

ASSEMBLY BILL

No. 1049

Introduced by Assembly Member Patterson

February 26, 2015

An act to amend Sections 7612, 7613, 7960, and 7961 of, and to amend the heading of Part 7 (commencing with Section 7960) of Division 12 of, the Family Code, and to amend Section 305.6 of the Welfare and Institutions Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 1049, as introduced, Patterson. Parent and child relationship.

(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law provides that these presumptions are rebuttable.

This bill would state that a person's offer or refusal to sign a voluntary declaration of paternity may be used as a factor, but shall not be determinative as to the issue of legal parentage in any proceedings regarding the establishment or termination of parental rights.

(2) Existing law provides that the spouse of a woman who conceives through assisted reproduction with semen donated by a man not her husband, as specified, is treated in law as if he or she were the natural parent of a child thereby conceived. 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 in law as if he were not the natural father of a child thereby conceived.

This bill would additionally provide that the spouse of a woman who conceives through assisted reproduction with oocytes donated for reproductive purposes is treated in law as if he or she were the natural parent of the child, and the woman who conceives the child is treated in law as the natural parent unless the woman is a surrogate mother, as defined. The bill would further provide that the donor of oocytes provided to a licensed physician or to a licensed egg bank for use in assisted reproduction of a woman other than the donor, her spouse, or domestic partner is treated in law as if she were not the natural parent of a child thereby conceived, unless otherwise specified.

(3) Existing law requires a nonattorney surrogacy facilitator to direct his or her client to deposit client funds in an independent, bonded escrow account or a trust account maintained by an attorney, subject to specified withdrawal requirements.

This bill would additionally require a nonattorney donor facilitator to direct his or her client to deposit client funds, as specified above.

(4) Existing law prohibits a peace officer from taking into temporary custody, without a warrant, a newborn who is in a hospital if specified conditions exist, including that the newborn or his or her birth mother tested positive for illegal drugs, the newborn is the subject of a proposed adoption, and a Health Facility Minor Release Report has been completed by the hospital, as specified.

This bill would instead prohibit a peace officer or child welfare agency worker from taking into temporary custody, without a warrant, a newborn who is in a hospital, if among other conditions, the newborn appears to come within the description of a dependent child of the juvenile court. The bill would require a hospital, whenever it makes a report or referral to a child welfare agency or law enforcement agency regarding a newborn, to immediately advise the birth parent or parents in writing of the parent's right to contact an attorney or a licensed private adoption agency for assistance with placing the newborn for adoption, and to complete a Health Facility Minor Release Report upon request by a parent. The bill would require a child welfare agency worker who investigates the hospital report or referral to, prior to filing a dependency petition for a newborn who has not yet been discharged from the hospital, confirm that the hospital has advised the birth parent or parents in writing of the right to place the newborn for adoption and allow the parent a reasonable opportunity to place the newborn for adoption before the newborn is discharged from the hospital. By creating additional

duties for local officials, this bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 7612 of the Family Code is amended to
2 read:

3 7612. (a) Except as provided in Chapter 1 (commencing with
4 Section 7540) and Chapter 3 (commencing with Section 7570) of
5 Part 2 or in Section 20102, a presumption under Section 7611 is
6 a rebuttable presumption affecting the burden of proof and may
7 be rebutted in an appropriate action only by clear and convincing
8 evidence.

9 (b) If two or more presumptions arise under Section 7610 or
10 7611 that conflict with each other, or if a presumption under
11 Section 7611 conflicts with a claim pursuant to Section 7610, the
12 presumption which on the facts is founded on the weightier
13 considerations of policy and logic controls.

14 (c) In an appropriate action, a court may find that more than
15 two persons with a claim to parentage under this division are
16 parents if the court finds that recognizing only two parents would
17 be detrimental to the child. In determining detriment to the child,
18 the court shall consider all relevant factors, including, but not
19 limited to, the harm of removing the child from a stable placement
20 with a parent who has fulfilled the child’s physical needs and the
21 child’s psychological needs for care and affection, and who has
22 assumed that role for a substantial period of time. A finding of
23 detriment to the child does not require a finding of unfitness of
24 any of the parents or persons with a claim to parentage.

25 (d) Unless a court orders otherwise after making the
26 determination specified in subdivision (c), a presumption under

1 Section 7611 is rebutted by a judgment establishing parentage of
 2 the child by another person.

3 (e) Within two years of the execution of a voluntary declaration
 4 of paternity, a person who is presumed to be a parent under Section
 5 7611 may file a petition pursuant to Section 7630 to set aside a
 6 voluntary declaration of paternity. The court’s ruling on the petition
 7 to set aside the voluntary declaration of paternity shall be made
 8 taking into account the validity of the voluntary declaration of
 9 paternity, and the best interests of the child based upon the court’s
 10 consideration of the factors set forth in subdivision (b) of Section
 11 7575, as well as the best interests of the child based upon the
 12 nature, duration, and quality of the petitioning party’s relationship
 13 with the child and the benefit or detriment to the child of continuing
 14 that relationship. In the event of any conflict between the
 15 presumption under Section 7611 and the voluntary declaration of
 16 paternity, the weightier considerations of policy and logic shall
 17 control.

