

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 993 (Patterson)
Version: June 25, 2021
Hearing Date: July 6, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

The parent and child relationship

DIGEST

This bill makes numerous changes to various adoption laws.

EXECUTIVE SUMMARY

This bill is the Academy of California Adoption Lawyers' annual adoption bill, which makes multiple changes to adoption and family law in California, including:

- changing rules for determining whether an embryo donor is an intended parent;
- specifying what a court must consider when determining whether to terminate the parental rights of an unfit parent;
- expanding use of post-adoption contact agreements; and
- expanding venue options for step-parent adoptions and readoptions of children adopted in other countries.

The author writes that this bill seeks to improve adoption processes and procedures in California in order to “provide much needed consistency and certainty and ultimately help avoid litigation and confusion for families.” There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Uniform Parentage Act (Fam. Code § 7600 et seq.),¹ which governs the parent-child relationships and the rights and duties flowing from the relationship.

¹ All further section references are to the Family Code unless otherwise specified.

- 2) Provides that if a woman conceives through assisted reproduction with semen or ova donated by a donor who is not her spouse, with the consent of another intended parent, that intended parent is treated in law as if they were the child's natural parent. (§ 7613(a).) Requires that the other intended parent's consent be in writing and signed by both parties. (*Id.*) Provides that a donor of semen to a licensed physician or sperm bank for use in assisted reproduction of a woman other than the donor's spouse is treated in law as if he were not the natural parent of the child thereby conceived, unless otherwise agreed to in a writing signed by the donor and the woman prior to the conception of the child. (*Id.* at (b)(1).) If the semen is not provided to a licensed physician or sperm bank, provides that the semen donor is treated in law as if he were the natural parent of the child, unless the donor and the woman agree in writing before conception or a court finds by clear and convincing evidence that the child was conceived through assisted reproduction and that, prior to the conception of the child, the woman and the donor had an oral agreement that the donor would not be a parent, as provided. (*Id.* at (b)(2).)
- 3) Allows a proceeding to be brought to terminate parental rights and declare a child free from the custody and control of a parent if the parent is convicted of a felony and the facts of the crime are of such a nature as to prove the unfitness of the parent to have future custody and control of the child. (§ 7825(a).) Allows the court to consider the parent's criminal record prior to the felony conviction to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control of the child. (*Id.* at (a)(2).)
- 4) Allows a petition to be filed to declare a child free from the custody and control of a parent by Department of Social Services (DSS), a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department planning adoption placement for the child. (§ 7840.) Allows the petition to be filed by an interested person, including a person who has filed, or who intends to file within a period of six months, an adoption petition, or by a licensed adoption agency to whom the child has been relinquished by the other parent. (§ 7841.)
- 5) Upon filing of the petition, requires the juvenile probation officer, qualified court investigator, licensed clinical social worker, licensed marriage and family therapist, licensed professional clinical counselor, or the county department designated by the board of supervisors to administer the public social services program to immediately investigate the circumstances of the child. (§§ 7850-7851.) Requires the investigator to provide to the court a written report of the investigation with a recommendation of the proper disposition to be made in the proceeding in the best interest of the child and requires the report to include specified information. (§7851.)

- 6) Allows an adoption request for the adoption of a nondependent minor to be filed with the court in which, among other things, an office of the department or a public adoption agency that is investigating the petition is located. (§8609.5(d).
- 7) Provides that nothing in California adoption laws may be construed to prevent the adopting parents from entering into a voluntary agreement with the child's birth relatives to permit continuing contact between the child and the birth relatives if the agreement is found by the court to have been executed voluntarily and to be in the best interests of the child at the time the adoption petition is granted. Provides ways to seek enforcement of a post-adoption contact agreement, but requires the agreement to warn the parties that the adoption will not be set aside due to failure to comply with the terms of the post-adoption contact agreement. (§ 8616.5.)
- 8) During the pendency of an agency, independent, or intercountry adoption, prohibits the child from being concealed within, or removed from, the county in which the adoption proceeding is pending, except as provided. (§§ 8713(b); 8803(a); 8910(b).)
- 9) Identifies parties that may file a petition for adoption in an independent adoption. (§ 8802.) Requires that an order for adoption in an independent adoption contain the child's adopted name, but not the child's name before adoption. (*Id.*)

