

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 960

Introduced by Assembly Member Chiu

February 26, 2015

An act to amend ~~Section 6306~~ Sections 7613 and 7613.5 of the Family Code, relating to ~~domestic violence: parentage~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 960, as amended, Chiu. ~~Prevention of domestic violence: protective orders.~~ Parentage: assisted reproduction.

Existing law provides that the spouse of a woman who conceives through assisted reproduction with semen donated by a man not her husband is treated as if he or she were the natural parent of the child. Existing law further provides that the donor of semen provided to a licensed physician or to a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated as if he were not the natural father of the child.

This bill would provide that the donor of semen for use in assisted reproduction is treated as if he were not the natural parent of the child if the semen was provided to a licensed physician and surgeon or a licensed sperm bank, the donor and the woman agreed in a writing prior to conception that the donor would not be a parent, or a court finds satisfactory evidence that, prior to conception, the donor and the woman intended to conceive through artificial reproduction and both the woman and the donor intended that the donor would not be a parent.

This bill would also create a new form for assisted reproduction that would provide clarity regarding a person's intent to be a legal parent if he or she is using assisted reproduction that results in a child at the

time of conception from a known sperm donor. The bill would also state that the use of this form, if signed prior to the conception of a child, is presumed to satisfy the writing requirement described above.

~~Existing law authorizes a court to issue an order to restrain a person to prevent acts of domestic violence, abuse, sexual abuse, and to provide for a separation of persons involved in domestic violence. Under existing law, prior to a hearing on the issuance or denial of an order for this purpose, the court is required to ensure that a search of specified records and databases is or has been conducted to determine if the subject of the proposed order has a prior criminal conviction, as specified. Under existing law, prior to deciding whether to issue an order or when determining appropriate temporary custody and visitation orders, a court is required to consider specified information obtained pursuant to that search.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

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 7613 of the Family Code is amended to
2 read:
3 7613. (a) ~~If, under the supervision of a licensed physician and~~
4 ~~surgeon and~~ *If a woman conceives through assisted reproduction*
5 ~~with semen donated by a man not her spouse, with the consent of~~
6 ~~her spouse, a woman conceives through assisted reproduction with~~
7 ~~semen donated by a man not her husband, the spouse another~~
8 ~~person, the other person is treated in law as if he or she were the~~
9 ~~natural parent of a child thereby conceived. The spouse's other~~
10 ~~person's consent shall be in writing and signed by both spouses.~~
11 ~~The physician and surgeon shall certify their signatures and the~~
12 ~~date of the assisted reproduction procedure, and retain the spouse's~~
13 ~~consent as part of the medical record, where it shall be kept~~
14 ~~confidential and in a sealed file. However, the physician and~~
15 ~~surgeon's failure to do so does not affect the parent and child~~
16 ~~relationship. All papers and records pertaining to the assisted~~
17 ~~reproduction procedure, whether part of the permanent record of~~
18 ~~a court or of a file held by the supervising physician and surgeon~~
19 ~~or elsewhere, are subject to inspection only upon an order of the~~

1 ~~court for good cause shown. the other person and the woman~~
2 ~~conceiving through assisted reproduction.~~

3 (b) (1) ~~The donor of semen provided to a licensed physician~~
4 ~~and surgeon or to a licensed sperm bank for use in assisted~~
5 ~~reproduction of by a woman other than the donor's spouse is treated~~
6 ~~in law as if he were not the natural parent of a child thereby~~
7 ~~conceived, unless otherwise agreed to in a writing signed by the~~
8 ~~donor and the woman prior to the conception of the child.~~
9 ~~conceived if any of the following are met:~~

10 (A) ~~The semen was provided to a licensed physician and surgeon~~
11 ~~or to a licensed sperm bank for use in assisted reproduction.~~

12 (B) ~~The donor and the woman agreed in a writing signed prior~~
13 ~~to conception that the donor would not be a parent.~~

