

AMENDED IN ASSEMBLY APRIL 5, 2010
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 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 *also* 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~~

Existing law provides that a 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 a child having a presumed father if the mother has relinquished for, or consents to, the adoption of the child, 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 delete ~~these~~ *the latter provisions relating to time periods in which a man may bring an action to establish paternity and*

would instead provide that a man may bring an action at any time to establish that he is the father of a child, 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 7630 of the Family Code is amended to
2 read:

3 7630. (a) A child, the child's natural mother, a man presumed
4 to be the child's father under subdivision (a), (b), or (c) of Section
5 7611, an adoption agency to whom the child has been relinquished,
6 or a prospective adoptive parent of the child may bring an action
7 as follows:

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

11 (2) For the purpose of declaring the nonexistence of the father
12 and child relationship presumed under subdivision (a), (b), or (c)
13 of Section 7611 only if the action is brought within a reasonable
14 time after obtaining knowledge of relevant facts. After the

1 presumption has been rebutted, paternity of the child by another
2 man may be determined in the same action, if he has been made
3 a party.

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

8 (c) Except as to cases coming within Chapter 1 (commencing
9 with Section 7540) of Part 2, an action to determine the existence
10 of the father and child relationship may be brought by the child or
11 personal representative of the child, the Department of Child
12 Support Services, the mother or the personal representative or a
13 parent of the mother if the mother has died or is a minor, a man
14 alleged or alleging himself to be the father, or the personal
15 representative or a parent of the alleged father if the alleged father
16 has died or is a minor.

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

22 (2) If a proceeding pursuant to Section 7662 has been filed under
23 Chapter 5 (commencing with Section 7660), an action under
24 subdivision (c) shall be consolidated with that proceeding. The
25 parental rights of the alleged natural father shall be determined as
26 set forth in Section 7664.

27 (3) The consolidated action under paragraph (1) or (2) shall be
28 heard in the court in which the proceeding under Section 7662 or
29 Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless
30 the court finds, by clear and convincing evidence, that transferring
31 the action to the other court poses a substantial hardship to the
32 petitioner. Mere inconvenience does not constitute a sufficient
33 basis for a finding of substantial hardship. If the court determines
34 there is a substantial hardship, the consolidated action shall be
35 heard in the court in which the paternity action is filed.

36 (e) (1) If any prospective adoptive parent who has physical
37 custody of the child, or any licensed California adoption agency
38 that has legal custody of the child, has not been joined as a party
39 to an action to determine the existence of a father and child
40 relationship under subdivision (a), (b), or (c), or an action for

1 custody by the alleged natural father, the court shall join the
2 prospective adoptive parent or licensed California adoption agency
3 as a party upon application or on its own motion, without the
4 necessity of a motion for joinder. A joined party shall not be
5 required to pay a fee in connection with this action.

6 (2) If a man brings an action to determine paternity and custody
7 of a child who he has reason to believe is in the physical or legal
8 custody of an adoption agency, or of one or more persons other
9 than the child’s mother who are prospective adoptive parents, he
10 shall serve his entire pleading on, and give notice of all proceedings
11 to, the adoption agency or the prospective adoptive parents, or
12 both.

13 (f) A party to an assisted reproduction agreement may bring an
14 action at any time to establish a parent and child relationship
15 consistent with the intent expressed in that assisted reproduction
16 agreement.

17 SEC. 2. Section 7631 of the Family Code is repealed.

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

19 7662. (a) If a mother relinquishes for or consents to, or
20 proposes to relinquish for or consent to, the adoption of a child,
21 or if a child otherwise becomes the subject of an adoption
22 proceeding, the agency or person to whom the child has been or
23 is to be relinquished, or the mother or the person having physical
24 or legal custody of the child, or the prospective adoptive parent,
25 shall file a petition to terminate the parental rights of the father,
26 unless one of the following occurs:

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

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

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

39 (b) The birth father may validly execute a waiver or denial of
40 paternity before or after the birth of the child, and once signed, no

1 notice of, relinquishment for, or consent to adoption of the child
2 shall be required from the birth father for the adoption to proceed.

3 (c) All proceedings affecting a child under Divisions 8
4 (commencing with Section 3000) to 11 (commencing with Section
5 6500), inclusive, and Parts 1 (commencing with Section 7500) to
6 3 (commencing with Section 7600), inclusive, of this division,
7 other than an action brought pursuant to this section, shall be stayed
8 pending final determination of proceedings to terminate the parental
9 rights of the father pursuant to this section.

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

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

15 7667. (a) Notwithstanding any other provision of law, an action
16 to terminate the parental rights of a father of a child as specified
17 in this part shall be set for hearing not more than 45 days after
18 filing of the petition therefor and completion of service thereon or
19 the entry of an order dispensing with notice of the proceedings.
20 The petition shall either specify the date of the hearing or state
21 that a hearing will be held on a date as determined pursuant to this
22 section, which shall be separately noticed.

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

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

28 (1) The identity or whereabouts of the father are unknown.

29 (2) The alleged father has validly executed a waiver of the right
30 to notice or a waiver or denial of paternity.

31 (3) The alleged father has been served with written notice of
32 his alleged paternity and the proposed adoption, and he has failed
33 to bring an action pursuant to subdivision (c) of Section 7630
34 within 30 days of service of the notice or the birth of the child,
35 whichever is later.

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

37 8710. (a) If a child is being considered for adoption, the
38 department or licensed adoption agency shall first consider adoptive
39 placement in the home of a relative or, in the case of an Indian
40 child, according to the placement preferences and standards set

1 out in subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section
2 361.31 of the Welfare and Institutions Code. However, if a relative
3 is not available, if placement with an available relative is not in
4 the child's best interest, or if placement would permanently
5 separate the child from other siblings who are being considered
6 for adoption or who are in foster care and an alternative placement
7 would not require the permanent separation, the foster parent or
8 parents of the child shall be considered with respect to the child
9 along with all other prospective adoptive parents where all of the
10 following conditions are present:

11 (1) The child has been in foster care with the foster parent or
12 parents for a period of more than four months.

13 (2) The child has substantial emotional ties to the foster parent
14 or parents.

15 (3) The child's removal from the foster home would be seriously
16 detrimental to the child's well-being.

17 (4) The foster parent or parents have made a written request to
18 be considered to adopt the child.

19 (b) In the case of an Indian child whose foster parent or parents
20 or other prospective adoptive parents do not fall within the
21 placement preferences established in subdivision (c) or (d) of
22 Section 361.31 of the Welfare and Institutions Code, the foster
23 parent or parents or other prospective adoptive parents shall only
24 be considered if the court finds, supported by clear and convincing
25 evidence, that good cause exists to deviate from these placement
26 preferences.

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

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

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

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