This bill:

- 1) Specifies that a person providing ova or embryos for use in assisted reproduction by a person other than the provider's spouse or nonmarital partner is not treated in law as the natural parent of the child unless the court finds satisfactory evidence that the provider or the ova or embryos, and each recipient, intended for that provider to have parental rights. If the donated embryo includes ova or sperm from a person other than a provider, requires that person's consent to the donation unless that person previously executed a writing to consent, waive, or relinquish their right to consent or unless otherwise ordered by a court.
- 2) With respect to a court's determination of whether to allow proceeding to terminate parental rights due to a parent's felony conviction that reflects on their fitness as a parent, (1) makes that provision mandatory, (2) no longer limits it to the prior criminal records, and (3) recasts the determination to require the court to determine whether the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control.
- 3) When a petition is filed by DSS, a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department to declare a child free from the custody and control of a parent for purposes of adoption, requires the investigative report to include, among other things:

- a) a summary of the child's past and current living circumstances and residence history;
 - b) a background summary regarding each nonagency party to the case, including, but not limited to, previous guardianship investigations and any criminal or child welfare agency history; and
 - c) a recommendation whether granting or denying the petition will serve the best interest of the child.
- 4) Requires each party to cooperate with the investigation. Provides that a petitioner's failure to cooperate with the investigation may be grounds for the investigator to recommend dismissal of, and for the court to dismiss, the petition.
- 5) Allows a request for readoption of a nondependent child to be filed in a court in a county where:
 - a) the petitioner resides;
 - b) the child was born or now resides;
 - c) an office of the agency that placed the child for adoption is located; an office of the social services department or a public adoption agency that is investigating the petition is located;
 - d) the county in which a placing birth parent resided when the adoptive placement agreement, consent, or relinquishment was signed;
 - e) the county in which a placing birth parent resided when the petition was filed; and
 - f) the county in which the child was freed for adoption.
- 6) Allows a step-parent adoption request or an adoption request by a domestic partner to be filed in any of the above counties as well, and must include the post-adoption contact agreement if one exists.
- 7) Allows post-adoption contact agreements to be extended to nonrelative extended family members, and allows all parties to have the right to visitation and contact, not just information. Requires the court to grant the post-adoption contact privileges if a contract is executed, absent a specific finding that the privileges in the agreement are not in the child's best interest. If the court does not grant the privileges, requires the court to schedule a hearing on the agreement and requires petitioners to notice all parties to the agreement. Expands the definition of birth relative. Requires, in every adoption, each petitioner to inform the court in writing whether there is a post-adoption contact agreement, and if entered before the adoption, requires that the terms of the agreement be included. Requires the adoption agency, in an agency adoption, to file the information, as provided, and in an independent or step-parent adoption, requires the petitioner to do so. If a post-adoption contact agreement is executed, but not filed with the court at the time of the adoption, requires the court, during the child's minority, upon the request of any signatory to the agreement or by the minor's counsel, to enter the agreement as of the date of the adoption order,

unless the court finds by clear and convincing evidence that it is not in the child's best interest to do so, and gives the court discretion to award attorney's fees and damages to any party aggrieved by the failure to file the information as required.

- 8) In an independent adoption, allows a guardian who was nominated by a parent for a purpose other than adoption and for a specified time period, or guardian under a dependency court diversion guardianship to file an adoption request without waiting the required three years if parental rights have already been terminated.
- 9) Allows a person, named in a court order terminating parental rights as the child's legal guardian or prospective adoptive parent, to file a request for adoption in an independent adoption.
- 10) During the pendency of an adoption, requires that the child proposed to be adopted not be concealed from the agency investigating the adoption or from the court with jurisdiction over the proceedings. Requires that the child not be removed from the county of the petitioner's residence at time of placement without obtaining court permission, as provided.
- 11) Requires that the order for adoption, in an independent adoption, contains the child's adopted name and the name the child had before the adoption.
- 12) Requires that both prospective adoptive parents and the proposed adoptee appear in person at the adoption hearing unless the court allows otherwise, as provided by existing law.

