

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2495 (Patterson)
Version: June 6, 2022
Hearing Date: June 14, 2022
Fiscal: Yes
Urgency: No
AWM

SUBJECT

The parent and child relationship

DIGEST

This bill makes various changes to family and adoption laws.

EXECUTIVE SUMMARY

This bill is the Academy of California Adoption Lawyers' annual adoption bill, which makes multiple changes to adoption and family law in California, including:

- changing the rules for determining whether an embryo donor is an intended parent;
- specifying what a court must consider when determining whether to terminate the parental rights of an unfit parent;
- expanding the use of post-adoption contact agreements; and
- expanding venue options for step-parent adoptions and readoptions of children adopted in other countries.

This bill is intended to improve assisted reproduction procedures and adoption processes and procedures in California, to ensure that the rights of donors of genetic material and intended parents of children are protected. The author has agreed to accept a minor technical amendment to correct an error introduced in the most recent version in the bill.

This bill is sponsored by the Academy of California Adoption-ART Lawyers. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the California Uniform Parentage Act (UPA), which sets forth the methods and procedures to establish the parentage of a child and the rights and duties flowing from the parent-child relationship. (Fam. Code, div. 12, pt. 3, §§ 7600 et seq.)
- 2) Defines the following relevant terms under the UPA:
 - a) A “natural parent” is a nonadoptive parent established under the UPA, whether biologically related to the child or not. (Fam. Code, § 7601(a).)
 - b) The “parent-child relationship” means the legal relationship existing between a child and the child’s natural or exhaustive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship. (Fam. Code, § 7601(b).)
- 3) Provides that, if a woman conceives through assisted reproduction with semen or ova donated by a donor who is not the woman’s spouse, with the consent of another intended parent, that intended parent is treated in law as if that intended parent is the natural parent of a child thereby conceived, and:
 - a) The donor of semen provided to parents in 3) is treated in law as if the donor is not the natural parent, provided certain conditions are met.
 - b) The donor of ova for use of assisted reproduction by a person in 3) other than the donor’s spouse or nonmarital partner is treated in law as if the donor is not the natural parent of a child conceived with the donated ova, unless the court finds satisfactory evidence that the person providing ova and the person who utilized the ova intended for the person providing ova to be a parent. (Fam. Code, § 7613.)
- 4) Establishes procedures for the adoption of children. (Fam. Code, div. 13, §§ 8500 et seq.)
- 5) Provides that an adoption request for the adoption of a nondependent minor may be filed with the court in a county in which any of the following applies: the petitioner resides there; the child was born or resides there at the time of filing; an office of the agency that placed the child for adoption is located there; an office of the department or a public adoption agency that is investigating the petition is located there; a placing birth parent or parents resided there when the adoptive placement agreement, consent, or relinquishment was signed; a placing birth parent or parents resided there when the petition was filed; the child was freed for adoption there. (Fam. Code, § 8609.5.)

- 6) Limits when a child who has been freed for adoption may be removed from the county in which the child was placed as follows:
 - a) In no event may a child be removed from the county by any person who has not petitioned to adopt the child without first obtaining the written consent of the department, county adoption agency, or licensed adoption agency responsible for the child.
 - b) During the pendency of an adoption proceeding, the child may not be concealed within the county in which the adoption proceeding is pending, and may not be removed from the county unless the petitioners or other interested persons first obtain permission for the removal from the court, under specified procedures.
 - c) The above requirements do not apply where the child is absent for a period of more than 30 days from the county in which the adoption proceeding is pending, unless a notice of recommendation of denial of petition has been personally served on the petitioners or the court has issued an order prohibiting the child's removal pending consideration of the suitability of the petitioners, the care provided the child, the availability of legally required agency consents to the adoption; where the child has been returned to and remains in the custody and control of the child's birth parent or parents; or where written consent for the removal of the child is obtained from the department, county adoption agency, or licensed adoption agency responsible for the child. (Fam. Code, § 8713.)
- 7) Provides the requirements for filing an adoption request to adopt a nondependent child, including where the request must be filed and the requirement that, where the petitioner has entered into a postadoption contract agreement with the birth parent, the agreement must be attached to and filed with the petition for adoption. (Fam. Code, § 8714.)
- 8) Defines "independent adoption" as the adoption of a child in which neither the State Department of Social Services (DSS), county adoption agency, nor agency licensed by DSS is a party to, or joins in, the adoption petition. (Fam. Code, § 8524.)
- 9) Sets forth the persons who may file a petition for adoption in an independent adoption. (Fam. Code, § 8802.)
- 10) Provides that, during the pendency of an independent adoption, the child proposed to be adopted may not be concealed within the county where the adoption proceeding is pending and may not be removed from the county except as provided. (Fam. Code, § 8803.)
- 11) Provides that, during the pendency of an intercounty adoption, the child proposed to be adopted may not be concealed within the county where the adoption

