

AMENDED IN SENATE MAY 25, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 20, 2005

## **SENATE BILL**

**No. 302**

---

---

**Introduced by Senator Scott**

February 16, 2005

---

---

An act to amend Sections 7630, 8604, and 9003 of the Family Code, and to amend Section 294 of the Welfare and Institutions Code, relating to adoption.

### **LEGISLATIVE COUNSEL'S DIGEST**

SB 302, as amended, Scott. Adoption.

Existing law provides that a man is presumed to be the natural father of a child if certain conditions are met. This presumption may be rebutted by a judgment establishing paternity of the child by another man. Existing law also authorizes a child, the child's natural mother, or, with certain exceptions, a presumed father of the child to bring an action to determine paternity, as specified.

Existing law provides that if a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has a presumed father, the father must be given notice of the adoption proceeding and a child may not be adopted without his consent, except under specified circumstances.

Existing law also provides that, in a stepparent adoption, the consent of either or both birth parents must be signed in the presence of a county clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state.

Existing law requires the social worker or probation officer to give notice to specified persons of a hearing to terminate parental rights or establish the legal guardianship of a dependent child.

This bill would authorize, in a stepparent adoption, the consent of either or both birth parents to be signed in the presence of a notary public.

The bill would additionally authorize an adoption agency to whom the child has been relinquished to or a prospective adoptive parent of the child to bring an action to determine paternity.

The bill would provide that the consent of a presumed father is not required for the child's adoption unless he became a presumed father before the mother's relinquishment or consent becomes irrevocable or before the mother's parental rights have been terminated.

The bill would also expand the list of specified persons whom the social worker or probation officer must notify regarding a hearing to terminate parental rights or establish a legal guardianship by requiring that notice be given to unknown parents by publication, if ordered by the court, as specified. By expanding the duties of social workers and probation officers, the bill would impose a state-mandated local program.

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

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

4 (2) For the purpose of declaring the nonexistence of the father  
5 and child relationship presumed under subdivision (a), (b), or (c)  
6 of Section 7611 only if the action is brought within a reasonable  
7 time after obtaining knowledge of relevant facts. After the  
8 presumption has been rebutted, paternity of the child by another  
9 man may be determined in the same action, if he has been made  
10 a party.

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

15 (c) An action to determine the existence of the father and child  
16 relationship with respect to a child who has no presumed father  
17 under Section 7611 or whose presumed father is deceased may  
18 be brought by the child or personal representative of the child,  
19 the Department of Child Support Services, the mother or the  
20 personal representative or a parent of the mother if the mother  
21 has died or is a minor, a man alleged or alleging himself to be the  
22 father, or the personal representative or a parent of the alleged  
23 father if the alleged father has died or is a minor.

24 (d) An action under subdivision (c) shall be consolidated with  
25 a proceeding pursuant to Section 7662 whenever a proceeding  
26 has been filed under Chapter 5 (commencing with Section 7660).  
27 The parental rights of the alleged natural father shall be  
28 determined as set forth in Section 7664. The consolidated action  
29 shall be heard in the court in which the Section 7662 proceeding  
30 is filed, unless the court in which the action under subdivision (c)  
31 is filed finds, by clear and convincing evidence, that transferring  
32 the action to the other court poses a substantial hardship to the  
33 petitioner. Mere inconvenience does not constitute a sufficient  
34 basis for a finding of substantial hardship. If the court determines  
35 there is a substantial hardship, the consolidated action shall be  
36 heard in the court in which the paternity action is filed.

37 SEC. 2. Section 8604 of the Family Code is amended to read:

38 8604. (a) Except as provided in subdivision (b), a child  
39 having a presumed father under Section 7611 may not be adopted  
40 without the consent of the child's birth parents, if living. The

1 consent of a presumed father is not required for the child's  
2 adoption unless he became a presumed father as described in  
3 Section 7611 before the mother's relinquishment or consent  
4 becomes irrevocable or before the mother's parental rights have  
5 been terminated.

