d 325, 329 n. 3 (1977) (noting that legislature amended adoption laws to protect putative father's rights in response to *Stanley*). The legislature provided that the

putative father was entitled to notice of an adoption proceeding if he (1) was named as a parent on the birth certificate, (2) substantially supported the child, (3) was married to the birth mother within 325 days before the child's birth or within 10 days after birth, (4) was openly living with the child or the person designated as the birth mother on the birth certificate, (5) had been adjudicated the child's parent, or (6) had filed an affidavit stating his intention to retain parental rights within 90 days of the child's birth or within 60 days of placement with the prospective adoptive parents, whichever was sooner, with the Department of Health's Division of Vital Statistics (the "90/60-day rule"). Minn.Stat. §§ 259.26, subd. 1, 259.261, subd. 1 (1974). [FN3] The legislature also provided that the putative father's consent to the adoption was required if the putative father was entitled to notice. Minn.Stat. § 259.24, subd. 1 (1974).

FN3. These two statutes were later recodified at Minn.Stat. §§ 295.49 and 259.51 (1994). Act of May 10, 1994, ch. 631, § 31, 1994 Minn. Laws 1873, 1892.

While the 1974 amendments protected a putative father's rights, they also had the adverse effect of jeopardizing the state's interest in permanence and stability in adoptions. For example, the court of appeals held that a putative father's substantial compliance with the filing requirements entitled a putative father to notice of an adoption even though his affidavit was untimely filed with the Division of Vital Statistics. *In re Welfare of A.M.P.*, 507 N.W.2d 616, 621 (Minn.App.1993). While *A.M.P.* was the only case in which the court of appeals found that a putative father who failed to timely file an affidavit had substantially complied with the requirements for notice, adoptive parents could never be certain that a putative father would not appear after the time for filing an affidavit expired and successfully challenge the validity of the adoption on the grounds he substantially complied with the 90/60-day rule.

In addition, the fact that a putative father failed to file an affidavit did not bar a putative father from seeking to establish an interest in the child by commencing a paternity action before the adoption was final. In *In re Paternity of J.A.V.*, 547 N.W.2d 374, 376-79 (Minn.1996), we held that because the legislature did not specifically provide that the failure to timely file an affidavit barred a putative father from commencing an action to establish paternity, a putative father who failed to timely file an affidavit could pursue his parental rights through a paternity action. As a result, a putative father could thwart a pending adoption after

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the deadline for filing an affidavit of paternity expired by commencing a paternity action. We recognized in *J.A.V.* that our decision could lead to "inordinate delays and expense" in adoption proceedings, but concluded it was for the legislature, not the court, to address this issue. *Id.* at 379.

Following our decision in *J.A.V.*, the legislature amended the adoption laws to limit *365 a putative father's rights to a child that is the subject of a pending adoption petition. Act of May 30, 1997, ch. 218, §§ 7-9, 1997 Minn. Laws 2200, 2202-10.

The legislature continued to require that the putative father's consent to the adoption be obtained if the putative father is entitled to notice of the adoption. Minn.Stat. § 259.24, subd. 1 (2000). It also continued to require that notice of the adoption be given to any putative father who is named on the birth certificate, has substantially supported the child, has married the birth mother, is openly living with the child or the person designated as the natural mother on the child's birth certificate, or has been adjudicated a parent of the child. Minn.Stat. § 259.49, subd. 1(b) (2000). However, the legislature limited a putative father's right to thwart a pending adoption by commencing a paternity action. The legislature provided that a putative father who commences a paternity action is entitled to notice, and therefore may block the adoption by withholding consent, if he commences his paternity action "within 30 days after the child's birth and the action is still pending" at the time the adoption petition is filed. Minn.Stat. § 259.49, subd. 1(b)(6). The statute does not require that the putative father commence his paternity action in Minnesota. The legislature also eliminated the 90/60-day rule and replaced it with a provision that entitles a putative father to notice if he registers with the newly created Minnesota Fathers' Adoption Registry under Minn.Stat. § 259.52. Minn.Stat. § 259.49, subd. 1(b)(8).

Minnesota Statutes § 259.52 provides that any putative father may register with the Minnesota Fathers' Adoption Registry but requires that the putative father register no later than 30 days after the birth of the child in order to retain any interest in a child who is the subject of a pending adoption petition. Minn.Stat. § 259.52, subds. 6, 7 (2000). [FN4] If a putative father is not entitled to notice of a petition for adoption under Minn.Stat. § 259.49, subd. 1, and does not register with the Minnesota Fathers' Adoption Registry before the child is more than 30 days old, the putative father:

FN4. While this change gives a putative father less time after the birth of the child to protect his parental rights than the 90/60-day rule, a putative father may register upon knowledge of the possibility of conception, i.e. upon the occurrence of sexual intercourse. Thus, the putative father has up to 10 months (9 months of pregnancy plus 30 days) to register.

(1) is barred thereafter from bringing or maintaining an action to assert any interest in the child during the pending adoption proceeding concerning the child;

(2) is considered to have waived and surrendered any right to notice of any hearing in any judicial proceeding for adoption of the child, and consent of that person to the adoption of the child is not required; and

(3) is considered to have abandoned the child.

Minn.Stat. § 259.52, subd. 8.

The legislature limited the circumstances under which a court can excuse a putative father's failure to timely register. A putative father's failure to timely register is excused if he proves by clear and convincing evidence that:

(i) it was not possible for him to register within the period of time specified in subdivision 7;

(ii) his failure to register was through no fault of his own; and

(iii) he registered within 10 days after it became possible for him to file.

Id.

The legislature further limited a putative father's right to be excused from the *366 registration requirement by providing that "lack of knowledge of the pregnancy or birth is not an acceptable reason for failure to register." *Id.*

III.

[3] The issue in this case is whether Heidbreder's paternity action must be dismissed due to his failure to register with the Minnesota Fathers' Adoption Registry before K.M.C. was more than 30 days old. Heidbreder is barred under Minn.Stat. § 259.52, subd. 8, from maintaining his paternity action unless (1) he was entitled to notice of the adoption under Minn.Stat. § 259.49, subd. 1, (2) he timely registered with the Minnesota Fathers' Adoption Registry, or (3) his failure to timely register is excused under Minn.Stat. § 259.52, subd. 8.

[4] Heidbreder admits he does not meet any of the

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criteria for notice of the adoption under Minn.Stat. § 259.49, subd. 1(b). [FN5] He argues, however, that he should be "deemed" entitled to notice because he would have been named on the birth certificate but for "fraudulent collusion" by Carton and CHS and because he would have timely commenced a paternity action had Carton revealed her location. This argument is without merit. There is no basis in the language of Minn.Stat. § 259.49, subd. 1(b), for expanding the categories of putative fathers entitled to notice beyond those specifically listed. [FN6]

FN5. The court of appeals held that Heidbreder was not entitled to notice under Minn.Stat. § 259.49, subd. 1(b)(4), which requires notice to a person who "is openly living with the child or the person designated on the birth certificate as the natural mother of the child or both," because this provision requires notice only to a putative father who lived or is living with the child, birth mother, or both after the birth of the child. *Heidbreder v. Carton*, 636 N.W.2d 833, 837 (Minn.App.2001). On appeal to this court, Heidbreder has abandoned his argument that he was entitled to notice because he openly lived with Carton for a few weeks during Carton's pregnancy.