18 (f) A voluntary declaration of paternity is invalid if, at the time
 19 the declaration was signed, any of the following conditions exist:

20 (1) The child already had a presumed parent under Section 7540.

21 (2) The child already had a presumed parent under subdivision
 22 (a), (b), or (c) of Section 7611.

23 (3) The man signing the declaration is a sperm donor, consistent
 24 with subdivision (b) of Section 7613.

25 (g) *A person’s offer or refusal to sign a voluntary declaration*
 26 *of paternity may be used as a factor, but shall not be determinative,*
 27 *as to the issue of legal parentage in any proceedings regarding*
 28 *the establishment or termination of parental rights.*

29 SEC. 2. Section 7613 of the Family Code is amended to read:

30 7613. (a) If, under the supervision of a licensed physician and
 31 surgeon and with the consent of her spouse, *if married*, a woman
 32 conceives through assisted reproduction with semen donated by a
 33 man not her husband *or with oocytes donated for reproductive*
 34 *purposes*, the spouse is treated in law as if he or she were the
 35 natural parent of a child ~~thereby conceived~~. *conceived and the*
 36 *woman who conceives the child is treated in law as the natural*
 37 *parent unless the woman is a surrogate mother as defined under*
 38 *subdivision (f) of Section 7960.* The spouse’s consent shall be in
 39 writing and signed by both spouses. The physician and surgeon
 40 shall certify their signatures and the date of the assisted

1 reproduction procedure, and retain the spouse’s consent as part of
2 the medical record, where it shall be kept confidential and in a
3 sealed file. However, the physician and surgeon’s failure to do so
4 does not affect the parent and child relationship. All papers and
5 records pertaining to the assisted reproduction procedure, whether
6 part of the permanent record of a court or of a file held by the
7 supervising physician and surgeon or elsewhere, are subject to
8 inspection only upon an order of the court for good cause shown.

9 (b) The donor of semen provided to a licensed physician and
10 surgeon or to a licensed sperm bank for use in assisted reproduction
11 of a woman other than the donor’s spouse is treated in law as if
12 he were not the natural parent of a child thereby conceived, unless
13 otherwise agreed to in a writing signed by the donor and the woman
14 prior to the conception of the child.

15 (c) *The donor of oocytes provided to a licensed physician and*
16 *surgeon or to a licensed egg bank for use in assisted reproduction*
17 *of a woman other than the donor, her spouse, or domestic partner*
18 *is treated in law as if she were not the natural parent of a child*
19 *thereby conceived, unless otherwise agreed to in a writing signed*
20 *by the donor and the recipient of the oocytes prior to the conception*
21 *of the child.*

22 SEC. 3. The heading of Part 7 (commencing with Section 7960)
23 of Division 12 of the Family Code is amended to read:
24

25 ~~PART 7. SURROGACY FACILITATORS AND AND DONOR~~
26 ~~FACILITATORS, ASSISTED REPRODUCTION AGREEMENTS~~
27 ~~FOR GESTATIONAL CARRIERS, AND OOCYTE DONATIONS~~
28

29 SEC. 4. Section 7960 of the Family Code is amended to read:
30 7960. For purposes of this part, the following terms have the
31 following meanings:

32 (a) “Assisted reproduction agreement” has the same meaning
33 as defined in subdivision (b) of Section 7606.

34 (b) “Fund management agreement” means the agreement
35 between the intended parents and the surrogacy *or donor* facilitator
36 relating to the fee or other valuable consideration for services
37 rendered or that will be rendered by the surrogacy *or donor*
38 facilitator.

1 (c) “Intended parent” means an individual, married or unmarried,
2 who manifests the intent to be legally bound as the parent of a
3 child resulting from assisted reproduction.

4 (d) “Nonattorney surrogacy *or donor* facilitator” means a
5 surrogacy *or donor* practitioner who is not an attorney in good
6 standing licensed to practice law in this state.

7 (e) “Surrogacy *or donor* facilitator” means a person or
8 organization that engages in either of the following activities:

9 (1) Advertising for the purpose of soliciting parties to an assisted
10 reproduction agreement *or for the donation of oocytes for use by*
11 *a person other than the provider of the oocytes*, or acting as an
12 intermediary between the parties to an assisted reproduction
13 ~~agreement.~~ *agreement or oocyte donation.*

14 (2) Charging a fee or other valuable consideration for services
15 rendered relating to an assisted reproduction ~~agreement.~~ *agreement*
16 *or oocyte donation.*

17 (f) “Surrogate” means a woman who bears and carries a child
18 for another through medically assisted reproduction and pursuant
19 to a written agreement, as set forth in Sections 7606 and 7962.
20 Within the definition of surrogate are two different and distinct
21 types:

22 (1) “Traditional surrogate” means a woman who agrees to
23 gestate an embryo, in which the woman is the gamete donor and
24 the embryo was created using the sperm of the intended father or
25 a donor arranged by the intended parent or parents.