14 (C) ~~A court finds satisfactory evidence that, prior to the~~
15 ~~conception of the child, the donor and the woman planned to~~
16 ~~conceive through assisted reproduction and that both the donor~~
17 ~~and the woman intended that the donor would not be a parent.~~

18 (2) ~~Paragraph (1) does not apply to a man who provided semen~~
19 ~~for use in assisted reproduction by a woman other than the man's~~
20 ~~spouse pursuant to a written agreement signed by the man and the~~
21 ~~woman prior to conception of the child stating that they intended~~
22 ~~for the man to be a parent.~~

23 SEC. 2. ~~Section 7613.5 of the Family Code is amended to read:~~

24 7613.5. (a) ~~An intended parent may, but is not required to, use~~
25 ~~the forms set forth in this section to demonstrate his or her intent~~
26 ~~to be a legal parent of a child conceived through assisted~~
27 ~~reproduction. These forms shall satisfy the writing requirement~~
28 ~~specified in Section 7613, and are designed to provide clarity~~
29 ~~regarding the intentions, at the time of conception, of intended~~
30 ~~parents using assisted reproduction. These forms do not affect any~~
31 ~~presumptions of parentage based on Section 7611, and do not~~
32 ~~preclude a court from considering any other claims to parentage~~
33 ~~under California statute or case law.~~

34 (b) ~~These forms apply only in very limited circumstances. Please~~
35 ~~read the forms carefully to see if you qualify for use of the forms.~~

36 (c) ~~These forms do not apply to assisted reproduction agreements~~
37 ~~for gestational carriers or surrogacy agreements.~~

38 (d) ~~Nothing in this section shall be interpreted to require the use~~
39 ~~of one of these forms to satisfy the writing requirement of Section~~
40 ~~7613.~~

1 (e) The following are the optional California Statutory Forms
2 for Assisted Reproduction:

3
4 **California Statutory Forms for Assisted Reproduction, Form 1:**

5
6 ~~Married Spouses or Registered Domestic Partners Using Assisted Reproduction~~
7 ~~to Conceive a Child~~ *Two People Using Assisted Reproduction to Conceive a*
8 *Child*

9 Use this form if: (1) You and the other person are married spouses or registered
10 domestic partners (including registered domestic partners or civil union partners
11 from another jurisdiction); (2) you *You* and the other *another* person are
12 conceiving a child through assisted reproduction using sperm and/or egg
13 donation; and (3) one of you will be giving birth.

14
15 **WARNING: Signing this form does not terminate the parentage claim of**
16 **a sperm donor.** A sperm donor’s claim to parentage is terminated if the sperm
17 is provided to a licensed physician or surgeon or to a licensed sperm bank prior
18 to ~~insemination~~ *insemination, or if you conceive without having sexual*
19 *intercourse and you have a written agreement signed by you, your spouse, and*
20 *the donor that you will conceive using assisted reproduction and do not intend*
21 *for the donor to be a parent, as required by Section 7613(b) of the Family*
22 *Code.*

23
24 The laws about parentage of a child are complicated. **You are strongly**
25 **encouraged to consult with an attorney about your rights.** Even if you do
26 not fill out this form, a spouse or domestic partner of the parent giving birth
27 is presumed to be a legal parent of any child born during the marriage or
28 domestic partnership.

29
30 _____

31
32 This form demonstrates your intent to be parents of the child you plan to
33 conceive through assisted reproduction using sperm and/or egg donation.