6 (b) If one birth parent has been awarded custody by judicial  
7 order, or has custody by agreement of both parents, and the other  
8 birth parent for a period of one year willfully fails to  
9 communicate with and to pay for the care, support, and education  
10 of the child when able to do so, then the birth parent having sole  
11 custody may consent to the adoption, but only after the birth  
12 parent not having custody has been served with a copy of a  
13 citation in the manner provided by law for the service of a  
14 summons in a civil action that requires the birth parent not  
15 having custody to appear at the time and place set for the  
16 appearance in court under Section 8718, 8823, 8913, or 9007.

17 (c) Failure of a birth parent to pay for the care, support, and  
18 education of the child for the period of one year or failure of a  
19 birth parent to communicate with the child for the period of one  
20 year is prima facie evidence that the failure was willful and  
21 without lawful excuse.

22 SEC. 3. Section 9003 of the Family Code is amended to read:

23 9003. (a) In a stepparent adoption, the consent of either or  
24 both birth parents shall be signed in the presence of a notary  
25 public, county clerk, probation officer, qualified court  
26 investigator, or county welfare department staff member of any  
27 county of this state. The notary public, county clerk, probation  
28 officer, qualified court investigator, or county welfare department  
29 staff member before whom the consent is signed shall  
30 immediately file the consent with the clerk of the court where the  
31 adoption petition is filed. The clerk shall immediately notify the  
32 probation officer or, at the option of the board of supervisors, the  
33 county welfare department of that county.

34 (b) If the birth parent of a child to be adopted is outside this  
35 state at the time of signing the consent, the consent may be  
36 signed before a notary or other person authorized to perform  
37 notarial acts.

38 (c) The consent, when reciting that the person giving it is  
39 entitled to sole custody of the child and when acknowledged  
40 before the notary public, county clerk, probation officer,

1 qualified court investigator, or county welfare department staff  
2 member, is prima facie evidence of the right of the person  
3 signing the consent to the sole custody of the child and that  
4 person's sole right to consent.

5 (d) A birth parent who is a minor has the right to sign a  
6 consent for the adoption of the birth parent's child and the  
7 consent is not subject to revocation by reason of the minority.

8 SEC. 4. Section 294 of the Welfare and Institutions Code is  
9 amended to read:

10 294. The social worker or probation officer shall give notice  
11 of a selection and implementation hearing held pursuant to  
12 Section 366.26 in the following manner:

13 (a) Notice of the hearing shall be given to the following  
14 persons:

15 (1) The mother.

16 (2) The fathers, presumed and alleged.

17 (3) The child, if the child is 10 years of age or older.

18 (4) Any known sibling of the child who is the subject of the  
19 hearing if that sibling either is the subject of a dependency  
20 proceeding or has been adjudged to be a dependent child of the  
21 juvenile court. If the sibling is 10 years of age or older, the  
22 sibling, the sibling's caregiver, and the sibling's attorney. If the  
23 sibling is under 10 years of age, the sibling's caregiver and the  
24 sibling's attorney. However, notice is not required to be given to  
25 any sibling whose matter is calendared in the same court on the  
26 same day.

27 (5) The grandparents of the child, if their address is known and  
28 if the parent's whereabouts are unknown.

29 (6) All counsel of record.

30 (7) If the court knows or has reason to know that an Indian  
31 child is involved, then to the Indian custodian and the tribe of  
32 that child. If the identity or location of the parent or Indian  
33 custodian and the tribe cannot be determined, notice shall be  
34 given to the Bureau of Indian Affairs.

35 (8) To any unknown parent by publication, if ordered by the  
36 court, ~~in addition to and concurrently with any other notice~~  
37 ~~required under this section, in any case in which an alleged~~  
38 ~~parent has been determined by the petitioner to not be a parent~~  
39 ~~and the identity of one or both of the parents, or alleged parents,~~  
40 ~~is unknown. In any case where an alleged parent is known by the~~

1 petitioner to not be a parent and the identity of one or both of the  
2 parents or alleged parents is unknown, the petitioner shall seek an  
3 order for publication notice pursuant to this paragraph as soon as  
4 possible, and in no case later than 30 days after the petitioner  
5 discovers the parent is unknown. An order of publication  
6 pursuant to this paragraph shall be based on an affidavit from the  
7 petitioner describing efforts made to identify the unknown parent  
8 or parents and a finding by the court that there has been due  
9 diligence in attempting to identify the unknown parent. *court*  
10 *pursuant to subdivision (h).*

11 (b) The following persons shall not be notified of the hearing:

12 (1) A parent who has relinquished the child to the State  
13 Department of Social Services or to a licensed adoption agency  
14 for adoption, and the relinquishment has been accepted and filed  
15 with notice as required under Section 8700 of the Family Code.