COMMENTS

1. Makes changes to various adoption-related processes

a. Embryo Donation

The rules regarding sperm and embryo donation and the parentage rights of the donor, have changed in recent years, giving donors and intended parents more leeway in establishing the relationships they desire. (See AB 2344 (Ammiano), Ch. 636, Stats. 2014.) This bill continues that trend by providing a simplified process for an embryo donation, by treating a provider of an embryo for use in assisted reproduction to an intended parent who is not the provider's spouse or nonmarital partner as if the provider is not the child's parent, unless the court finds satisfactory evidence that the provider and the intended parent intended for the provider to be a parent. This is consistent with California's existing law on intended parents. If the donated embryo includes ova or sperm from a person other than the provider, that person must consent to the donation unless that person has already consented, waived, or relinquished their right to the embryo, or as otherwise ordered by a court.

b. Termination of parental rights for unfitness under the Family Code

Most terminations of parental rights for unfitness occur in the juvenile court through the dependency system, where all parties can be represented by counsel and where parents can be offered supports and services to maintain the family unit, if possible. Parental rights can also be terminated under the Family Code for multiple reasons, most often for adoption of the child, with no availability of the supports and services provided in the dependency system. There is a specific provision that allows a family law proceeding to be brought to terminate parental rights if the parent is convicted of a felony and the facts of the crime are of such a nature as to prove the unfitness of the parent to have future custody and control of the child. In making that determination, the court is allowed, though not required, to consider the parent's criminal record prior to the felony conviction to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control regarding the child. (§ 7825.) The bill would (1) make that provision mandatory, (2) no longer limit it to the prior criminal records, and (3) recast the determination to require the court to determine whether the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control. Thus, the court is required to consider the person's overall record more holistically in the course of a making a determination about the present fitness of the parent. (*See In re Terry E.* (1986) 180 Cal.App.3d 932, 950; *In re Michele C.* (1976) 64 Cal.App.3d 818, 822-823.)

In addition, this bill requires that the entity that conducts the investigation to declare a child free from the custody and control of a parent for purposes of adoption – whether DSS, a county welfare department, a licensed private or public adoption agency, a county adoption department, or a county probation department – must now include (1) a summary of the child's past and current living circumstances and residence history, (2) a background summary regarding each nonagency party to the case, including, but not limited to, previous guardianship investigations and any criminal or child welfare agency history, and (3) a recommendation whether granting or denying the petition will serve the best interest of the child.

The bill also provides that the petitioner's failure to cooperate with the investigation may be grounds for the investigator to recommend dismissal of, and for the court to dismiss, the petition.

c. Post-adoption contact agreements

A post-adoption contact agreement is a voluntary agreement between the birth parents and the adoptive parents explaining the future contact that may occur between birth relatives, including Native American tribes, and the child. Existing legislative intent states that families may benefit from these agreements and that they are intended to “ensure children of an achievable level of continuing contact when contact is beneficial

to the children and the agreements are voluntarily executed by birth relatives.” (Section 8616.5 (a).) Existing law provided ways to enforce these agreements, but that may never include setting aside the adoption itself.

This bill significantly expands post-adoption contact agreements. First, it defines birth relatives who may enter post-adoption contact agreements broadly and then expands the scope of individuals who may enter these agreements to include nonrelative extended family members, defined as adult caregivers who have an established familial relationship with a relative of the child or a familial or mentoring relationship with the child. (Welf. & Inst. Code § 362.7.) This may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends.

Second, the bill allows all parties to have the right to visitation and contact with the child, not just information about the child, even if birth relatives have not had a preexisting relationship with the child.

Third, the bill creates a presumption that the post-adoption contact agreement is reasonable by requiring the court to grant the post-adoption contact privileges for an executed agreement, absent a specific finding that the privileges in the agreement are not in the child’s best interest. If the court does not grant the privileges, the bill requires the court to schedule a hearing on the agreement.

