

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2020

Introduced by Assembly Member Fletcher

February 17, 2010

An act to amend Sections ~~7573, 7612, 7630, 7646, 7630, 7662, 7667,~~ and 8710 of, and to repeal Section 7631 of, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, as amended, Fletcher. Family law.

Under existing law, a man is presumed to be a child's father if he marries or attempts to marry the child's mother or if he holds the child out as his own, as specified. Existing law provides that the presumption of paternity arising under these circumstances is rebuttable, and is rebutted by a judgment establishing paternity by another man. Existing law provides that if conflicting presumptions of paternity arise, the court is required to determine which presumption is founded on the weightier considerations of policy and logic. Under existing law, a voluntary declaration of paternity has the force and effect of a judgment of paternity, except as provided.

This bill would provide that a judgment of paternity by another man does not rebut a presumption of paternity if that judgment was obtained by a plaintiff seeking a child support order against the father or as the result of a voluntary declaration of paternity, and would require the court in those cases to determine which presumption is founded on the weightier considerations of policy and logic. The bill would provide that if another man is presumed to be the child's father, a voluntary

~~declaration of paternity is only valid with that other man's written consent.~~

~~Existing law provides that a motion to set aside a judgment of paternity may be brought by the child's mother or the previously established father within 2 years of the judgment. *man may bring an action at any time to determine that he is the father of a child having no presumed father.* Under existing law, a man who is not a presumed father may bring an action to establish that he is the natural father of ~~the~~ a child having a presumed father if the mother has relinquished for, or consents to, the adoption of the child, ~~as specified and requires that he bring this action within 30 days after (1) he is served with notice that he is or could be the father or (2) the birth of the child, whichever is later.~~~~

~~This bill would include presumed fathers among those who can bring an action to set aside a judgment of paternity during that 2-year period. The~~

~~This bill would delete these provisions and would instead provide that a man may bring an action at any time to establish that he is the father of a child, regardless of whether he is a presumed father subject to a specified exception.~~

Existing law provides that if a mother consents to, or relinquishes for, the adoption of a child, a petition to terminate the parental rights of the father is required, subject to specified exceptions, and an action to terminate the parental rights of a father shall be set for a hearing.

This bill would authorize the court in an action to terminate parental rights to dispense with a hearing and issue an ex parte order terminating parental rights if the identity or whereabouts of the alleged father is unknown, he has been served with a written notice of his alleged paternity and the potential adoption and has failed to respond, or he has signed a waiver of his right to notice or a denial of paternity.

Existing law provides that if a child is being considered for adoption, the State Department of Social Services or licensed adoption agency is required to first consider adoptive placement in the home of a relative, unless it is not in the child's best interest, or if other specified conditions exist.

This bill would specify that a parent's refusal to place the child with relatives or siblings is a sufficient basis for the department or licensed adoption agency to determine that the placement is not in the child's best interest, except as provided.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 7573 of the Family Code is amended to~~
2 ~~read:~~
3 ~~7573.—Except as provided in Sections 7575, 7576, 7577, and~~
4 ~~7612, a completed voluntary declaration of paternity, as described~~
5 ~~in Section 7574, that has been filed with the Department of Child~~
6 ~~Support Services shall establish the paternity of a child and shall~~
7 ~~have the same force and effect as a judgment for paternity issued~~
8 ~~by a court of competent jurisdiction. The voluntary declaration of~~
9 ~~paternity shall be recognized as a basis for the establishment of an~~
10 ~~order for child custody, visitation, or child support. However, if~~
11 ~~another man is presumed to be the child’s father under Section~~
12 ~~7611, a voluntary declaration of paternity is valid only with that~~
13 ~~other man’s written consent.~~
14 ~~SEC. 2.—Section 7612 of the Family Code is amended to read:~~
15 ~~7612. (a) Except as provided in Chapter 1 (commencing with~~
16 ~~Section 7540) and Chapter 3 (commencing with Section 7570) of~~
17 ~~Part 2 or in Section 20102, a presumption under Section 7611 is~~
18 ~~a rebuttable presumption affecting the burden of proof and may~~
19 ~~be rebutted in an appropriate action only by clear and convincing~~
20 ~~evidence.~~
21 ~~(b) If two or more presumptions arise under Section 7610 or~~
22 ~~7611 that conflict with each other, or if a presumption under~~
23 ~~Section 7611 conflicts with a claim pursuant to Section 7610, the~~
24 ~~presumption which on the facts is founded on the weightier~~
25 ~~considerations of policy and logic controls.~~
26 ~~(c) The presumption under Section 7611 is rebutted by a~~
27 ~~judgment establishing paternity of the child by another man, unless~~
28 ~~that judgment was obtained by a plaintiff seeking a child support~~
29 ~~order against the father or as the result of a voluntary declaration~~
30 ~~of paternity, in which case the court shall decide the issue of~~
31 ~~paternity pursuant to subdivision (b). A motion to challenge a~~
32 ~~judgment of paternity shall be brought within the time period~~
33 ~~specified in Section 7646.~~