34
35 I, _____ (print name of spouse/partner), ~~am married to, or~~
36 ~~in a registered domestic partnership (including a registered domestic partnership~~
37 ~~or civil union from another jurisdiction)~~ with, a person who will give birth to
38 a child we plan to conceive through assisted reproduction using sperm and/or
39 egg donation: *person not giving birth), intend to be a parent of a child that*
40 _____ (print name of person giving birth) will or has

1 *conceived through assisted reproduction using sperm and/or egg donation. I*
2 *consent to the use of assisted reproduction by my spouse/~~domestic partner~~ to*
3 *~~conceive a child: the person who will give birth.~~ I INTEND to be a parent of*
4 *the child conceived.*

5
6 SIGNATURES

7
8 Intended parent who will give birth: _____ (print name)
9 _____ (signature) _____ (date)

10
11 Intended parent ~~spouse or registered domestic partner~~: *who will not give birth:*
12 _____ (print name)
13 _____ (signature) _____ (date)

14
15 _____
16
17 NOTARY ACKNOWLEDGMENT

18
19 State of California
20 County of _____)

21
22 On _____ before me, _____
23 (insert name and title of the officer)

24 personally appeared _____,
25 who proved to me on the basis of satisfactory evidence to be the person(s)
26 whose name(s) is/are subscribed to the within instrument and acknowledged
27 to me that he/she/they executed the same in his/her/their authorized capacity,
28 and that by his/her/their signature(s) on the instrument the person(s), or the
29 entity upon behalf of which the person(s) acted, executed the instrument.

30
31 I certify under PENALTY OF PERJURY under the laws of the State of
32 California that the foregoing paragraph is true and correct.

33
34 WITNESS my hand and official seal.

35
36 Signature _____ (Seal)

37
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40

1 **California Statutory Forms for Assisted Reproduction, Form 2:**

2
3 ~~Unmarried, Intended Parents Using Intended Parent’s Sperm to Conceive a~~
4 ~~Child~~ *Unmarried, Intended Parents Using Intended Parent’s Sperm to Conceive*
5 *a Child*

6 Use this form if: (1) Neither you or the other person are married or in a
7 registered domestic partnership (including a registered domestic partnership
8 or civil union from another state); (2) one of you will give birth to a child
9 conceived through assisted reproduction using the intended parent’s sperm;
10 and (3) you both intend to be parents of that child.

11
12 Do not use this form if you are conceiving using a surrogate.

13
14 **WARNING:** If you do not sign this form, *or a similar agreement*, you may be
15 treated as a sperm donor if ~~your sperm is provided to a licensed physician or~~
16 ~~surgeon or to a licensed sperm bank prior to insemination~~ *you conceive without*
17 *having sexual intercourse* according to Section 7613(b) of the Family Code.
18

19 The laws about parentage of a child are complicated. **You are strongly**
20 **encouraged to consult with an attorney about your rights.**

21
22 _____

23
24 This form demonstrates your intent to be parents of the child you plan to
25 conceive through assisted reproduction using sperm donation.

26
27 I, _____ (print name of parent giving birth), plan to use
28 assisted reproduction with another intended parent who is providing sperm to
29 conceive the child. I am not married and am not in a registered domestic
30 partnership (including a registered domestic partnership or civil union from
31 another jurisdiction), and I INTEND for the person providing sperm to be a
32 parent of the child to be conceived.

33
34 I, _____ (print name of parent providing sperm), plan to
35 use assisted reproduction to conceive a child using my sperm with the parent
36 giving birth. I am not married and am not in a registered domestic partnership
37 (including a registered domestic partnership or civil union from another
38 jurisdiction), and I INTEND to be a parent of the child to be conceived.

39
40 SIGNATURES

1
 2 Intended parent giving birth: _____ (print name)
 3 _____ (signature) _____ (date)
 4

5 Intended parent providing sperm: _____ (print name)
 6 _____ (signature) _____ (date)
 7

8 _____
 9

10 NOTARY ACKNOWLEDGMENT

11
 12 State of California
 13 County of _____)
 14

15 On _____ before me, _____
 16 (insert name and title of the officer)

17 personally appeared _____,
 18 who proved to me on the basis of satisfactory evidence to be the person(s)
 19 whose name(s) is/are subscribed to the within instrument and acknowledged
 20 to me that he/she/they executed the same in his/her/their authorized capacity,
 21 and that by his/her/their signature(s) on the instrument the person(s), or the
 22 entity upon behalf of which the person(s) acted, executed the instrument.
 23