FN6. We also note that there is no evidence indicating that CHS engaged in any fraudulent conduct. The record indicates that CHS did nothing more than tell Carton she was not legally required to identify a father on the birth certificate but that if she named a father he would be entitled to notice of the adoption. CHS merely informed Carton of the law in Minnesota and allowed her to make her own decision about whether to name Heidbreder on the birth certificate.

In addition, Carton's failure to disclose her location did not prevent Heidbreder from timely commencing a paternity action because Heidbreder knew at the time Carton left that she was pregnant, and he does not assert that he could not have filed a paternity action in Iowa or in Illinois-- where he believed Carton was--to protect his interests in K.M.C. without knowing Carton's location.

[5] Heidbreder concedes that his registration, filed one day late, was untimely. He argues that his failure to timely register should be excused because it was "not possible" for him to timely register and that his failure to timely register was "through no fault of his own" under Minn.Stat. § 259.52, subd. 8(i)-(iii). He asserts that it was "not possible" for him to register in Minnesota because Carton concealed her location and he did not know she was in Minnesota.

[6] The legislature specifically provided that lack of knowledge of pregnancy or birth would not excuse a putative father's failure to timely register. Minn.Stat.

§ 259.52, subd. 8. It is apparent from this statutory language that the legislature intended not to excuse an untimely registration based on concealment of the fact of pregnancy or birth by the birth mother even if the concealment made it "not possible" for the putative father to timely register and his failure to timely register was *367 "through no fault of his own." It follows that concealment by the birth mother of facts related to the pregnancy or birth, such as her location during pregnancy or at the time of birth, would also not excuse a putative father's failure to timely register even if he otherwise met the requirements of Minn.Stat. § 259.52, subd. 8(i)-(iii). Therefore, the fact that Carton concealed her location from Heidbreder does not excuse his failure to timely register with the Minnesota Fathers' Adoption Registry.

Heidbreder characterizes Carton's concealment as "fraud" and asserts that this excuses his failure to timely register because Carton's "fraud" made it "not possible" for him to timely register and made his failure to register "no fault of his own" under Minn.Stat. § 259.52, subd. 8.

We need not resolve the question of whether fraud by the birth mother excuses a putative father's failure to timely register under Minn.Stat. § 259.52 because Heidbreder cannot, as a matter of law, establish that Carton engaged in fraud.

[7] To establish fraud, a plaintiff must demonstrate: [T]hat [the] defendant (1) made a representation (2) that was false (3) having to do with a past or present fact (4) that is material (5) and susceptible of knowledge (6) that the representor knows to be false or is asserted without knowing whether the fact is true or false (7) with the intent to induce the other person to act (8) and the person in fact is induced to act (9) in reliance on the representation [and] (10) that the plaintiff suffered damages (11) attributable to the misrepresentation.

M.H. v. Caritas Family Servs., 488 N.W.2d 282, 289 (Minn.1992). A misrepresentation may be made by an affirmative statement that is itself false or by concealing or not disclosing certain facts that render facts disclosed misleading. *Id.*

[8] Carton's statements that she would "never ever" choose adoption and would not move to Minnesota with her mother fail to satisfy at least three elements of fraud. First, the statements concern future facts--adoption and moving to Minnesota--not past or present facts. Second, there is no evidence that at the time Carton made these statements she knew they were

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false. Heidbreder has presented no evidence that Carton intended to put the child up for adoption or that Carton intended to move to Minnesota when she told him she would not do either of these things. Carton testified that she moved to Minnesota on the "spur of the moment" and that she decided to put the child up for adoption after moving to Minnesota. The record does not support the conclusion that Carton knew her statements were untrue at the time she made them. Finally, there is no evidence that Carton made these statements intending to prevent Heidbreder from exercising his rights as the putative father or to induce him not to protect himself in the event she placed the child up for adoption. Thus, Heidbreder's claim that Carton committed fraud fails as a matter of law.

[9][10] Heidbreder's claim that Carton engaged in fraudulent nondisclosure also fails as a matter of law. Nondisclosure does not give rise to a fraud claim unless there is "a legal or equitable obligation" to communicate facts to a particular person and that person is entitled to the information. *L & H Airco, Inc. v. Rapistan Corp.*, 446 N.W.2d 372, 380 (Minn.1989). A duty to disclose facts may exist when a fiduciary relationship exists between the parties or when disclosure would be necessary to clarify information already disclosed. *Id.*

[11] Heidbreder does not assert that Carton had a duty to clarify her prior *368 statements that she would not put the child up for adoption and would not move to Minnesota. Rather, he asks the court to hold that Carton, as the mother of his unborn child, owed him a fiduciary duty to disclose her location because her nondisclosure prevented him from protecting his interest in K.M.C. as a putative father. At oral argument, Heidbreder's attorney clarified when the fiduciary duty on the birth mother to disclose her location should attach. He stated that the fiduciary duty should not attach based solely on the occurrence of sexual intercourse and a resulting pregnancy. Rather, he asked us to hold that a fiduciary duty attaches at the time of birth and that upon giving birth, the birth mother is required to disclose her location to a putative father whom she knows is attempting to locate her.

We decline to impose a fiduciary duty on an unmarried birth mother to disclose her location to the putative father even if she knows he wants to know her location or establish a relationship with his child. We are not aware of any court that has imposed such a fiduciary duty on an unmarried birth mother to the putative father. There are numerous situations in which an unmarried birth mother would be justified in

keeping information from a putative father, including situations where the woman has fled an abusive relationship, where the pregnancy was the result of nonconsensual intercourse, or where the putative father poses a danger to the child.

Furthermore, there is no need to impose such a duty on the birth mother in the interest of protecting a putative father's interests because the legislature has provided a means for the putative father to assert his interest in his child independent of the birth mother through registration with the Minnesota Fathers' Adoption Registry. Because a putative father is able to protect his interest in his child without any assistance or information from the birth mother, the birth mother is not in a position superior to the putative father such that she should be required to provide him with information regarding her location.

Because we decline to impose a fiduciary duty on a birth mother to notify a putative father of her location at the time of birth, Carton had no duty to disclose her location to Heidbreder, and thus Heidbreder's claim of fraudulent nondisclosure fails as a matter of law.

In the absence of evidence to support a finding of fraud or fraudulent nondisclosure, there is no reason to address whether either would make it "not possible" for a putative father to register or make the putative father's failure to register "no fault of his own" under Minn.Stat. § 259.52, subd. 8(i)-(ii).

Because the legislature has provided that lack of knowledge of pregnancy or birth does not excuse a putative father's failure to timely register, it is clear that the legislature intended to foreclose the argument that the birth mother's concealment of any information relating to the pregnancy or birth, including her location during pregnancy or at the time of birth, excuses a putative father's failure to register, regardless of whether the concealment made it "not possible" for the putative father to timely register and his failure to timely register "no fault of his own." [FN7] *369 Therefore, Heidbreder's failure to timely register cannot be excused under Minn.Stat. § 259.52, subd. 8, based on Carton's concealment of her location. Because Carton did not engage in fraud, there is no need to address whether fraud by the birth mother could excuse a putative father's failure to timely register with the Minnesota Fathers' Adoption Registry.

