

Senate Bill No. 302

Passed the Senate September 7, 2005

Secretary of the Senate

Passed the Assembly September 6, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7620, 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, 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 an action to determine a parent and child relationship may be brought in the county in which a child resides or is found, or, if the father is deceased, in the county in which probate proceedings for probate of his estate have been or could be commenced.

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 expand the provision governing venue for an action to determine a parent and child relationship by additionally authorizing that action to be brought in the county in which a licensed California adoption agency maintains an office if the agency brings the action.

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.

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

SECTION 1. Section 7620 of the Family Code is amended to read:

7620. (a) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse.

(b) An action under this part shall be brought in one of the following:

(1) The county in which the child resides or is found.

(2) The county in which a licensed California adoption agency maintains an office if that agency brings the action.

(3) If the father is deceased, the county in which proceedings for probate of the estate of the father of the child have been or could be commenced.

SEC. 2. Section 7630 of the Family Code is amended to read:

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

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

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

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

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

(d) An action under subdivision (c) shall be consolidated with a proceeding pursuant to Section 7662 whenever a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664. The consolidated action shall be heard in the court in which the Section 7662 proceeding

is filed, unless the court in which the action under subdivision (c) is filed finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

SEC. 3. Section 8604 of the Family Code is amended to read:

8604. (a) Except as provided in subdivision (b), a child having a presumed father under Section 7611 may not be adopted without the consent of the child's birth parents, if living. The consent of a presumed father is not required for the child's adoption unless he became a presumed father as described in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 of Division 12, or subdivision (a), (b), or (c) of Section 7611 before the mother's relinquishment or consent becomes irrevocable or before the mother's parental rights have been terminated.

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

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

SEC. 4. Section 9003 of the Family Code is amended to read:

9003. (a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state. The notary public, court clerk, probation officer, qualified

court investigator, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption petition is filed. The clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

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

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and when acknowledged before the notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member, is prima facie evidence of the right of the person signing the consent to the sole custody of the child and that person's sole right to consent.

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

SEC. 5. Section 294 of the Welfare and Institutions Code is amended to read:

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

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

(1) The mother.

(2) The fathers, presumed and alleged.

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

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

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

(6) All counsel of record.

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

(8) To any unknown parent by publication, if ordered by the court pursuant to paragraph (2) of subdivision (g).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) (1) 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 filed with the court at least 75 days before the hearing date and the court, consistent with the provisions of Sections 7665 and 7666 of the Family Code, 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 or possible natural parent and no person has appeared claiming to be the natural parent.

(2) After a determination that there has been due diligence in attempting to identify an unknown parent pursuant to paragraph (1) and the probation officer or social worker recommends adoption, 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 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. 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.

(3) If the court determines that there has been due diligence in attempting to identify one or both of the parents, or alleged parents, of the child and the probation officer or social worker recommends legal guardianship or long-term foster care, no further notice to the parent shall be required.

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

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

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

(k) This section shall also apply to children adjudged wards pursuant to Section 727.31.

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

SEC. 6. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2005

Governor