24 I certify under PENALTY OF PERJURY under the laws of the State of
 25 California that the foregoing paragraph is true and correct.
 26

27 WITNESS my hand and official seal.
 28

29 Signature _____ (Seal)
 30
 31
 32 _____
 33

34 **California Statutory Forms for Assisted Reproduction, Form 3:**

35
 36 Intended Parents Conceiving a Child Using Eggs from One Parent and the
 37 Other Parent Will Give Birth

38 Use this form if: You are conceiving a child using the eggs from one of you
 39 and the other person will give birth to the child; (2) and you both intend to be
 40 parents to that child.

1
2 Do not use this form if you are conceiving using a surrogate.

3
4 **WARNING: Signing this form does not terminate the parentage claim of**
5 **a spermdonor.** A sperm donor’s claim to parentage is terminated if the sperm
6 is provided to a licensed physician or surgeon or to a licensed sperm bank prior
7 to ~~insemination~~ *insemination, or if you conceive without having sexual*
8 *intercourse and you have a written agreement signed by you, your spouse, and*
9 *the donor that you will conceive using assisted reproduction and do not intend*
10 *for the donor to be a parent, as required by Section 7613(b) of the Family*
11 *Code.*

12
13 The laws about parentage of a child are complicated. **You are strongly**
14 **encouraged to consult with an attorney about your rights.**

15
16 _____

17
18 This form demonstrates your intent to be parents of the child you plan to
19 conceive through assisted reproduction using eggs from one parent and the
20 other parent will give birth to the child.

21
22 I, _____ (print name of parent giving birth), plan to use
23 assisted reproduction to conceive and give birth to a child with another person
24 who will provide eggs to conceive the child. I INTEND for the person providing
25 eggs to be a parent of the child to be conceived.

26
27 I, _____ (print name of parent providing eggs), plan to use
28 assisted reproduction to conceive a child with another person who will give
29 birth to the child conceived using my eggs. I INTEND to be a parent of the
30 child to be conceived.

31
32 SIGNATURES

33
34 Intended parent giving birth: _____ (print name)
35 _____ (signature) _____ (date)

36
37 Intended parent providing eggs: _____ (print name)
38 _____ (signature) _____ (date)

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40 _____

NOTARY ACKNOWLEDGMENT

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State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized capacity,
and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

California Statutory Forms for Assisted Reproduction, Form 4:

Intended Parent(s) Using a Known Sperm Donor to Conceive a Child

Use this form if: You are using a known sperm donor to conceive a child and
you do not intend for the donor to be a parent.

Do not use this form if you are conceiving using a surrogate.

**WARNING: Signing this form does not terminate the parentage claim of a
spermdonor. If you do not sign this form or a similar agreement, your sperm
donor may be treated as a parent unless the sperm is provided to a licensed
physician or surgeon or to a licensed sperm bank prior to insemination, or a
court finds that there is satisfactory evidence that you planned to conceive
through assisted reproduction and did not intend for the donor to be a parent,
as required by Section 7613(b) of the Family Code.**

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*The laws about parentage of a child are complicated. **You are strongly encouraged to consult with an attorney about your rights.***

This form demonstrates your intent that your sperm donor will not be a parent of the child you plan to conceive through assisted reproduction using sperm donation.

I, _____ (print name of parent giving birth), plan to use assisted reproduction to conceive using a sperm donor, and I DO NOT INTEND for the sperm donor to be a parent of the child to be conceived.

I, _____ (print name of sperm donor), plan to donate my sperm to _____ (print name of parent giving birth and second parent if applicable) I am not married and am not in a registered domestic partnership (including a registered domestic partnership or a civil union from another jurisdiction) with _____ (print name of parent giving birth), and I DO NOT INTEND to be a parent of the child to be conceived.

