

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

AB 746 (Cervantes)  
Version: June 14, 2021  
Hearing Date: June 29, 2021  
Fiscal: No  
Urgency: No  
JT

**SUBJECT**

Adoption: stepparent adoption

**DIGEST**

This bill clarifies that (1) there is no minimum amount of time that a couple must be in a legally-recognized union before becoming eligible for stepparent adoption, and (2) the parties cannot be required to provide verification of their income or education.

**EXECUTIVE SUMMARY**

Existing law establishes a streamlined process for stepparent adoption – applicable when, during the marriage, domestic partnership, or civil union from another jurisdiction, one of the spouses or partners gave birth to the child or the child was born through a gestational surrogacy process brought about by one or both of the spouses or partners – by providing that, unless a court orders otherwise, the stepparent adoption is not subject to a home investigation or home study, certain costs, or an adoption hearing. Under existing law, there is no minimum period that the couple must be married, in a domestic partnership, or in a civil union before the adoption may be finalized. Nevertheless, there is some confusion as to this point and some courts have required couples to have been in a legally-recognized union for at least a year before the adoption will be granted. Similarly, while there is no statutory requirement that the parties verify their income or education, the author reports that couples have been told that this information must be provided in order for the adoption to be granted.

This bill clarifies that, in stepparent adoptions, the parties need not have been spouses or partners for a minimum period of time before the adoption is granted. The bill also clarifies that the parties cannot be required to provide verification of their income or education. The bill is author-sponsored and has no support or opposition.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that an unmarried minor child may be adopted by any adult, subject to the rules prescribed in Family Code section 8600 et seq.<sup>1</sup> Establishes categories of adoptions, including adoptions by relative caregivers or foster parents (§ 8730 et seq.), agency adoptions (§ 8700 et seq.), independent adoptions (§ 8800 et seq.), intercountry adoptions (§ 8900 et seq.), stepparent adoptions (§ 9000 et seq.), and adoptions of adults and married minors (§ 9300 et seq.).
- 2) Establishes a streamlined process for stepparent adoption – applicable when, during the marriage, domestic partnership, or civil union from another jurisdiction, one of the spouses or partners gave birth to the child or the child was born through a gestational surrogacy process brought about by one or both of the spouses or partners – by providing that, unless a court orders otherwise, the stepparent adoption is not subject to a home investigation or home study, certain costs, or an adoption hearing. (§ 9000.5 (a), (b).)
- 3) Establishes requirements for providing notice to, and obtaining the consent of, others with a claim to parentage, including providing certain attestations, enabling the court to hold a hearing, and authenticating the parent’s consent. (§§ 9000.5(c), (d), (e), 9003, 9005.) Requires the court to dismiss the adoption petition if a birth parent refuses to give required consent. (§ 9006(b).)
- 4) Provides, with specified exceptions, that an action or proceeding of any kind to nullify an adoption must be commenced within one year after the entry of the order. (§ 9102.)

This bill:

- 1) Clarifies that, in stepparent adoptions, the parties need not have been spouses or partners for a minimum period of time before the adoption is granted.
- 2) Clarifies that the parties cannot be required to provide verification of their income or education.

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<sup>1</sup> All further statutory references are to the Family Code.

## COMMENTS

### 1. Stepparent adoptions

The various statutory categories of adoptions include:

- agency adoptions, in which the child is placed in an adoptive home by a county adoption agency or a licensed adoption agency after relinquishment by, or other termination of parental rights of, the child's natural parent or parents (§ 8700 et seq.);
- adoptions by relative caregivers or foster parents (§ 8730 et seq.);
- independent adoptions, in which the child is placed directly in an adoptive home by the child's natural parent or parents with or without the assistance of a third party, such as an attorney (§ 8800 et seq.);
- intercountry adoptions, in which the child to be adopted is born in a foreign country (§ 8900 et seq.);
- stepparent adoptions, in which the spouse or domestic partner of a child's natural parent seeks to adopt the child (§ 9000 et seq.); and
- adult adoptions, in which one adult adopts another (§ 9300 et seq.).