16 (2) An alleged father who has denied paternity and has  
17 executed a waiver of the right to notice of further proceedings.

18 (3) A parent whose parental rights have been terminated.

19 (c) (1) Service of the notice shall be completed at least 45  
20 days before the hearing date. Service is deemed complete at the  
21 time the notice is personally delivered to the person named in the  
22 notice or 10 days after the notice has been placed in the mail, or  
23 at the expiration of the time prescribed by the order for  
24 publication.

25 (2) In the case of an Indian child, notice to the Indian  
26 custodian and the tribe shall be completed at least 10 days before  
27 the hearing.

28 (3) In the case of an Indian child, if notice is given to the  
29 Bureau of Indian Affairs, the bureau shall have 15 days after  
30 receipt to provide the requisite notice to the parent or Indian  
31 custodian and the tribe.

32 (4) Service of notice in cases where publication is ordered  
33 shall be completed at least 30 days before the date of the hearing.

34 (d) Regardless of the type of notice required, or the manner in  
35 which it is served, once the court has made the initial finding that  
36 notice has properly been given to the parent, or to any person  
37 entitled to receive notice pursuant to this section, subsequent  
38 notice for any continuation of a Section 366.26 hearing may be  
39 by first-class mail to any last known address, by an order made  
40 pursuant to Section 296, or by any other means that the court

determines is reasonably calculated, under any circumstance, to provide notice of the continued hearing. However, if the recommendation changes from the recommendation contained in the notice previously found to be proper, notice shall be provided to the parent, and to any person entitled to receive notice pursuant to this section, regarding that subsequent hearing.

(e) The notice shall contain the following information:

- (1) The date, time, and place of the hearing.
- (2) The right to appear.
- (3) The parents' right to counsel.
- (4) The nature of the proceedings.
- (5) The recommendation of the supervising agency.
- (6) A statement that, at the time of hearing, the court is required to select a permanent plan of adoption, legal guardianship, or long-term foster care for the child.

(7) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(f) Notice to the parents may be given in any one of the following manners:

(1) If the parent is present at the hearing at which the court schedules a hearing pursuant to Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings, their right to counsel, the nature of the proceedings, and the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the child. The court shall direct the parent to appear for the proceedings and then direct that the parent be notified thereafter by first-class mail to the parent's usual place of residence or business only.

(2) Certified mail, return receipt requested, to the parent's last known mailing address. This notice shall be sufficient if the child welfare agency receives a return receipt signed by the parent.

(3) Personal service to the parent named in the notice.

(4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and

1 thereafter mailed to the parent named in the notice by first-class  
2 mail at the place where the notice was delivered.

3 (5) If the residence of the parent is outside the state, service  
4 may be made as described in paragraph (1), (3), or (4) or by  
5 certified mail, return receipt requested.

6 (6) If the recommendation of the probation officer or social  
7 worker is legal guardianship or long-term foster care, service  
8 may be made by first-class mail to the parent's usual place of  
9 residence or business.

10 (7) If a parent's identity is known but his or her whereabouts  
11 are unknown and the parent cannot, with reasonable diligence, be  
12 served in any manner specified in paragraphs (1) to (6),  
13 inclusive, the petitioner shall file an affidavit with the court at  
14 least 75 days before the hearing date, stating the name of the  
15 parent and describing the efforts made to locate and serve the  
16 parent.

17 (A) If the court determines that there has been due diligence in  
18 attempting to locate and serve the parent and the probation  
19 officer or social worker recommends adoption, service shall be to  
20 that parent's attorney of record, if any, by certified mail, return  
21 receipt requested. If the parent does not have an attorney of  
22 record, the court shall order that service be made by publication  
23 of citation requiring the parent to appear at the date, time, and  
24 place stated in the citation, and that the citation be published in a  
25 newspaper designated as most likely to give notice to the parent.  
26 Publication shall be made once a week for four consecutive  
27 weeks. Whether notice is to the attorney of record or by  
28 publication, the court shall also order that notice be given to the  
29 grandparents of the child by first-class mail.