(If applicable) I, _____ (print name of intended parent not giving birth), I INTEND to be a parent of the child that _____ (print name of parent giving birth) will conceive through assisted reproduction using a sperm donor and I DO NOT INTEND to for the sperm donor to be a parent. I consent to the use of assisted reproduction by the person who will give birth.

SIGNATURES

*Intended parent giving birth: _____ (print name)
_____ (signature) _____ (date)*

*Sperm Donor: _____ (print name)
_____ (signature) _____ (date)*

*Intended parent not giving birth: _____ (print name)
_____ (signature) _____ (date)*

1 _____

2

3 *NOTARY ACKNOWLEDGMENT*

4

5 *State of California*

6 *County of _____)*

7

8 *On _____ before me, _____*

9 *(insert name and title of the officer)*

10 *personally appeared _____,*

11 *who proved to me on the basis of satisfactory evidence to be the person(s)*

12 *whose name(s) is/are subscribed to the within instrument and acknowledged*

13 *to me that he/she/they executed the same in his/her/their authorized capacity,*

14 *and that by his/her/their signature(s) on the instrument the person(s), or the*

15 *entity upon behalf of which the person(s) acted, executed the instrument.*

16

17 *I certify under PENALTY OF PERJURY under the laws of the State of*

18 *California that the foregoing paragraph is true and correct.*

19

20 *WITNESS my hand and official seal.*

21

22 *Signature _____ (Seal)*

23

24

25 ~~SECTION 1. Section 6306 of the Family Code is amended to~~

26 ~~read:~~

27 ~~6306. (a) Prior to a hearing on the issuance or denial of an~~

28 ~~order under this part, the court shall ensure that a search is or has~~

29 ~~been conducted to determine if the subject of the proposed order~~

30 ~~has a prior criminal conviction for a violent felony specified in~~

31 ~~Section 667.5 of the Penal Code or a serious felony specified in~~

32 ~~Section 1192.7 of the Penal Code; has a misdemeanor conviction~~

33 ~~involving domestic violence, weapons, or other violence; has an~~

34 ~~outstanding warrant; is currently on parole or probation; has a~~

35 ~~registered firearm; or has a prior restraining order or violation of~~

36 ~~a prior restraining order. The search shall be conducted of all~~

37 ~~records and databases readily available and reasonably accessible~~

38 ~~to the court, including, but not limited to, the following:~~

39 ~~(1) The California Sex and Arson Registry (CSAR).~~

40 ~~(2) The Supervised Release File.~~

1 ~~(3) State summary criminal history information maintained by~~
2 ~~the Department of Justice pursuant to Section 11105 of the Penal~~
3 ~~Code.~~

4 ~~(4) The Federal Bureau of Investigation's nationwide database.~~

5 ~~(5) Locally maintained criminal history records or databases.~~

6 ~~However, a record or database need not be searched if the~~
7 ~~information available in that record or database can be obtained~~
8 ~~as a result of a search conducted in another record or database.~~

9 ~~(b) (1) Prior to deciding whether to issue an order under this~~
10 ~~part or when determining appropriate temporary custody and~~
11 ~~visitation orders, the court shall consider the following information~~
12 ~~obtained pursuant to a search conducted under subdivision (a): a~~
13 ~~conviction for a violent felony specified in Section 667.5 of the~~
14 ~~Penal Code or a serious felony specified in Section 1192.7 of the~~
15 ~~Penal Code; a misdemeanor conviction involving domestic~~
16 ~~violence, weapons, or other violence; an outstanding warrant;~~
17 ~~parole or probation status; a prior restraining order; and violation~~
18 ~~of a prior restraining order.~~

19 ~~(2) Information obtained as a result of the search that does not~~
20 ~~involve a conviction described in this subdivision shall not be~~
21 ~~considered by the court in making a determination regarding the~~
22 ~~issuance of an order pursuant to this part. That information shall~~
23 ~~be destroyed and shall not become part of the public file in this or~~
24 ~~any other civil proceeding.~~