Finally, to ensure that the court is aware of the agreement, the bill requires, in every adoption, each petitioner to inform the court in writing whether there is a post-adoption contact agreement, and if entered before the adoption, requires that the terms of the agreement be included. If a post-adoption contact agreement is executed, but not filed with the court at the time of the adoption, the bill requires the court, during the child’s minority, upon the request of any signatory to the agreement or by the minor’s counsel, to enter the agreement as of the date of the adoption order, unless the court finds by clear and convincing evidence that it is not in the child’s best interest to do so, and gives the court discretion to award attorney’s fees and damages to any party aggrieved by the failure to file the information as required.

d. Expansion of who may file a petition for adoption

This bill also expands who may file an independent adoption petition to include the person named as a legal guardian or prospective adoptive parent in an order terminating parental rights. The sponsors argue that it is bad public policy to terminate parental rights, but then not allow the persons identified by the court as the child’s guardian or prospective parents to file for adoption, thus leaving the child as a legal orphan for a period of time. This bill closes that temporary open period by allowing the person named as a legal guardian or prospective adoptive parent in an order terminating parental rights to immediately file a petition to adopt the child.

- e. Reduction of the time for a guardian in a dependency court diversion guardianship to seek to adopt the child, but only where parental rights have already been terminated*

Under existing law for independent adoptions, a person who has become a guardian of a child under a dependency court diversion guardianship under Welfare & Institutions Code Section 360, or who was nominated by a parent for a purpose other than adoption and for a specified time period, can petition the court to adopt the child provided the guardianship has been in place for at least three years. (§ 8802.) To avoid having a child become a legal orphan, as discussed directly above, and to be consistent with other provisions of the bill, this bill keeps the existing three year time period before adoption can be sought, except if parental rights have already been terminated. This allows the legal guardian to petition for adoption once parental rights have terminated and reduce time that a child may be a legal orphan.

- f. Expansion of venue options for adoptions*

This bill expands venue options to allow a request for readoption of a nondependent child to be filed in a court in a county where:

- the petitioner resides; the child was born or now resides;
- an office of the agency that placed the child for adoption is located;
- an office of the social services department or a public adoption agency that is investigating the petition is located;
- the county in which a placing birth parent resided when the adoptive placement agreement, consent, or relinquishment was signed;
- the county in which a placing birth parent resided when the petition was filed;
- and
- the county in which the child was freed for adoption.

The bill also allows a step-parent adoption request or an adoption request by a domestic partner to be filed in any of the above counties as well, and must include the post-adoption contact agreement if one exists.

As the result of the venue expansion, this bill also changes the rules on where a prospective adoptive child can live and seeks to limit concealment of the child. During the pendency of an adoption, the bill provides that the child proposed to be adopted cannot be concealed from the agency investigating the adoption or from the court with jurisdiction over the proceedings. The bill also provides that the child cannot be removed from the county of the petitioner's residence at time of placement without obtaining court permission, as provided.

- g. Child's pre- and post-adoption name must be listed in the adoption order.*

This bill also requires that an adoption order include not just the adopted child's name after the adoption, but also the child's name prior to the adoption. The sponsors argue that with newer, more stringent federal identification laws, it is difficult for adoptive

parents to obtain social security numbers for their adopted children without a court order listing the child's birth name. The child's birth name is already included in the adoption request. This change would include the name of the child before the adoption in the adoption order to make it easier to obtain a social security number for the child.

The bill's sponsor, the Academy of California Adoption-ART Lawyers (ACAL), writes:

Part of ACAL's mission is to provide professional, public, and judicial education on adoption, assisted reproduction, guardianship, foster care proceedings, and legislation. We encourage fair and balanced family formation laws and regulations and seek to prevent exploitation of those involved in these matters. AB 993 will appropriately modernize several adoption and assisted reproduction-related laws to establish more fairness and better reflect current practice and realities.

SUPPORT

Academy of California Adoption-ART Lawyers (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 429 (Dahle, 2021) as of January 1, 2023, eliminates the provisions governing the confidentiality of proceedings and records under the Uniform Parentage Act (UPA), except in parentage cases involving assisted reproduction. That bill is pending in the Senate Appropriations Committee.

Prior Legislation: See Comment 1.

PRIOR VOTES:

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