30 (B) If the court determines that there has been due diligence in  
31 attempting to locate and serve the parent and the probation  
32 officer or social worker recommends legal guardianship or  
33 long-term foster care, no further notice is required to the parent,  
34 but the court shall order that notice be given to the grandparents  
35 of the child by first-class mail.

36 (C) In any case where the residence of the parent becomes  
37 known, notice shall immediately be served upon the parent as  
38 provided for in either paragraph (2), (3), (4), (5), or (6).

39 ~~(8)~~

(g) If the identity of one or both of the parents, or alleged parents, of the child is unknown, or if the name of one or both parents is uncertain, then that fact shall be set forth in the affidavit and the court, if ordering publication, shall order the published citation to be directed to either the father or mother, or both, of the child, and to all persons claiming to be the father or mother of the child, naming and otherwise describing the child. An order of publication pursuant to this paragraph shall be based on an affidavit describing efforts made to identify the unknown parent or parents. If the court determines there has been due diligence in attempting to identify the unknown parent, the court may order notice by publication pursuant to this section no less than 60 or more than 75 days prior to the hearing. Service made by publication pursuant to this paragraph shall require the unknown parent or parents to appear at the date, time, and place stated in the citation. Publication shall be made once a week for four consecutive weeks. Consistent with the provisions of Sections 7665 and 7666 of the Family Code, the court may issue an order dispensing with notice to a natural parent or possible natural parent if, after inquiry and a determination that there has been due diligence in attempting to identify the unknown parent, the court is unable to identify the natural parent and no person has appeared claiming to be the natural parent.

(g) *affidavit and the court, consistent with the provisions of Sections 7665 and 7666 of the Family Code and subject to subdivision (h), shall issue an order dispensing with notice to a natural parent or possible natural parent under this section if, after inquiry and a determination that there has been due diligence in attempting to identify the unknown parent, the court is unable to identify the natural parent and no person has appeared claiming to be the natural parent.*

(h) *After a determination that there has been due diligence in attempting to identify an unknown parent pursuant to subdivision (g), the court shall consider whether publication notice would be likely to lead to actual notice to the unknown parent. The court may order publication notice if, on the basis of all information before the court, the court determines that notice by publication is likely to lead to actual notice to the parent. If publication notice to an unknown parent is ordered, the court shall order the*

1 *published citation to be directed to either the father or mother, or*  
2 *both, of the child, and to all persons claiming to be the father or*  
3 *mother of the child, naming and otherwise describing the child.*  
4 *An order of publication pursuant to this paragraph shall be*  
5 *based on an affidavit describing efforts made to identify the*  
6 *unknown parent or parents. If the court determines there has*  
7 *been due diligence in attempting to identify the unknown parent,*  
8 *the court may order notice by publication pursuant to this section*  
9 *no less than 60 or more than 75 days prior to the hearing.*  
10 *Service made by publication pursuant to this paragraph shall*  
11 *require the unknown parent or parents to appear at the date,*  
12 *time, and place stated in the citation. Publication shall be made*  
13 *once a week for four consecutive weeks.*

14 (i) Notice to the child and all counsel of record shall be by  
15 first-class mail.

16 ~~(h)~~

17 (j) In the case of an Indian child, notice to the tribe shall be by  
18 registered mail, return receipt requested.

19 ~~(i)~~

20 (k) Notwithstanding subdivision (a), if the attorney of record is  
21 present at the time the court schedules a hearing pursuant to  
22 Section 366.26, no further notice is required, except as required  
23 by subparagraph (A) of paragraph (7) of subdivision (f).

24 ~~(j)~~

25 (l) This section shall also apply to children adjudged wards  
26 pursuant to Section 727.31.

27 ~~(k)~~

28 (m) The court shall state the reasons on the record explaining  
29 why good cause exists for granting any continuance of a hearing  
30 held pursuant to Section 366.26 to fulfill the requirements of this  
31 section.

32 SEC. 5. If the Commission on State Mandates determines that  
33 this act contains costs mandated by the state, reimbursement to  
34 local agencies and school districts for those costs shall be made  
35 pursuant to Part 7 (commencing with Section 17500) of Division  
36 4 of Title 2 of the Government Code.