proceeding is pending and may not be removed from the county except as provided. (Fam. Code, § 8910.)

- 12) Provides procedures for an international adoption or readoption request to be filed by a resident of this state. (Fam. Code, § 8912.)
- 13) Provides procedures by which a stepparent may adopt a child of the stepparent's spouse. (Fam. Code, § 9000.)
- 14) Provides that, in a procedure to adopt an adult, both the prospective parent and proposed adoptee shall appear at the hearing in person, unless an appearance is impossible, in which event an appearance may be made for either or both of the persons by counsel empowered in writing to make the appearance. (Fam. Code, § 9324.)

This bill:

- 1) Adds, to provisions relating to when a donor or provider of ova for use in assisted reproduction to an intended parent who is not the provider's spouse or nonmarital partner, to include the donor or provider of an embryo, and:
 - a) Provides that, if donated embryos include ova or sperm from a person other than one of the providers, that person's consent to donation is required unless that person has previously executed a writing to consent or to waive or relinquish their right to consent, or unless otherwise ordered by a court of law.
 - b) Clarifies that if a provider of ova, semen, or embryos is not the original source of the ova or sperm, each original provider's written consent to the donation is required unless that person has executed a writing to consent, waive, or relinquish their right to the embryo, or as otherwise ordered by a court of law.¹
- 2) Amends the provisions establishing where an adoption request for a dependent minor may be filed to include a readoption request, and allows the request to be filed in the county where an office of the agency that is filing the petition for adoption is located.
- 3) Modifies the provisions relating to when a nonminor dependent may be removed from the county, as follows:
 - a) At no point may the child proposed to be adopted be concealed from the agency that is investigating the adoption or from the court with jurisdiction over the adoption proceeding.

¹ As explained further in Part 3, the author has agreed to a minor technical amendment to this provision to make it internally consistent.

- b) The child shall not be removed from the county of the petitioner's residence at the time of placement unless certain procedures are followed.
 - c) The above does not apply when the child is absent for not more than 30 days from the county of the petitioner's residence at the time of placement, unless a notice of recommendation of denial of petition has been personally served on petitioners or the court has issued an order prohibiting the removal from the county of the petitioner's residence at the time of placement, pending consideration of certain matters.
- 4) Changes the required contents for a request for adoption for a nondependent child, to clarify the requirement to file a postadoption contract (if any) and to require the order of adoption to include the child's adopted name and the name of the child before adoption.
- 5) Modifies the list of persons who may adopt a child in an independent adoption to:
- a) Clarify that the person must be an adult;
 - b) Reduce the time for a guardian in a dependency court diversion guardianship to seek to adopt the child, from three years to one year, only where the parental rights have been terminated; and
 - c) Authorize a person named in a court order terminating parental rights as the child's legal guardian or prospective adoptive parent to adopt through an independent adoption.
- 6) Modifies the provisions relating to when a child may be removed from the county during an independent or intercounty adoption, as follows:
- a) At no point may the child proposed to be adopted be concealed from the agency that is investigating the adoption or from the court with jurisdiction over the adoption proceeding.
 - b) The child shall not be removed from the county of the petitioner's residence at the time of placement, unless certain procedures are followed.
 - c) The above does not apply when the child is absent for not more than 30 days from the county of the petitioner's residence at the time of placement, unless a notice of recommendation of denial of petition has been personally served on petitioners or the court has issued an order prohibiting the removal from the county of the petitioner's residence at the time of placement, pending consideration of certain matters.
- 7) Modifies the requirements for a request for international adoption to require the request to include the child's name before adoption and the order to include both the child's adopted name and the name the child had before adoption.
- 8) Authorizes a stepparent to file a request to adopt a child of the stepparent's spouse in any of the counties a petition for nonminor dependent adoption could be filed.