FN7. The dissent asserts that the "bald assertions" contained in this statement have no basis in law or fact. However, in interpreting a statute, we must

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presume that the legislature did not intend an absurd result. Minn.Stat. § 645.17(1) (2000). It would be absurd to conclude that a putative father who knew of the pregnancy but did not know the birth mother's location is entitled to greater protection under the statute than a putative father who is ignorant of both the pregnancy and the birth mother's location.

IV.

Heidbreder argues that his registration with the Minnesota Fathers' Adoption Registry should be deemed timely because he substantially complied with the statute.

In the 1950s, we stated in two cases that deficiencies in an adoption proceeding would not bar approval of an adoption if the party petitioning for adoption substantially complied with the statutory requirements. See *In re Petition of Jordet*, 248 Minn. 433, 439, 80 N.W.2d 642, 646 (1957); *In re Adoption of Anderson*, 235 Minn. 192, 197, 50 N.W.2d 278, 283 (1951). Relying on these decisions, the court of appeals recognized a substantial compliance exception to the former 90/60-day rule. See *A.M.P.*, 507 N.W.2d at 621. We have never addressed whether a putative father is entitled to notice if he substantially complied with the statutory requirements for registration with the Minnesota Fathers' Adoption Registry.

[12] We decline to carve out a substantial compliance exception to the statutory requirement that a putative father not otherwise entitled to notice of petition for adoption under Minn.Stat. § 259.49, subd. 1, must register with the Minnesota Fathers' Adoption Registry no later than 30 days after the birth of the child in order to assert an interest in a child who is the subject of a petition for adoption. The legislature created the Minnesota Fathers' Adoption Registry after the court of appeals' decision in *A.M.P.* but did not include a substantial compliance exception. The legislature's decision to excuse a putative father's failure to timely register only if he can establish by "clear and convincing evidence" that it was "not possible" for him to have timely registered and that his failure to register was "through no fault of his own," indicates that the legislature did not want untimely registration to be excused based on the putative father's substantial compliance with the registration deadline.

[13] We agree with Heidbreder that the purpose of the Minnesota Fathers' Adoption Registry is to provide a mechanism for identifying putative fathers and giving them notice of adoption proceedings. See Minn.Stat. § 259.52, subd. 1. However, adoption registries are

also intended to balance the putative father's interests with those of the child, the birth mother, and adoptive parents. See *In re Petition of K.J.R.*, 293 Ill.App.3d 49, 227 Ill.Dec. 190, 687 N.E.2d 113, 117 (1997). Adoption registries serve the interests of the child and adoptive parents by establishing a clear cut-off date after which there is little risk that a putative father who has failed to timely register and who is not otherwise entitled to notice can disrupt the adoptive placement. [FN8] While recognizing a substantial compliance exception *370 would benefit putative fathers who fail to timely register, such an exception would also weaken the permanence and stability adoption registries give adopted children.

[FN8] In addition to serving the interests of a child who is adopted, the Minnesota Fathers' Adoption Registry also serves the interests of a child who is raised by her birth mother because it allows a public authority responsible for enforcing child support to have the registry searched to determine whether "a putative father is registered in relation to [the] child who is or may be the subject of a child support obligation." Minn.Stat. § 259.52, subd. 3 (2000).

In enacting Minn.Stat. § 259.52, the legislature has decided that a putative father must act promptly to assert his interest in a child. We recognize that Heidbreder's registration was only one day late. However, under the statute, Heidbreder's registration cannot be treated any differently than a registration that is one week, one month, one year, or one decade late. The state cannot give a putative father an infinite amount of time to claim an interest in the child. At some point, the putative father's interest in knowing and raising his child gives way to the child's interest in having a permanent and stable home. While the deadline here may seem unjustly short to the putative father who misses the deadline, the period is justified by the need for early permanent and stable placement. No matter how much time the legislature provides for registration, the possibility that a putative father will miss the deadline by one day can never be eliminated. We will not undermine the legislature's determination that a putative father not otherwise entitled to notice of an adoption proceeding under Minn.Stat. § 259.49, subd. 1, must register within 30 days of the child's birth to protect his interests by recognizing a substantial compliance exception for a putative father who misses the statutory deadline but claims his registration should nonetheless be recognized because he acted promptly upon learning of the need to register.

To conclude that [the putative father] acted promptly once he became aware of the child is to fundamentally misconstrue whose timetable is

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relevant. Promptness is measured in terms of the baby's life not by the onset of the father's awareness. The demand for prompt action by the father at the child's birth is neither arbitrary nor punitive, but instead a logical and necessary outgrowth of the State's legitimate interest in the child's need for early permanence and stability.

Robert O. v. Russell K., 80 N.Y.2d 254, 590 N.Y.S.2d 37, 604 N.E.2d 99, 103-04 (1992).

Because creating a substantial compliance exception would defeat one of the purposes of the Minnesota Fathers' Adoption Registry--permanent and stable adoptive placements--we hold that substantial compliance with the registration requirements does not excuse a putative father's failure to timely register.

V.

[14][15] We also reject Heidbreder's claim that the registration deadline of 30 days after birth in Minn.Stat. § 259.52, subd. 7, is a statute of limitations that can be tolled by fraudulent concealment. Generally, a statute of limitations affects a party's remedy not his right. *See State ex rel. Moser v. Kaml*, 181 Minn. 523, 527, 233 N.W. 802, 804 (1930). Here, Minn.Stat. § 259.52 does not provide any remedy to a putative father but rather terminates a putative father's substantive rights to a child who is the subject of an adoption petition if he fails to timely register. Minn.Stat. § 259.52, subd. 8. Therefore, the registration deadline is not a statute of limitations.

[16] Even if we were to treat the registration deadline as a statute of limitations that could be tolled by fraudulent concealment, Heidbreder would not be entitled to relief because Carton had no duty to inform Heidbreder of her location or otherwise assist him in protecting his rights. *See Lehr*, 463 U.S. at 265 n. 23, 103 S.Ct. 2985 (noting that "[i]t is a generally accepted feature of our adversary system *371 that a potential defendant who knows that the statute of limitations is about to run has no duty to give the plaintiff advice").

VI.

Heidbreder also argues that promissory estoppel bars respondents and Carton from seeking dismissal of his paternity action because Carton promised him she would "never ever" put his child up for adoption. He also contends that respondents and Carton are barred from opposing equitable relief because Carton has "unclean hands."

[17] A party seeking to invoke the doctrine of equitable or promissory estoppel has the burden of proving (1) that promises or inducements were made; (2) that he reasonably relied upon the promises; and (3) that he will be harmed if estoppel is not applied. *Hydra-Mac, Inc. v. Onan Corp.*, 450 N.W.2d 913, 919 (Minn.1990). We assume, as we must in reviewing summary judgment, that Carton promised Heidbreder she would never put the child up for adoption. Nonetheless, Heidbreder's promissory estoppel claim fails because we conclude that, as a matter of law, it was unreasonable for Heidbreder to rely on Carton's promise after she left him. *See Nicoller Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn.1995) (recognizing that summary judgment is appropriate on promissory estoppel claim if plaintiff's reliance on alleged promise was unreasonable as a matter of law).