1 ~~SEC. 3.~~

2 SECTION 1. Section 7630 of the Family Code is amended to
3 read:

4 7630. (a) A child, the child’s natural mother, a man presumed
5 to be the child’s father under subdivision (a), (b), or (c) of Section
6 7611, an adoption agency to whom the child has been relinquished,
7 or a prospective adoptive parent of the child may bring an action
8 as follows:

9 (1) At any time for the purpose of declaring the existence of the
10 father and child relationship presumed under subdivision (a), (b),
11 or (c) of Section 7611.

12 (2) For the purpose of declaring the nonexistence of the father
13 and child relationship presumed under subdivision (a), (b), or (c)
14 of Section 7611 only if the action is brought within a reasonable
15 time after obtaining knowledge of relevant facts. After the
16 presumption has been rebutted, paternity of the child by another
17 man may be determined in the same action, if he has been made
18 a party.

19 (b) Any interested party may bring an action at any time for the
20 purpose of determining the existence or nonexistence of the father
21 and child relationship presumed under subdivision (d) or (f) of
22 Section 7611.

23 (c) Except as to cases coming within Chapter 1 (commencing
24 with Section 7540) of Part 2, an action to determine the existence
25 of the father and child relationship may be brought by the child or
26 personal representative of the child, the Department of Child
27 Support Services, the mother or the personal representative or a
28 parent of the mother if the mother has died or is a minor, a man
29 alleged or alleging himself to be the father, or the personal
30 representative or a parent of the alleged father if the alleged father
31 has died or is a minor.

32 (d) (1) If a proceeding has been filed under Chapter 2
33 (commencing with Section 7820) of Part 4, an action under
34 subdivision (a) or (b) shall be consolidated with that proceeding.
35 The parental rights of the presumed father shall be determined as
36 set forth in Sections 7820 to 7829, inclusive.

37 (2) If a proceeding pursuant to Section 7662 has been filed under
38 Chapter 5 (commencing with Section 7660), an action under
39 subdivision (c) shall be consolidated with that proceeding. The

1 parental rights of the alleged natural father shall be determined as
2 set forth in Section 7664.

3 (3) The consolidated action under paragraph (1) or (2) shall be
4 heard in the court in which the proceeding under Section 7662 or
5 Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless
6 the court finds, by clear and convincing evidence, that transferring
7 the action to the other court poses a substantial hardship to the
8 petitioner. Mere inconvenience does not constitute a sufficient
9 basis for a finding of substantial hardship. If the court determines
10 there is a substantial hardship, the consolidated action shall be
11 heard in the court in which the paternity action is filed.

12 (e) (1) If any prospective adoptive parent who has physical
13 custody of the child, or any licensed California adoption agency
14 that has legal custody of the child, has not been joined as a party
15 to an action to determine the existence of a father and child
16 relationship under subdivision (a), (b), or (c), or an action for
17 custody by the alleged natural father, the court shall join the
18 prospective adoptive parent or licensed California adoption agency
19 as a party upon application or on its own motion, without the
20 necessity of a motion for joinder. A joined party shall not be
21 required to pay a fee in connection with this action.

22 (2) If a man brings an action to determine paternity and custody
23 of a child who he has reason to believe is in the physical or legal
24 custody of an adoption agency, or of one or more persons other
25 than the child's mother who are prospective adoptive parents, he
26 shall serve his entire pleading on, and give notice of all proceedings
27 to, the adoption agency or the prospective adoptive parents, or
28 both.