25 ~~(c) (1) After issuing its ruling, the court shall advise the parties~~
26 ~~that they may request the information described in subdivision (b)~~
27 ~~upon which the court relied. The court shall admonish the party~~
28 ~~seeking the proposed order that it is unlawful, pursuant to Sections~~
29 ~~11142 and 13303 of the Penal Code, to willfully release the~~
30 ~~information, except as authorized by law.~~

31 ~~(2) Upon the request of either party to obtain the information~~
32 ~~described in subdivision (b) upon which the court relied, the court~~
33 ~~shall release the information to the parties or, upon either party's~~
34 ~~request, to his or her attorney in that proceeding.~~

35 ~~(3) The party seeking the proposed order may release the~~
36 ~~information to his or her counsel, court personnel, and~~
37 ~~court-appointed mediators for the purpose of seeking judicial~~
38 ~~review of the court's order or for purposes of court proceedings~~
39 ~~under Section 213.5 of the Welfare and Institutions Code.~~

1 ~~(d) Information obtained as a result of the search conducted~~
2 ~~pursuant to subdivision (a) and relied upon by the court shall be~~
3 ~~maintained in a confidential case file and shall not become part of~~
4 ~~the public file in the proceeding or any other civil proceeding.~~
5 ~~However, the contents of the confidential case file shall be~~
6 ~~disclosed to the court-appointed mediator assigned to the case or~~
7 ~~to a child custody evaluator appointed by the court pursuant to~~
8 ~~Section 730 of the Evidence Code or Section 3111 of this code.~~
9 ~~All court-appointed mediators and child custody evaluators~~
10 ~~appointed or contracted by the court pursuant to Section 730 of~~
11 ~~the Evidence Code or Section 3111 of this code who may receive~~
12 ~~information from the search conducted pursuant to subdivision (a)~~
13 ~~shall be subject to, and shall comply with, the California Law~~
14 ~~Enforcement Telecommunications System policies, practices, and~~
15 ~~procedures adopted pursuant to Section 15160 of the Government~~
16 ~~Code.~~

17 ~~(e) If the results of the search conducted pursuant to subdivision~~
18 ~~(a) indicate that an outstanding warrant exists against the subject~~
19 ~~of the order, the court shall order the clerk of the court to~~
20 ~~immediately notify, by the most effective means available,~~
21 ~~appropriate law enforcement officials of the issuance and contents~~
22 ~~of any protective order and of any other information obtained~~
23 ~~through the search that the court determines is appropriate. The~~
24 ~~law enforcement officials so notified shall take all actions necessary~~
25 ~~to execute any outstanding warrants or any other actions, with~~
26 ~~respect to the restrained person, as appropriate and as soon as~~
27 ~~practicable.~~

28 ~~(f) If the results of the search conducted pursuant to subdivision~~
29 ~~(a) indicate that the subject of the order is currently on parole or~~
30 ~~probation, the court shall order the clerk of the court to immediately~~
31 ~~notify, by the most effective means available, the appropriate parole~~
32 ~~or probation officer of the issuance and contents of any protective~~
33 ~~order issued by the court and of any other information obtained~~
34 ~~through the search that the court determines is appropriate. That~~
35 ~~officer shall take all actions necessary to revoke any parole or~~
36 ~~probation, or any other actions, with respect to the restrained~~
37 ~~person, as appropriate and as soon as practicable.~~

38 ~~(g) Nothing in this section shall delay the granting of an~~
39 ~~application for an order that may otherwise be granted without the~~
40 ~~information resulting from the database search. If the court finds~~

1 ~~that a protective order under this part should be granted on the~~
2 ~~basis of the affidavit presented with the petition, the court shall~~
3 ~~issue the protective order and shall then ensure that a search is~~
4 ~~conducted pursuant to subdivision (a) prior to the hearing.~~

O