[18] Carton effectively ended her romantic relationship with Heidbreder when she moved to Minnesota and refused to tell him where she was. [FN9] Once that relationship ended, Heidbreder could not reasonably expect that Carton, who as far as he knew would be raising the child alone, would not reconsider her promise not to put the child up for adoption. Heidbreder was aware that Carton had suggested the possibility of adoption and that her promise not to put the child up for adoption was made after he told her he was "absolutely against" adoption because it is "not right." Heidbreder also believed Carton was "scared and confused" when she left him. Under these circumstances, Heidbreder could not reasonably believe that a "scared and confused" Carton would not reconsider adoption after she ended their relationship, moved away, and refused to reveal her location. Indeed, such actions by a birth mother, if anything, are consistent with a birth mother's decision to put her child up for adoption without interference from the putative father and would put a putative father on notice of the need to protect his rights.

FN9. While Carton maintained contact with Heidbreder via e-mail, Heidbreder does not assert that he and Carton were still romantically involved or that Carton ever indicated she wanted to continue their relationship after she left.

[19][20] Heidbreder argues that respondents and Carton cannot oppose equitable relief because Carton acted with "unclean hands." The doctrine of "unclean hands" bars a party who acted inequitably from obtaining equitable relief. *See Gully v. Gully*, 599 N.W.2d 814, 825 (Minn.1999). It does not bar a party

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with "unclean hands" from opposing a request for equitable relief by the other side. Here, it is Heidbreder, not respondents, seeking equitable relief and it is irrelevant whether anyone other than Heidbreder acted with "unclean hands." Therefore, we do not need to address whether Carton, while not engaging in any fraud, acted with "unclean hands" such that respondents would not be entitled to equitable relief if they were seeking such relief. [FN10]

FN10. It is not clear to us that even if respondents were seeking equitable relief and Carton had "unclean hands" that it is appropriate to deny prospective adoptive parents equitable relief based on the conduct of the birth mother. The interests of the birth mother and adoptive parents are not always aligned as they are here and there may be situations in which it would be unjust to deny adoptive parents equitable relief based on the conduct of the birth mother. However, we do not need to address the issue here because respondents seek legal rather than equitable relief.

*372 VII.

We now turn to Heidbreder's constitutional arguments that Minn.Stat. §§ 259.49 and 259.52 violate due process and equal protection as applied to him because they deprived him of his parental rights and gave Carton greater rights in the adoption proceeding than him.

[21][22] The constitutionality of a statute is question of law that is reviewed de novo on appeal. *Associated Builders & Contractors v. Ventura*, 610 N.W.2d 293, 298 (Minn.2000). Statutes are presumed to be constitutional and the party challenging the constitutionality of a statute "must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *Id.* at 299.

A. Procedural Due Process

[23][24] A person may not allege a procedural due process violation unless the person has a protected property or liberty interest at stake. *State v. Mitchell*, 577 N.W.2d 481, 492 (Minn.1998). Heidbreder argues that he has a protected liberty interest in having a relationship with K.M.C. because he is her biological father. [FN11] However, the mere existence of a biological connection between a child and a putative father does not confer due process protection on the putative father's parental interests. *Lehr*, 463 U.S. at 260-61, 103 S.Ct. 2985 (citing *Caban v. Mohammed*, 441 U.S. 380, 397, 99 S.Ct. 1760, 60 L.Ed.2d 397 (1979) (Stewart, J., dissenting)). A putative father's

interest in knowing his child is entitled to due process protection only when the father "demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child.'" *Lehr*, 463 U.S. at 261, 103 S.Ct. 2985 (quoting *Caban*, 441 U.S. at 392, 99 S.Ct. 1760). While the Court has never addressed the degree of involvement a putative father must have to demonstrate "a full commitment" to the responsibilities of parenthood, it has recognized that a putative father could demonstrate the required commitment if he has a "significant custodial, personal, or financial relationship" with the child. *Lehr*, 463 U.S. at 262, 103 S.Ct. 2985.

FN11. Although the parties do not dispute that Heidbreder is K.M.C.'s biological father, he has never been adjudicated the biological father of K.M.C.

[25][26] Here, Heidbreder is not entitled to due process protection of his interest in K.M.C. because he does not have a custodial, personal or financial relationship with K.M.C. Heidbreder never had a custodial right to K.M.C. See Minn.Stat. § 257.541, subd. 1 (2000) (providing that birth mother who is not married to child's father at time of conception or birth has sole custody of child until paternity is established in a judicial proceeding). In addition, there is no evidence in the record that would support a conclusion that Heidbreder had a personal relationship with K.M.C. The record is also void of any evidence that Heidbreder provided, or attempted to provide, financial support to Carton during her pregnancy or to K.M.C. following her birth. Therefore, due process does not require recognition of Heidbreder's*373 interest in K.M.C. as a putative father. [FN12]

FN12. The dissent concludes that Heidbreder demonstrated a sufficient commitment to K.M.C. entitling him to due process protection because he "did nothing to avoid the responsibilities of parenthood." However, a putative father does not acquire a protected liberty interest in his child by merely failing to do anything to avoid his parental responsibilities. A putative father must affirmatively demonstrate a commitment to such responsibilities.

[A]n unwed father's right to a continued parental relationship [is defined] by his manifestation of parental responsibility. * * * [W]e take this to mean that the qualifying interest of an unwed father requires a willingness himself to assume full custody of the child--not merely to block adoption by others. *In re Raquel Marie X.*, 76 N.Y.2d 387, 559 N.Y.S.2d 855, 559 N.E.2d 418, 428 (1990). The dissent interprets Heidbreder's actions in telling Carton he would support her but would not support

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adoption, in living with Carton for only a few weeks, maintaining contact with Carton through e-mail, consulting an attorney, and trying to locate her indicates an intent to rear the child. We disagree.

Heidbreder's actions do not unequivocally indicate an intent to assume full custody of K.M.C. Rather, his actions (and inaction in failing to take any steps to obtain visitation or to ensure that the child received financial support from him) are equally consistent with those of a putative father who does not want his child adopted because he believes adoption is "not right" but intends to avoid assuming the responsibility of providing for the child's emotional and financial needs by simply waiting for the birth mother to "send [him] papers." While Heidbreder may have sincerely wanted a relationship with K.M.C. before she was more than 30 days old, his actions do not demonstrate a commitment to the responsibilities associated with that relationship such that due process requires that he be given a voice in K.M.C.'s future.

[27] Because Heidbreder did not have an established relationship with K.M.C., the only due process issue is whether the state "has adequately protected his opportunity to form such a relationship." *Lehr*, 463 U.S. at 262-63, 103 S.Ct. 2985.

In *Lehr*, the Court rejected a due process challenge to a New York statutory scheme similar to our own that required notice of an adoption petition to a putative father only if the putative father fell into one of seven categories, which included putative fathers who had registered with New York's adoption registry. The Court concluded that the statutory scheme adequately protected a putative father's opportunity to establish a relationship with his child because the statutory procedure was unlikely to omit most responsible fathers and did not place "qualification for notice * * * beyond the control of an interested putative father." *Lehr*, 463 U.S. at 264, 103 S.Ct. 2985. The Court found no due process violation even though the scheme denied a putative father who had expressed, belatedly, an interest in his child because:

[T]he right to receive notice was completely within appellant's control. By mailing a postcard to the putative father registry, he could have guaranteed that he would receive notice of any proceeding to adopt Jessica. The possibility that he may have failed to do so because of his ignorance of the law cannot be a sufficient reason for criticizing the law itself. The New York Legislature concluded that a more open-ended notice requirement would merely complicate the adoption process, threaten the privacy interests of unwed mothers, create the risk of unnecessary controversy, and impair the desired finality of adoption decrees.