29 (f) A party to an assisted reproduction agreement may bring an
30 action at any time to establish a parent and child relationship
31 consistent with the intent expressed in that assisted reproduction
32 agreement.

33 ~~SEC. 4.~~

34 ~~SEC. 2.~~ Section 7631 of the Family Code is repealed.

35 ~~SEC. 5.~~ Section 7646 of the Family Code is amended to read:

36 ~~7646. (a) Notwithstanding any other provision of law, a~~
37 ~~judgment establishing paternity may be set aside or vacated upon~~
38 ~~a motion by the previously established mother of a child, the~~
39 ~~previously established father of a child, a man presumed to be the~~
40 ~~father pursuant to Section 7611, the child, or the legal~~

1 representative of any of these persons if genetic testing indicates
 2 that the previously established father of a child is not the biological
 3 father of the child. The motion shall be brought within one of the
 4 following time periods:

5 (1) ~~Within a two-year period commencing with the date on~~
 6 ~~which the previously established father or presumed father knew~~
 7 ~~or should have known of a judgment that established the previously~~
 8 ~~established father as the father of the child or commencing with~~
 9 ~~the date the previously established father or presumed father knew~~
 10 ~~or should have known of the existence of an action to adjudicate~~
 11 ~~the issue of paternity, whichever is first, except as provided in~~
 12 ~~paragraph (2) or (3) of this subdivision.~~

13 (2) ~~Within a two-year period commencing with the date of the~~
 14 ~~child's birth if paternity was established by a voluntary declaration~~
 15 ~~of paternity. Nothing in this paragraph shall bar any rights under~~
 16 ~~subdivision (e) of Section 7575.~~

17 (3) ~~In the case of any previously established father who is the~~
 18 ~~legal father as a result of a default judgment as of the effective~~
 19 ~~date of this section, within a two-year period from January 1, 2005,~~
 20 ~~to December 31, 2006, inclusive.~~

21 (b) ~~Subdivision (a) does not apply if the child is presumed to~~
 22 ~~be a child of a marriage pursuant to Section 7540.~~

23 (e) ~~Reconsideration of a motion brought under paragraph (3)~~
 24 ~~of subdivision (a) may be requested and granted if the following~~
 25 ~~requirements are met:~~

26 (1) ~~The motion was filed with the court between September 24,~~
 27 ~~2006, and December 31, 2006, inclusive.~~

28 (2) ~~The motion was denied solely on the basis that it was~~
 29 ~~untimely.~~

30 (3) ~~The request for reconsideration of the motion is filed on or~~
 31 ~~before December 31, 2009.~~

32 ~~SEC. 6.~~

33 *SEC. 3.* Section 7662 of the Family Code is amended to read:

34 7662. (a) If a mother relinquishes for or consents to, or
 35 proposes to relinquish for or consent to, the adoption of a child,
 36 or if a child otherwise becomes the subject of an adoption
 37 proceeding, the agency or person to whom the child has been or
 38 is to be relinquished, or the mother or the person having physical
 39 or legal custody of the child, or the prospective adoptive parent,

1 shall file a petition to terminate the parental rights of the father,
2 unless one of the following occurs:

3 (1) The father’s relationship to the child has been previously
4 terminated or determined not to exist by a court.

5 (2) The father has been served as prescribed in Section 7666
6 with a written notice alleging that he is or could be the natural
7 father of the child to be adopted or placed for adoption and has
8 failed to bring an action for the purpose of declaring the existence
9 of the father and child relationship pursuant to subdivision (c) of
10 Section 7630 within 30 days of service of the notice or the birth
11 of the child, whichever is later.

12 (3) The alleged father has executed a written form developed
13 by the department to waive notice, to deny his paternity, relinquish
14 the child for adoption, or consent to the adoption of the child.

15 (b) The birth father may validly execute a waiver or denial of
16 paternity before or after the birth of the child, and once signed, no
17 notice of, relinquishment for, or consent to adoption of the child
18 shall be required from the birth father for the adoption to proceed.