Stepparent adoption, which is the most common type of adoption in California, allows the spouse or partner of a child's parent to adopt that child. Before *Obergefell v. Hodges* (2015) 576 U.S. 644, in which the U.S. Supreme Court held that withholding marriage licenses from same-sex couples violated the equal protection and due process clauses of the 14th Amendment, many states refused to recognize same-sex unions and, as a result, refused to recognize that the children born to those unions were the children of both parents. To help protect LGBTQ families, AB 2344 (Ammiano, Ch. 636, Stats. 2014) established a streamlined process for stepparent adoption, applicable when a spouse or partner gave birth to the child during the marriage, domestic partnership,<sup>2</sup> or civil union from another jurisdiction, by providing that, unless a court orders otherwise, a stepparent adoption is not subject to a home investigation or home study, certain costs, or an adoption hearing. (§ 9000.5.) Last session, AB 1373 (Patterson, Ch. 192, Stats. 2019) clarified that the streamlined process for stepparent adoption applies where the child was born during the marriage or domestic partnership through a gestational surrogacy process brought about by one or both of the spouses or partners. (§ 9000.5.)

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<sup>2</sup> Existing law provides that registered domestic partners (no longer limited to same-sex couples following SB 30 [Wiener, Ch. 135, Stats. 2019]) have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. (§ 297.5(a).) California law does not provide for civil unions, but civil unions from other jurisdictions are recognized in California.

## 2. Clarifies stepparent adoption prerequisites

Existing law does not require that parties be married or in a domestic partnership for a minimum amount of time before the adoption may be granted. It does require that the child be born—whether by a spouse or partner giving birth to the child or by a gestational surrogacy process brought about by one or both of the spouses—during the marriage, domestic partnership, or civil union. As such, there is some practical minimum amount of time that must elapse before a stepparent adoption may be granted. Apart from logistical constraints, however, the statutory scheme imposes no minimum period of time that the spouses or partners must be together in a legal union before finalizing a stepparent adoption.

Despite statutory silence as to this issue, some courts have indicated that the Department of Social Services has adopted a policy that the parent and stepparent must be married for at least one year before the adoption.<sup>3</sup> However, there does not appear to be any such formal policy adopted by the department;<sup>4</sup> nor is there any mention of such a requirement on Judicial Branch’s website or on the form prescribed by Judicial Council that provides general information on adoptions.<sup>5</sup>

This bill clarifies that there is no minimum time period before a spouse or partner may apply for stepparent adoption. The bill also clarifies that the parties cannot be required to provide verification of their income or education. While there is no such statutory requirement, the author reports that couples have been told that this information must be provided in order for the adoption to be granted.

The author writes:

LGBTQIA+ prospective parents still encounter explicit or covert discrimination. Although not limited, there are challenges and barriers presented by the lack of alignment across counties to ensure parity for same-sex couples. AB 746 will clarify and codify language to ensure no marriage requirements are made for same-sex couples. To ensure equity, this bill seeks to ensure that every county follows the same requirements for alignment. As experienced by families of color, LGBTQIA+ families also experience amplified versions of the same challenges faced by

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<sup>3</sup> See e.g. *Stepparent Adoption*, Superior Court of Santa Clara County website, available at: [https://www.sccourt.org/self\\_help/probate/adoption/stepparent\\_adoption.shtml](https://www.sccourt.org/self_help/probate/adoption/stepparent_adoption.shtml) (as of May 29, 2021); *Stepparent Adoption*, Superior Court of County of Orange website, available at: <https://www.occourts.org/self-help/familylaw/adoptions/stepparent.html> (as of May 29, 2021).

<sup>4</sup> *Stepparent Adoption*, Department of Social Services website, available at <https://www.cdss.ca.gov/benefits-services/adoption-services/stepparent-adoption> (as of May 29, 2021).

<sup>5</sup> *ADOPT-050-INFO How to Adopt a Child in California* (Rev. Jan. 1, 2021), Judicial Council website, available at <https://www.courts.ca.gov/documents/adopt050info.pdf> (as of May 29, 2021).

heterosexual couples seeking to adopt before, during, and after the adoption process.

Continuing to have this misalignment has continuously hindered and prolonged the process for many families, including LGBTQIA+ families wishing parentage. Families going through the stepparent adoption process already encounter a confusing and complex system with state and county policies that vary across the state.

AB 746 will further reduce barriers to stepparent adoptions by clarifying that in stepparent adoptions, the parties are not required to have been married or in a domestic partnership for a minimum period before the adoption. This bill will codify the elimination of a minimum marriage requirement into law that applies to all couples seeking a stepparent adoption and ensures that parentage laws reflect and further protect all families in our state.

#### **SUPPORT**

None known

#### **OPPOSITION**

None known

#### **RELATED LEGISLATION**

Pending Legislation: AB 993 (Patterson, 2021) makes various changes to adoption processes. The bill will be heard in this Committee on July 6, 2021.

Prior Legislation: *See* Comment 1.

#### **PRIOR VOTES:**

Assembly Floor (Ayes 63, Noes 5)

Assembly Judiciary Committee (Ayes 9, Noes 1)

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