Id. at 264, 103 S.Ct. 2985 (footnote omitted).

The Court also rejected the putative father's claim that even if the statutory scheme adequately protected a putative *374 father's opportunity to establish a relationship with his child in the "normal case," he was nonetheless entitled to "special notice" because the trial court and birth mother "knew that he had filed an affiliation proceeding in another court." *Id.* at 264-65, 103 S.Ct. 2985. The Court stated:

This argument amounts to nothing more than an indirect attack on the notice provisions of the New York statute. The legitimate state interests in facilitating the adoption of young children and having the adoption proceeding completed expeditiously that underlie the entire statutory scheme also justify a trial judge's determination to require all interested parties to adhere precisely to the procedural requirements of the statute. The Constitution does not require either a trial judge or a litigant to give special notice to nonparties who are presumptively capable of asserting and protecting their own rights. Since the New York statutes adequately protected appellant's inchoate interest in establishing a relationship with Jessica, we find no merit in the claim that his constitutional rights were offended because the Family Court strictly complied with the notice provisions of the statute.

Id. at 265, 103 S.Ct. 2985 (footnote omitted).

Heidbreder argues that the requirement that he register with the Minnesota Fathers' Adoption Registry before K.M.C. was more than 30 days old to protect his interests as a putative father is inadequate because he did not know Carton was in Minnesota, he did not know Minnesota law required him to register, and he was not required to do anything under Iowa law to receive notice of termination of his parental rights and pending adoption of his child in Iowa. However, the issue here is not whether one part of the statutory scheme--the Minnesota Fathers' Adoption Registry--adequately protected Heidbreder's interests, but whether the entire scheme adopted by the legislature adequately protected Heidbreder's opportunity to form a relationship with K.M.C. We conclude that the statutes, as applied to Heidbreder, adequately protected his opportunity to establish a relationship with K.M.C.

The statutory scheme here is almost identical to the statutory scheme upheld in *Lehr*. The only material factual distinction between the two cases is that here the putative father is not a resident of the state in which he was required to register. However, the fact that Heidbreder is not a Minnesota resident does not make

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the statutory scheme unconstitutional as applied to him because the scheme is not "likely to omit many responsible fathers" who live outside of Minnesota and "qualification for notice [is] not beyond the control of an interest putative father" living outside the state, *Lehr*, 463 U.S. at 264, 103 S.Ct. 2985. [FN13]

FN13. The dissent concludes that *Lehr* is inapplicable here because unlike the putative father in *Lehr*, Heidbreder did not wait 2 years to establish a relationship with the child and Heidbreder "tried at every turn to grasp the opportunity to develop a relationship with his offspring and accept some measure of responsibility for his child's future." However, *Lehr* controls our decision because the issue here is not whether Heidbreder tried to grasp the opportunity to develop a relationship with K.M.C. at some point in her life, but rather whether the state provided Heidbreder a sufficient opportunity to develop a relationship with K.M.C. that would be entitled to due process protection. While the legislature could have included other categories of putative fathers among those entitled to notice of an adoption proceeding--including putative fathers who live with the birth mother at some point during the pregnancy or who express opposition to adoption--there is no basis for concluding that due process requires notice to these categories of putative fathers. Our statutory scheme requires notice to the same categories of putative fathers who were entitled to notice under the statutory scheme upheld in *Lehr*. While the dissent would like the legislature to do more to protect a putative father's rights, the legislature has provided all the due process protection required under the Court's decision in *Lehr*.

Furthermore, we disagree with the dissent's conclusion that Heidbreder has "grasp[ed] the opportunity" to demonstrate a commitment to the responsibilities of parenthood. During Carton's pregnancy and up until 31 days after K.M.C.'s birth, the only things Heidbreder arguably did in an effort to establish a relationship with his offspring was asking Carton and her family and friends about her location and meeting with an attorney. Merely asking about Carton's location does not indicate an intent to assume the responsibilities of parenthood. Similarly, Heidbreder's discussions with an attorney do not indicate an intent to assume such responsibilities. After meeting with the attorney, Heidbreder decided, for whatever reason, not to avail himself of the legal opportunities available to him to establish a relationship with K.M.C. Rather, Heidbreder chose to do nothing and wait for Carton to send him papers. Based on these facts, we disagree with dissent's conclusion that Heidbreder "grasp[ed] the opportunity" to demonstrate a full commitment to K.M.C.

*375 [28] In addition to registering with the

Minnesota Fathers' Adoption Registry, a non-resident putative father can ensure that his parental rights are not terminated under Minn.Stat. § 259.52, subd. 8, by commencing a paternity action. See Minn.Stat. § 259.49, subd. 1(b)(6) (2000). There is no requirement in Minn.Stat. § 259.49, subd. 1(b)(6), that the paternity action be commenced in Minnesota. Therefore, a putative father may protect his interest in a child by commencing a paternity action in his own state before the child is more than 30 days old.

Furthermore, even though Heidbreder is an Iowa resident, Minnesota law did not foreclose his opportunity to establish the required relationship with K.M.C. Heidbreder knew or had sufficient reason to believe that Carton was not in Iowa. Therefore, it was not reasonable for him to assume he could rely exclusively on the provisions of Iowa law to protect his interests. Under the circumstances, Heidbreder could have done more than simply assume Carton "would * * * send [him] papers." Heidbreder had opportunities under Iowa law to establish a sufficient commitment. He could have registered with the Iowa Declaration of Paternity Registry or commenced a paternity action in Iowa. [FN14] In addition, while Heidbreder did not know with certainty where Carton was, he had sufficient information to put him on notice that it was possible she was in Illinois or Minnesota. [FN15] Both Illinois *376 and Minnesota provided Heidbreder with the opportunity to establish a commitment. Heidbreder could have commenced a paternity action in either state or registered with the adoption registries provided by both states. Any of the above options would have put Heidbreder in a position to argue he established a sufficient commitment to warrant due process protection. [FN16] Therefore, as applied to the circumstances of this case, Minn.Stat. §§ 259.49 and 259.52 adequately protected Heidbreder's opportunity to establish the required commitment necessary for due process protection to arise.

FN14. A putative father may commence a paternity action in Iowa according to the same procedure applicable to a paternity action brought by the birth mother. See Iowa Code § 600B.7 (2001). A birth mother may commence a paternity action during the pregnancy. Iowa Code § 600B.9 (2001).

FN15. The dissent asserts that our conclusion that Heidbreder had sufficient information to be on notice that Carton could be in Minnesota or Illinois is "speculative, at best," and "simplistic" in light of the ease and frequency with which people now move from state to state. We disagree.