- 9) Modifies the personal appearance requirement for adult adoption, to require both the prospective adoptive parent and the proposed adoptee to appear in person unless the court allows otherwise under Family Code section 8613, which addresses parents commissioned in military service or out of the country under other specified circumstances.

COMMENTS

1. Author's statement

According to the author:

AB 2495 seeks to correct inequities and gaps in the Family Code related to adoption proceedings and assisted reproduction. These changes appropriately modernize adoption-related laws to establish more fairness and better reflect current practice and realities.

2. This bill makes changes to various assisted reproduction and adoption processes

a. Embryo donation

The rules regarding sperm and embryo donation and the parentage rights of the donor have changed in recent years, giving donors and intended parents more leeway in establishing the relationships they desire. (See AB 2344 (Ammiano), Ch. 636, Stats. 2014.) This bill continues that trend by providing a simplified process for an embryo donation, through which a provider of an embryo for use in assisted reproduction to an intended parent who is not the provider's spouse or nonmarital partner is treated in law as if the provider is not the child's parent, unless the court finds satisfactory evidence that the provider and the intended parent intended for the provider to be a parent. This is consistent with California's existing law on intended parents. If the donated embryo includes ova or sperm from a person other than the provider, that person must consent to the donation unless that person has already consented, waived, or relinquished their right to the embryo, or as otherwise ordered by a court.

b. Expansion of who may file a petition for independent adoption

This bill expands who may file an independent adoption petition to include the person named as a legal guardian or prospective adoptive parent in an order terminating parental rights. The sponsors argue that it is bad public policy to terminate parental rights, but then not allow the persons identified by the court as the child's guardian or prospective parents to file for adoption, thus leaving the child as a legal orphan for a period of time. This bill closes that temporary open period by allowing the person named as a legal guardian or prospective adoptive parent in an order terminating parental rights to immediately file a petition to adopt the child.

- c. Reduction of the time for a guardian in a dependency court diversion guardianship to seek to adopt the child, but only where parental rights have already been terminated*

Under existing law for independent adoptions, a person who has become a guardian of a child under a dependency court diversion guardianship under Welfare & Institutions Code section 360, or who was nominated by a parent for a purpose other than adoption and for a specified time period, can petition the court to adopt the child provided the guardianship has been in place for at least three years.² To avoid having a child become a legal orphan, as discussed directly above, and to be consistent with other provisions of the bill, this bill keeps the existing three year time period before adoption can be sought, except if parental rights have already been terminated. This allows the legal guardian to petition for adoption once parental rights have terminated and reduce the time that a child may be a legal orphan.

- d. Expansion of venue options for adoptions*

This bill expands venue options to allow a request for readoption of a nondependent child to be filed in a court in a county where:

- The petitioner resides;
- The child was born or now resides;
- An office of the agency that placed the child for adoption is located;
- An office of the social services department or a public adoption agency that is investigating the petition is located;
- The county in which a placing birth parent resided when the adoptive placement agreement, consent, or relinquishment was signed;
- The county in which a placing birth parent resided when the petition was filed; and
- The county in which the child was freed for adoption.

The bill also allows a step-parent adoption request or an adoption request by a domestic partner to be filed in any of the above counties as well, and must include the post-adoption contact agreement if one exists.