26 (2) “Gestational carrier” means a woman who is not an intended
27 parent and who agrees to gestate an embryo that is genetically
28 unrelated to her pursuant to an assisted reproduction agreement.

29 (g) “*Donor*” means a woman who provides her oocytes for use
30 *by another for the purpose of assisting the recipient of the oocytes*
31 *in having a child or children of her own.*

32 SEC. 5. Section 7961 of the Family Code is amended to read:

33 7961. (a) A nonattorney surrogacy *or donor* facilitator shall
34 direct the client to deposit all client funds into either of the
35 following:

36 (1) An independent, bonded escrow depository maintained by
37 a licensed, independent, bonded escrow company.

38 (2) A trust account maintained by an attorney.

39 (b) For purposes of this section, a nonattorney surrogacy *or*
40 *donor* facilitator may not have a financial interest in any escrow

1 company holding client funds. A nonattorney surrogacy *or donor*
2 facilitator and any of its directors or employees shall not be an
3 agent of any escrow company holding client funds.

4 (c) Client funds may only be disbursed by the attorney or escrow
5 agent as set forth in the assisted reproduction agreement and fund
6 management agreement.

7 (d) This section shall not apply to funds that are both of the
8 following:

9 (1) Not provided for in the fund management agreement.

10 (2) Paid directly to a medical doctor for medical services or a
11 psychologist for psychological services.

12 SEC. 6. Section 305.6 of the Welfare and Institutions Code is
13 amended to read:

14 305.6. (a) Any peace officer *or child welfare agency worker*
15 may, without a warrant, take into temporary custody a minor who
16 is in a hospital if the release of the minor to a prospective adoptive
17 parent or a representative of a licensed adoption agency poses an
18 immediate danger to the minor's health or safety.

19 (b) (1) Notwithstanding subdivision (a) and Section 305, a
20 peace officer *or child welfare agency worker* may not, without a
21 warrant, take into temporary custody a minor who is in a hospital
22 if all of the following conditions ~~exist~~: *exist at any time prior to*
23 *the minor's discharge from the hospital*:

24 (A) The minor is a newborn who ~~tested positive for illegal drugs~~
25 ~~or whose birth mother tested positive for illegal drugs~~: *is described*
26 *in Section 300*.

27 (B) The minor is the subject of a proposed adoption and a Health
28 Facility Minor Release Report, prescribed by the department, has
29 been completed by the hospital, including the marking of the boxes
30 applicable to an independent adoption or agency adoption planning,
31 and signed by the placing birth parent or birth parents, as well as
32 either the prospective adoptive parent or parents or an authorized
33 representative of a licensed adoption agency, prior to the discharge
34 of the birth parent or the minor from the hospital. Prior to signing
35 the Health Facility Minor Release Report, the birth parent or
36 parents shall be given a notice written in at least 14-point pica
37 type, containing substantially the following statements:

38 (i) That the Health Facility Minor Release Report does not
39 constitute consent to adoption of the minor by the prospective
40 adoptive parent or parents, or any other person.

1 (ii) That the Health Facility Minor Release Report does not
 2 constitute a relinquishment of parental rights for the purposes of
 3 adoption.

4 (iii) That the birth parent or parents or any person authorized
 5 by the birth parent or parents may reclaim the minor at any time
 6 from the prospective adoptive parent or parents or any other person
 7 to whom the minor was released by the hospital, as provided in
 8 Sections 8814.5, 8815, or 8700 of the Family Code.

9 This notice shall be signed by the birth parent or parents and
 10 attached to the Health Facility Minor Release Report, a copy of
 11 which shall be provided to the birth parent or parents by hospital
 12 personnel at the time the form is completed.

13 (C) The release of the minor to a prospective adoptive parent
 14 or parents or an authorized representative of a licensed adoption
 15 agency does not pose an immediate danger to the minor.

16 (D) An attorney or an adoption agency has provided
 17 documentation stating that he or she, or the agency, is representing
 18 the prospective adoptive parent or parents for purposes of the
 19 adoption. In the case of an independent adoption, as defined in
 20 Section 8524 of the Family Code, the attorney or adoption agency
 21 shall provide documentation stating that the prospective adoptive
 22 parent or parents have been informed that the child may be eligible
 23 for benefits provided pursuant to the Adoption Assistance Program,
 24 as set forth in Chapter 2.1 (commencing with Section 16115) of
 25 Part 4 of Division 9, only if, at the time the adoption request is
 26 filed, the child has met the requirements to receive federal
 27 supplemental security income benefits pursuant to Subchapter XVI
 28 (commencing with Section 1381) of Chapter 7 of Title 42 of the
 29 United States Code, as determined and documented by the federal
 30 Social Security Administration.