Our conclusion that Heidbreder was on notice that

Carton could be in Minnesota or Illinois is based on the information Heidbreder knew or believed. Heidbreder knew Carton had relatives in Minnesota and that her mother was moving to Minnesota. While Heidbreder knew Carton's relationship with her mother was strained and Carton told Heidbreder she would not move to Minnesota with her mother, it is reasonable to recognize that there was at least the possibility that a pregnant "scared and confused" 18 year old woman might request assistance from her mother or out-of-state relatives for assistance if she did not want the birth father to know her location. In addition, Heidbreder knew that Carton had gone to Illinois earlier in the pregnancy and he testified that he believed Carton was in Illinois. In light of Heidbreder's testimony and other facts he knew about Carton's contacts with Illinois, imputing notice to him that Carton could be in Illinois cannot be labeled "speculative." The fact that people move from state to state only buttresses our conclusion that the fact Carton had moved out of state does not excuse Heidbreder's failure to register. Because people move from state to state with ease and frequency, Heidbreder could not reasonably assume that Carton would stay in Iowa. This is especially true in light of the fact that Heidbreder knew Carton had relatives in Minnesota and contacts in Illinois, and knew that she did not want Heidbreder to know where she was.

FN16. We note that registration with another state's registry does not entitle a putative father to notice under Minn.Stat. §§ 259.49 or 259.52. If registration with an adoption registry in any state is, by itself, sufficient to demonstrate a substantial commitment to the child, then arguably a putative father is entitled to due process protection regardless of whether state law recognizes such registration. We need not address the issue here because we are not presented with a situation in which a putative father registered with another state's registry.

That the statutes could provide more time or greater opportunity for the putative father to establish the required relationship is a policy decision that is left to the legislature. The Court recognized in *Lehr* that the legislature may require strict adherence to statutory procedures as long as the statute satisfies due process constraints. 463 U.S. at 265, 103 S.Ct. 2985. The Minnesota Legislature has made policy choices similar to those made by the New York Legislature at issue in *Lehr*. Because the statutes provide adequate notice and opportunity to be heard to someone who has established a sufficient relationship to create a protected liberty interest and also adequately protected Heidbreder's opportunity to create such a relationship, the statutes satisfy due process requirements.

B. Equal Protection.

[29][30][31] Heidbreder claims that Minn.Stat. §§ 259.49 and 259.52 violate equal protection as applied to him because Carton receives more favorable treatment under the statutes than he in the proceeding for the adoption of K.M.C. This argument is without merit. It is well established that the state can treat unmarried parents differently with respect to their rights in an adoption proceeding based on each parent's relationship to the child. *Lehr*, 463 U.S. at 267-68, 103 S.Ct. 2985. Equal protection does not prohibit the state from treating a birth mother with an established custodial relationship with the child more favorably than a putative father who does not have an established relationship. *Id.* As the birth mother, Carton had an established custodial relationship with K.M.C. under Minnesota law. See Minn.Stat. § 257.541, subd. 1. In contrast, Heidbreder did not have an established relationship with K.M.C., nor did he avail himself of the opportunities provided to him to establish such a relationship. Under these circumstances, Carton and Heidbreder were not similarly situated with respect to their relationship to K.M.C., and equal protection does not require the legislature to give Heidbreder the same opportunity as Carton *377 to voice an opinion about K.M.C.'s best interests or to block the adoption by withholding consent.

VIII.

The dissent asserts that in our "arrogance" we have foreclosed the possibility that the best interests of the child can be met by having a permanent and stable relationship with the child's biological father. The legislature has concluded, however, that a child's best interests will be served in an adoption proceeding if the rights of any putative father not entitled to notice of her adoption under Minn.Stat. § 259.49 are terminated unless the putative father registered with the Minnesota Fathers' Adoption Registry before the child is more than 30 days old or the putative father's failure to register is excused under Minn.Stat. § 259.52, subd. 8(i)-(iii). Our decision today is not made in arrogance, but rather in deference to the legislature's determination of when a child's interest in permanence and stability in an adoptive placement takes priority over any interest a putative father has in establishing a relationship with the child. The legislature has carefully balanced the different interests of the child and putative father, and its decision, as applied to Heidbreder, does not violate the constitution. Under these circumstances, nothing would be more arrogant than for us to disregard the legislature's decision

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concerning the best interests of a child out of a desire to give a putative father time beyond that prescribed by the legislature to assert an interest in a child.

Affirmed.

PAGE, Justice (dissenting).

I respectfully dissent because the court's decision (1) improperly applies Minn.Stat. § 259.52, subd. 8 (2000), to the facts of this case and (2) as a result violates Heidbreder's right to due process.

Before and during the majority of Carton's pregnancy, Heidbreder and Carton lived in Iowa. At that time, Heidbreder was 19 and Carton was 18. At some point during the early stages of Carton's pregnancy, Heidbreder and Carton discussed adoption, and Heidbreder unequivocally stated that he was opposed to the idea. Carton agreed that she would not place the child up for adoption. Eventually, Heidbreder and Carton tried living together, which they did for a short period. Ultimately, Heidbreder and Carton separated because, according to Carton, she and Heidbreder could not get along. [FN1]

FN1. The court states, "Carton and Heidbreder argued during the time they lived together." While accurate, it seems that the court's motive in pointing this out is to suggest that, because they argued, Heidbreder engaged in conduct making him either unfit to parent or unwilling to parent his child. The record does not, however, support the conclusion that he is either unfit or unwilling to do so. Moreover, the fact that Heidbreder and Carton argued and could not get along does not support the conclusion that Heidbreder's failure to register within 30 days after birth was not excused.

Upon separating, Carton left Iowa and moved to Minnesota, living in various places. She did not tell Heidbreder where she moved. She moved to Minnesota, living first with her grandparents in St. Cloud and then at a home for unwed pregnant teenagers. Carton and Heidbreder maintained contact via e-mail but she continued to refuse to tell him where she was. Carton also directed her family and friends not to reveal her whereabouts to Heidbreder. Heidbreder attempted to find Carton by asking her relatives and friends where she was, but they refused to tell him anything. In addition, Heidbreder attempted to contact Carton's grandparents in Minnesota to ask them where Carton *378 might be, but was unable to do so because he did not know the grandparent's last name and people who knew would not tell him.

The record indicates that, in an effort to protect his rights, Heidbreder consulted an attorney in Iowa to discuss "setting up child support payments and visitation rights." Heidbreder Dep. Tr. at 37. Heidbreder told the attorney that he did not believe that Carton would consider adoption for their child and, therefore, the two did not discuss Heidbreder's parental rights in that context. The attorney told Heidbreder that, in any event, his consent was necessary for adoption under Iowa law. Heidbreder and the attorney considered hiring a private investigator to locate Carton, but did not do so. Heidbreder and the attorney also considered instituting a paternity action, but Heidbreder testified that, because they did not know where Carton was, the attorney was unsure of where to commence such an action. Heidbreder and the attorney decided to wait for Carton to contact them with information about her location.

Carton began adoption proceedings with the Children's Home Society (CHS) while at the home for pregnant teenagers. Carton told a CHS representative that she knew Heidbreder would not want her to go through with the adoption. A CHS representative told Carton that, if she omitted Heidbreder's name from the birth certificate, Heidbreder would not be able to stop the adoption unless he registered with the Minnesota Fathers' Adoption Registry within 30 days of the child's birth.