As the result of the venue expansion, this bill also changes the rules on where a prospective adoptive child can live and seeks to limit concealment of the child. During the pendency of an adoption, the bill provides that the child proposed to be adopted cannot be concealed from the agency investigating the adoption or from the court with jurisdiction over the proceedings. The bill also provides that the child cannot be removed from the county of the petitioner's residence at the time of placement without obtaining court permission, as provided.

² Fam. Code, § 8802.

e. Child's pre- and post-adoption name must be listed in the adoption order

This bill also requires that an adoption order include not just the adopted child's name after the adoption, but also the child's name prior to the adoption. The sponsors argue that with newer, more stringent federal identification laws, it is difficult for adoptive parents to obtain social security numbers for their adopted children without a court order listing the child's birth name. The child's birth name is already included in the adoption request. This change would include the name of the child before the adoption in the adoption order to make it easier to obtain a social security number for the child.

f. Mandatory appearances in adult adoption cases

In the adoption of an adult, current law requires both the prospective adoptive parent and the proposed adoptee to appear at the hearing in person unless appearance is "impossible," in which case one or both of the persons may appear by counsel designated in writing to do so.³ This bill eliminates general "impossibility" standard for a non-appearance and instead limits non-appearances to circumstances provided for in Family Code section 8613, which addresses prospective adoptive parents who are unavailable because they are commissioned or enlisted in military service or governmental service, serving in a recognized charitable religious organization, or for other specified reasons.

3. Amendment

In the most recent amendments to the bill, the author rearranged certain provisions in Section 1 relating to the requirement that donors of ova or sperm consent to the use of their genetic material. These amendments inadvertently introduced an ambiguity in the scope of one of those provisions, by creating a paragraph that refers inconsistently to "ova or sperm" and "embryos." In order to correct that error, the author has agreed to the following changes, subject to any nonsubstantive changes Legislative Counsel may make:

At page 4, in line 16, strike "embryo" and insert "genetic material"

4. Arguments in support

According to the bill's sponsor, the Academy of California Adoption-ART Lawyers:

The purpose of this bill is to update several sections of the California Family Code, including:

³ Fam. Code, § 9324.

- Clarifying the rights of all donors and recipients of genetic material related to cases of assisted reproduction, including the requirement for written consent to subsequent donations;
- Establishing venue provisions for mandatory readoptions of foreign-born children;
- Eliminating inequities in the creation and enforcement of post-adoption contract agreements;
- Requiring the inclusion of the adopted child's birth name in the order of adoption, to simplify the process of obtaining post-adoption identity documents;
- Eliminating conflicting provisions and clarifying requirements related to the child's residence pending adoption finalization; and
- Clarifying court appearance options to allow a variety of methods for parties to appear in accordance with Family Code section 8613.5...

AB 2495 will appropriately modernize several adoption and assisted reproduction-related laws to establish more fairness and better current practice and realities.

SUPPORT

Academy of California Adoption-ART Lawyers (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

AB 1926 (Choi, 2022) authorizes a person authorized to execute a voluntary declaration of parentage via electronic signature, and establishes related procedures and requirements relating to the electronic voluntary declaration of parentage form, to take effect on January 1, 2024. AB 1926 is pending before the Senate Appropriations Committee.

AB 993 (Patterson, 2021) is the Academy of California Adoption Lawyers' annual adoption bill from 2021 and contains many of the same provisions in this bill, plus some not included here. AB 993 was held on suspense in the Senate Appropriations Committee.

Prior Legislation:

AB 2344 (Ammiano, Ch. 636, Stats. 2014) authorized an intended parent to use a specified form to demonstrate their intent to be the legal parent of a child conceived through assisted reproduction.

SB 274 (Leno, Ch. 564, Stats. 2013) modified the UPA to, among other things, define a “natural parent” as a nonadoptive parent whether or not biologically related to the child and state that the UPA does not preclude a finding that a child has a parent-child relationship with more than two parents.

PRIOR VOTES:

Assembly Floor (Ayes 61, Noes 0)

Assembly Appropriations Committee (Ayes 15, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)