31 (E) The prospective adoptive parent or parents or their
 32 representative, or an authorized representative of a licensed
 33 adoption agency, provides all of the following to the peace officer
 34 ~~who is at the hospital or child welfare agency worker who seeks~~
 35 to take the minor into temporary custody:

36 (i) A fully executed copy of the Health Facility Minor Release
 37 Report.

38 (ii) A written ~~form, developed by the department,~~ *form* signed
 39 by either the prospective adoptive parent or parents or a

1 representative of the licensed adoption agency, which shall include
2 all of the following:

3 (I) A statement that the minor is the subject of a proposed
4 adoption.

5 (II) A declaration that the signer or signers will immediately
6 notify the county child welfare agency pursuant to Section 11165.9
7 of the Penal Code if the adoption plan is terminated for any reason,
8 and will not release the minor to the birth parent or parents or any
9 designee of the birth parent or parents until the county child welfare
10 agency or local law enforcement agency completes an investigation
11 and determines that release of the minor to the birth parent or
12 parents or a designee of the birth parent or parents will not create
13 an immediate risk to the health or safety of the minor.

14 (III) An agreement to provide a conformed copy of the adoption
15 request or guardianship petition to the county child welfare agency
16 within five business days after filing.

17 (IV) The names, identifying information, and contact
18 information for the minor, for each prospective adoptive parent,
19 and for each birth parent, to the extent that information is known.
20 In the case of an agency adoption where no prospective adoptive
21 parent or parents are identified at the time of the minor's release
22 from the hospital, the licensed adoption agency may provide the
23 information as it pertains to the licensed or certified foster home
24 into which the agency intends to place the minor.

25 (c) (1) In every independent adoption proceeding under this
26 section, the prospective adoptive parent or parents shall file with
27 the court either an adoption request within 10 working days after
28 execution of an adoption placement agreement, or a guardianship
29 petition within 30 calendar days after the child's discharge from
30 the hospital, whichever is earlier.

31 (2) If the adoption plan for a minor who was released from the
32 hospital pursuant to subdivision (b) is terminated for any reason,
33 the prospective adoptive parent or parents or licensed adoption
34 agency shall immediately notify the county child welfare agency.
35 The prospective adoptive parent or parents or licensed adoption
36 agency may not release the minor into the physical custody of the
37 birth parent or parents, or any designee of the birth parent or
38 parents, until the county child welfare agency or local law
39 enforcement agency completes an investigation and determines
40 that release of the minor to the birth parent or parents or a designee

1 of the birth parent or parents will not create an immediate risk to
2 the health or safety of the minor.

3 *(d) If a hospital makes a report or referral to a child welfare*
4 *agency or law enforcement agency regarding a minor newborn,*
5 *the hospital shall do both of the following:*

6 *(1) Immediately advise the birth parent or parents in writing of*
7 *the parent’s right to contact an attorney or a licensed private*
8 *adoption agency for assistance with placing the minor newborn*
9 *for adoption in accordance with this section.*

10 *(2) Upon request by a birth parent, complete a Health Facility*
11 *Minor Release Report and provide copies of the report to all*
12 *parties listed in subparagraph (B) of paragraph (1) of subdivision*
13 *(b), even if the minor newborn is ineligible for release at that time*
14 *for any reason.*

15 *(e) Prior to filing a petition pursuant to Section 300 regarding*
16 *a minor newborn who has not yet been discharged from the*
17 *hospital, a child welfare agency worker who investigates a hospital*
18 *report or referral regarding the minor newborn shall do all of the*
19 *following:*

20 *(1) Confirm that the hospital has advised the parent in writing*
21 *of the right to place the minor newborn for adoption.*

22 *(2) Allow a parent who wishes to place a minor newborn for*
23 *adoption a reasonable opportunity to do so at any time before the*
24 *minor newborn is discharged from the hospital.*

25 *(3) Implement interim measures, as necessary, to ensure the*
26 *safety and well-being of the minor newborn pending adoptive*
27 *placement, such as instructions to the hospital not to discharge*
28 *the minor newborn to any agency or person without approval from*
29 *the child welfare agency, which approval shall be given upon*
30 *satisfaction of the requirements of this section.*

31 ~~(d)~~

32 *(f) Nothing in this section is intended to create a duty that*
33 *requires law enforcement to investigate the prospective adoptive*
34 *parent or parents.*

35 SEC. 7. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O