Carton gave birth to K.M.C. on August 12, 2000. Carton omitted Heidbreder's name from the birth certificate, and K.M.C. was placed in an adoptive home two days later. Thirty-one days after K.M.C.'s birth, Heidbreder learned that K.M.C. had been born in Minnesota. That same day, Heidbreder found a website for the Minnesota Fathers' Adoption Registry and registered.

I.

To receive notice of an adoption proceeding, putative fathers whose names are not included on the child's birth certificate and who are not otherwise entitled to notice pursuant to Minn.Stat. § 259.49, subd. 1 (2000), must register with the Fathers' Adoption Registry within 30 days of the child's birth unless excused. Minn.Stat. § 259.52 (2000). Failure to register within that time period may be excused if the putative father proves by clear and convincing evidence that "(i) it was not possible for him to register within the period of time specified in subdivision 7; (ii) his failure to

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register was through no fault of his own; and (iii) he registered within ten days after it became possible for him to file." Minn.Stat. § 259.52, subd. 8. Lack of knowledge of pregnancy or birth is not an excuse under the statute. *Id.* The court concludes that Heidbreder did not show that it was not possible for him to register or that his failure to register was through no fault of his own. Based on the facts presented, however, Heidbreder's failure to file within 30 days of K.M.C.'s birth was excused under section 259.52, subdivision 8.

Was it possible for Heidbreder to register with the Minnesota Fathers' Adoption Registry within the 30 days, such that his failure to register was his fault? The answer is unquestionably no. It is true in theory that Heidbreder could have attempted to protect his parental rights in each of the 50 states, but such a legal requirement would be inefficient and unreasonable. As a practical matter, it was "not possible" for Heidbreder to register in any state, given that he did not know and had no way of knowing where Carton *379 was living after she left Iowa. Because he did not know that she was in Minnesota, he had no reason to attempt to protect his parental rights in Minnesota as opposed to some other jurisdiction. As such, I would conclude that it was "not possible" for Heidbreder to register within the required 30-day time period and that his failure to register was "through no fault of his own." Finally, because Heidbreder registered within 10 days of when it became possible for him to do so, I would conclude that Heidbreder demonstrated by clear and convincing evidence that his failure to timely register was excused under section 259.52, subdivision 8.

Based on the statutory provision that "lack of knowledge of pregnancy or birth does not excuse a putative father's failure to timely register," the court asserts:

[I]t is clear that the legislature intended to foreclose the argument that the birth mother's concealment of any information relating to the pregnancy or birth, including her location during pregnancy or at the time of birth, excuses a putative father's failure to register, regardless of whether the concealment made it "not possible" for the putative father to timely register and his failure to timely register "no fault of his own."

Interestingly, the court provides no support for this statement. The bald assertions contained in this statement have no basis in fact or in law. Moreover, there is no logical stopping point to the court's line of

reasoning. Based on the court's interpretation of the "lack of knowledge" provision, it is not clear that there is any circumstance that would make it "not possible" to register and thereby qualify as an excuse under subparts (i)-(iii) of section 259.52, subdivision 8. By stating that, "[i]n the absence of evidence to support a finding of fraud or fraudulent nondisclosure, there is no reason to address whether either would make it 'not possible' for a putative father to register or make the putative father's failure to register 'no fault of his own,'" the court suggests that either fraud or fraudulent nondisclosure would excuse a putative father's untimely registration. This suggestion rings hollow, however, given the court's subsequent conclusion that a claim for fraud or fraudulent nondisclosure cannot exist because a birth mother has no fiduciary duty to inform a father of the child's place of birth. In the process, the court has emasculated section 259.52, subdivision 8(i)-(iii), and violated Minn.Stat. § 645.16 (2000) ("Every law shall be construed, if possible, to give effect to all its provisions."). Although lack of knowledge of pregnancy or birth is not an acceptable reason for failure to register, the issue here is lack of knowledge of where to register.

The court states that it would be "absurd to conclude that a putative father who knew of the pregnancy but did not know the birth mother's location is entitled to greater protection under the statute than a putative father who was ignorant of both the pregnancy and the birth mother's location." This interpretation of section 259.52, subdivision 8, strips it of all meaning by leaving no group of fathers to whom the exception can apply. The only fathers entitled to protection under subdivision 8 are fathers who in fact knew of the pregnancy or birth, given that lack of knowledge of pregnancy or birth is not an excuse. The court's conclusion that fathers who know and fathers who do not know of the birth or pregnancy are excluded from protection under subdivision 8 is not only absurd, but legally impermissible. See Minn.Stat. §§ 645.16, 645.17(1), (2) (2000).

The court also states, "while Heidbreder did not know with certainty where Carton was, he had sufficient information to put *380 him on notice that it was possible she was in Illinois or Minnesota." This statement is speculative, [FN2] at best, and overly simplistic, given the ease and frequency with which people moved from state to state at the end of the 20th century. The court's statement implies that a putative father must attempt to protect his rights in every state where the birth mother might be.

FN2. The court takes umbrage at the suggestion that its statement is speculative and asserts that Heidbreder had sufficient information to believe that Carton was in Minnesota because, of course, a "scared and confused" pregnant teenager would return to her mother despite their bad relationship. This, too, is pure speculation. Moreover, the record makes it clear that Heidbreder knew that Carton had a bad relationship with her mother and had been told by Carton that she would "never move to Minnesota with her mother." Heidbreder Dep. Tr. at 32, 49-50; Carton Dep. Tr. at 32-33. Heidbreder testified:

Because for one thing, I didn't think she--I didn't--she told me she would never want to live up there because when we were together I told her if she wanted to be around her brothers and sisters that maybe I could transfer, and she said no, I'm not going to follow her. And she said she would never ever move with her mom. And her mom and her barely got along at all. And she told me she didn't like the family--she loved them, but she didn't like the family up here because her grandparents and her were estranged and no one would accept her pregnancy. And she said they wouldn't let her-- anybody up here wouldn't--her mom kicked her out of the house in the first place, so I wouldn't think that she would move up here with her mom. And she said she just didn't like the people up here.

Heidbreder Dep. Tr. at 49-50. Thus, Heidbreder had every reason to believe that Carton was not in Minnesota.

That Heidbreder did not register in Illinois, where he believed Carton was, or in Iowa, where he believed Carton was not, is irrelevant to the analysis. Registration in either state would not have saved Heidbreder under Minnesota law. Registration in either Illinois or Iowa would not have entitled Heidbreder to notice under Minnesota's statutory scheme. Nor is it true that Heidbreder's registration in another state would have been clear and convincing evidence that it was not possible for him to register in Minnesota or that his failure to register in this state was through no fault of his own.

What matters here is that Heidbreder did not know where Carton was when K.M.C. was born, did not find out where she was until the 31st day after K.M.C.'s birth, and then immediately registered with the Minnesota Fathers' Adoption Registry. Therefore, I would conclude that Heidbreder demonstrated by clear and convincing evidence that it was not possible for him to register within the period of time provided in Minn.Stat. § 259.52, subd. 7 (2000), and that his failure to do so should be excused.

II.