19 (c) All proceedings affecting a child under Divisions 8
20 (commencing with Section 3000) to 11 (commencing with Section
21 6500), inclusive, and Parts 1 (commencing with Section 7500) to
22 3 (commencing with Section 7600), inclusive, of this division,
23 other than an action brought pursuant to this section, shall be stayed
24 pending final determination of proceedings to terminate the parental
25 rights of the father pursuant to this section.

26 (d) Nothing in this section may limit the jurisdiction of the court
27 pursuant to Part 3 (commencing with Section 6240) and Part 4
28 (commencing with Section 6300) of Division 10 with respect to
29 domestic violence orders.

30 ~~SEC. 7.~~

31 *SEC. 4.* Section 7667 of the Family Code is amended to read:

32 7667. (a) Notwithstanding any other provision of law, an action
33 to terminate the parental rights of a father of a child as specified
34 in this part shall be set for hearing not more than 45 days after
35 filing of the petition therefor and completion of service thereon or
36 the entry of an order dispensing with notice of the proceedings.
37 The petition shall either specify the date of the hearing or state
38 that a hearing will be held on a date as determined pursuant to this
39 section, which shall be separately noticed.

1 (b) The matter so set shall have precedence over all other civil
2 matters on the date set for trial, except an action to terminate
3 parental rights pursuant to Part 4 (commencing with Section 7800).

4 (c) The court may dispense with a hearing and issue an ex parte
5 order terminating parental rights if any of the following apply:

- 6 (1) The identity or whereabouts of the father are unknown.
- 7 (2) The alleged father has validly executed a waiver of the right
8 to notice or a waiver or denial of paternity.
- 9 (3) The alleged father has been served with written notice of
10 his alleged paternity and the proposed adoption, and he has failed
11 to bring an action pursuant to subdivision (c) of Section 7630
12 within 30 days of service of the notice or the birth of the child,
13 whichever is later.

14 ~~SEC. 8.~~

15 *SEC. 5.* Section 8710 of the Family Code is amended to read:

16 8710. (a) If a child is being considered for adoption, the
17 department or licensed adoption agency shall first consider adoptive
18 placement in the home of a relative or, in the case of an Indian
19 child, according to the placement preferences and standards set
20 out in subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section
21 361.31 of the Welfare and Institutions Code. However, if a relative
22 is not available, if placement with an available relative is not in
23 the child’s best interest, or if placement would permanently
24 separate the child from other siblings who are being considered
25 for adoption or who are in foster care and an alternative placement
26 would not require the permanent separation, the foster parent or
27 parents of the child shall be considered with respect to the child
28 along with all other prospective adoptive parents where all of the
29 following conditions are present:

- 30 (1) The child has been in foster care with the foster parent or
31 parents for a period of more than four months.
- 32 (2) The child has substantial emotional ties to the foster parent
33 or parents.
- 34 (3) The child’s removal from the foster home would be seriously
35 detrimental to the child’s well-being.
- 36 (4) The foster parent or parents have made a written request to
37 be considered to adopt the child.

38 (b) In the case of an Indian child whose foster parent or parents
39 or other prospective adoptive parents do not fall within the
40 placement preferences established in subdivision (c) or (d) of

1 Section 361.31 of the Welfare and Institutions Code, the foster
2 parent or parents or other prospective adoptive parents shall only
3 be considered if the court finds, supported by clear and convincing
4 evidence, that good cause exists to deviate from these placement
5 preferences.

6 (c) Except as required by the Indian Child Welfare Act (25
7 U.S.C. Sec. 1901 et seq.), the refusal of a birth parent to place the
8 child with relatives or siblings shall be a sufficient basis for the
9 department or licensed adoption agency to find that the placement
10 is not in the best interest of the child.

11 (d) This section does not apply to a child who has been adjudged
12 a dependent of the juvenile court pursuant to Section 300 of the
13 Welfare and Institutions Code, or to a child whose prospective
14 adoptive parents were selected pursuant to subdivision (f) of
15 Section 8700 or Section 8801.

16 (e) Nothing in this section shall be construed to require a child
17 who has been placed for adoption to be removed from the adoptive
18 home for the purpose of placement with siblings or other relatives.