If, as the court concludes, Heidbreder's failure to register is not excused under section 259.52, subdivision 8, then Heidbreder's interest in maintaining his parental rights has been denied protection under the Due Process Clause. See *Lehr v. Robertson*, 463 U.S. 248, 261, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983). A father is entitled to due process when he "demonstrates a full commitment to the responsibilities of parenthood by com [ing] forward to participate in the rearing of his child." *Id.* (quoting *Caban v. Mohammed*, 441 U.S. 380, 392, 99 S.Ct. 1760, 60 L.Ed.2d 297 (1979)).

Here, Heidbreder demonstrated a full commitment to the responsibilities of parenthood. Heidbreder clearly communicated to Carton that he supported their having the child and that he was opposed to *381 adoption. [FN3] In his deposition, Heidbreder testified:

FN3. The court disdainfully dismisses Heidbreder's opposition to adoption because he believed it was "not right." Is the court saying that it will tell a father, or even a mother, what reasons he or she may have for not wanting his or her child adopted? It seems to me that any father or mother sincerely desiring to take on the responsibility of being a parent would believe that adoption was "not right" for his or her children. One wonders what point the court is trying to make.

Q. Did you put her on your checking account?

A. I talked to her about it.

Q. Did you do it?

A. No. She didn't want to.

* * *

Q. [I] told her she had more support and she didn't need to do that.

Q. So you didn't tell her that you would support whatever decision she would make?

A. I would not support adoption or abortion.

* * *

Q. And you said earlier that you indicated to her she had a lot of support for having the child? A. Right.

Q. Working with you, right?

A. Right.

Heidbreder Dep. Tr. at 25, 39, 55. Heidbreder also went to Carton's medical appointments with her and they lived together for a period of time during Carton's pregnancy. At a minimum, this signifies Heidbreder's effort to provide emotional and moral support to Carton and his intention to establish a personal relationship with K.M.C. Evidently, the court counts the fact that they did not remain together as a strike against Heidbreder.

According to the court, "[t]he record is also void of any evidence that Heidbreder provided, or attempted to

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provide, financial support to Carton during her pregnancy or to K.M.C. following her birth." This assertion relies on a mischaracterization of the record and is, at least in part, misleading. In fact, Heidbreder could not have provided financial support to Carton and K.M.C. following the birth for the same reason he could not timely register under section 259.52, subdivision 7. He did not know where they were and, given Carton's family's rejection of Heidbreder's involvement in Carton's life, there was no viable vehicle for providing financial support. More important, however, is the fact that K.M.C. was placed for adoption two days after her birth and, according to the court, Heidbreder's parental rights were terminated 30 days after her birth.

With respect to the time period before K.M.C.'s birth, the court fails to recognize that, while Carton provided the money for the first month's rent and security deposit for their apartment, Heidbreder also signed the lease, thereby making himself financially responsible for the rent each month. Heidbreder testified that he talked with Carton about putting her name on his checking account, but Carton did not want this. Heidbreder testified, "I generally felt that my money was her money []." Together, they shared the cost of the food and groceries and Heidbreder's mother and family bought maternity clothes for Carton. Thus, the record does not support the assertion that Heidbreder did not provide or attempt to provide financial support to Carton during her pregnancy.

When Carton left Iowa, Heidbreder maintained contact with her via e-mail, while also attempting to locate her through Carton's family and friends. Although only 19 years of age, Heidbreder talked *382 with an attorney about child support and visitation rights. Heidbreder wasted no time in registering with the Minnesota Father's Adoption Registry once he learned where Carton was located. In sum, Heidbreder did nothing to avoid the responsibilities of parenthood; rather, each action he took had the effect of embracing those responsibilities. When viewed without hostility toward this father, the only reasonable conclusion based on the record before us, is that Heidbreder took steps that evince a clear effort on his part to come forward to participate in the rearing of his child.

The court relies heavily on *Lehr* to conclude that "the statutes, as applied to Heidbreder, adequately protected his opportunity to establish a relationship with K.M.C." In *Lehr*, the Court determined that the father, who was a New York resident, was presumptively

capable of asserting and protecting his own rights, but failed to do so having waited 2 years before coming forward to assert paternity. 463 U.S. at 262-65, 103 S.Ct. 2985. Unlike the father in *Lehr*, Heidbreder made sure that Carton knew that he wanted to participate in the rearing of K.M.C. even before K.M.C.'s birth. Heidbreder, however, had no knowledge of where Carton lived and, thus, was not capable of protecting his rights. Because *Lehr* did not involve a father who tried at every turn to grasp the opportunity to develop a relationship with his offspring and accept some measure of responsibility for his child's future, the court's reliance on *Lehr*'s holding is misplaced.

In *Lehr*, the Court stated:

The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with his offspring. If he grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development.

Id. at 262, 103 S.Ct. 2985. It is clear, as discussed above, that Heidbreder grasped the opportunity and has demonstrated a full commitment to the responsibilities of parenthood by coming forward to participate in the rearing of his child. [FN4] For this reason, Minnesota's statutory scheme, as interpreted by today's decision, does not adequately protect Heidbreder's parental rights and results in a denial of due process. Put bluntly, section 259.52, subdivision 8, exists to protect any father who is not otherwise entitled to notice under section 259.49, subdivision 1, and who did not register before the expiration of the 30-day period set forth in section 259.52, subdivision 7, if the father can demonstrate by clear and convincing evidence that it was not possible for him to register, that it was not his fault for having failed to register, and that he registered within 10 days after it became possible to do so. If subdivision 8, on the facts presented here, is read, as the court does, to exclude a father such as Heidbreder from its protection, then the statutory scheme fails to protect a father's opportunity to form the parent-child relationship and, consequently, violates due process.

FN4. The court asserts that Heidbreder's actions did not "unequivocally indicate an intent to assume full custody" of his child. Whether he indicated an intent to assume "full custody" is not the question to be answered. The correct question is whether he "demonstrate[d] a full commitment to the responsibilities of parenthood by com[ing] forward to

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participate in the rearing of his child.'" *Lehr*, 463 U.S. at 261, 103 S.Ct. 2985 (quoting *Caban*, 441 U.S. at 392, 99 S.Ct. 1760). I conclude, and the record supports, that he did.

*383 A father's biological connection with his child equips him to make uniquely valuable contributions to the child's development. See *Lehr*, 463 U.S. at 262, 103 S.Ct. 2985. By its arrogance, [FN5] today's decision forecloses the possibility that the best interests of a child can be met by having a permanent and stable relationship with the child's natural father. In doing so, the decision exposes the inadequacies of a system that fails in protecting both the rights of fathers and the best interests of the children who, absent some unfitness on the father's part, need them.

FN5. The court's arrogance lies in its hostility to putative fathers generally, and to this father specifically, as well as in its reading out of Minnesota's statutory scheme section 259.52, subdivision 8.

PAUL H. ANDERSON, Justice (dissenting).

I join in the dissent of Justice Page.

GILBERT, Justice (dissenting).

I join in the dissent of Justice Page.

PAUL H. ANDERSON, Justice (dissenting).

I conclude that the majority opinion has an unnecessarily broad reach. The opinion's broad reach is especially problematic for putative fathers who, with the most honorable intentions, seek to assert and fulfill their rights, duties and obligations. Therefore, I am in general agreement with the conclusions reached by Justice Page and join his dissent. I am, however, compelled to add a proviso. I do not concur in the assessment that the majority opinion is arrogant and hostile.

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