

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1650 (Jim Patterson)
Version: June 19, 2023
Hearing Date: June 27, 2023
Fiscal: No
Urgency: No
AWM

SUBJECT

Family law proceedings: custody, parentage, and adoption

DIGEST

This bill makes changes to the state's parentage and adoption laws.

EXECUTIVE SUMMARY

This bill is the Academy of California Adoption Lawyers' annual adoption bill, which makes three straightforward changes to adoption and family law in California.

Specifically, the bill:

- Authorizes a superior court to make the necessary factual determinations for a child up to the age of 21 to seek special immigrant juvenile status ("SIJS") nunc pro tunc (retroactively);
- Permits parties to enter into voluntary agreements regarding the rights and obligations relating to embryos; and
- Modifies the requirements for filing a postadoption contact agreement with the court.

According to the author and sponsor, this bill will correct inequities and lacunae in the current legal framework for parental rights and adoption proceedings. The author has agreed to minor amendments to bring the SIJS provisions in line with federal law and to clarify that minor-aged siblings need not sign forms relating to a postadoption contact agreement.

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) Provides immigration relief that relies on a state's interest in the welfare of children by providing for Special Immigrant Juvenile Status (SIJ) where a state determines that reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or similar basis found under state law and that it would not be in the child's best interest to return to their home country. (8 U.S.C. § 1101(a)(27).)
 - a) A "special immigrant juvenile" is a person under 21 years of age who is declared a dependent by a juvenile court or committed to the custody of a state agency or a court-appointed individual, whose reunification with one or both of their parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law, and whose return to their country of nationality or last habitual residence is not in their best interest. (8 U.S.C. § 1101(a)(27)(J).)
 - b) A person who has obtained SIJ status may, on the basis of that status, apply for a visa for lawful permanent residency. (8 U.S.C. § 1153(b)(4).)
- 2) Authorizes a superior court to make the judicial findings and determinations that are necessary for a person to seek SIJ status from the federal government, regardless of the division of the superior court or the type of the proceedings. (Code Civ. Proc., § 155.)
- 3) Establishes the Uniform Parentage Act, which sets forth the legal relationship between a child and their natural, nonadoptive, or adoptive parents. (Fam. Code, div. 12, pt. 3, §§ 7600 et seq.)
- 4) Establishes, within the Uniform Parentage Act, default rules regarding the donation of embryos and genetic material for the creation of embryos, and the procedures and protections for, and limitations on, a donor of such material; and allows, in certain circumstances, the donors and recipients of such material to enter into agreements regarding the rights and conditions surrounding the donation. (Fam. Code, §§ 7551, 7573.5, 7613.)
- 5) Authorizes adoptive parents to enter into postadoption contact agreements with the adoptee's birth parents, other family members as specified, or Indian tribe which may provide for, among other things, visitation between the child and relatives and the sharing of information about the child. (Fam. Code, § 8616.5.)
- 6) Establishes procedural requirements for the adoption of a child who is a dependent or ward of the juvenile court, including requiring a postadoption contact agreement, if any, to be filed with the court. (Fam. Code, § 8714.)

- 7) Establishes procedural requirements for an international adoption or readoption request filed by a resident of the state, including requiring a postadoption contact agreement, if any, to be filed with the court. (Fam. Code, § 8912.)
- 8) Establishes procedures for a stepparent to adopt a child of the stepparent's spouse, including requiring a postadoption contact agreement, if any, to be filed with the court. (Fam. Code, § 9000.)

This bill:

- 1) Clarifies that a superior court make the predicate SIJ status findings for a child up to 21 years of age nunc pro tunc (so that the findings are retroactive to a date determined by the court), without proof of clerical or other error, provided that there is evidence of both of the following:
 - a) The relevant facts were true as of the requested nunc pro tunc date; and
 - b) It is in the child's best interests to enter the findings nunc pro tunc.
- 2) Authorizes persons who are not married to one another and who share legal control over the disposition of embryos created through assisted reproduction to enter into a written agreement whereby one person renounces all legal interest in the embryos, with the specific intent to not be a legal parent of any child conceived with use of the embryos; upon execution of the agreement, the person who retains legal interest in and control over disposition of the embryos would have the sole right to determine the use and disposition of the embryos, and the renouncing person would be treated in law as a donor, and not a legal parent.
 - a) Either party may file the agreement with the court, at which point the court shall issue an order establishing the nonparentage of the donor.
 - b) If parties who share legal control over the disposition of embryos are married together at the time of an agreement in 2), the agreement shall become legally binding only upon the entry of a final decree of dissolution of the marriage that incorporates the agreement.
- 3) Requires, in an adoption proceeding, each petitioner to inform the court in writing, on a specified form, whether the petitioner has entered, or has agreed to enter, into a postadoption contact agreement with any person or persons.
 - a) If a postadoption contact agreement has been entered into, the terms of the agreement must be set forth on or attached to a specified form and each participant in the agreement must sign the form.
 - b) Prior to the finalization of the adoption, the petitioner must file the form or forms with the court and provide a file-marked copy to all signatories to the agreement and to any licensed adoption agency that placed the child for adoption or consented to the adoption within 30 days of receiving the copy.

- 4) Clarifies that, when a party entering into an adoption has entered into a postadoption contact agreement, the agreement must be filed with the court prior to the finalization of the adoption.

COMMENTS

1. Author's comment

According to the author:

AB 1650 seeks to correct inequities and gaps in the Code of Civil Procedure and the Family Code related to the termination of parental rights and adoption proceedings. The bill would make the following changes:

Amend Code of Civil Procedure Section 155 to harmonize with federal law and with Probate Code Section 1510.1 regarding Special Immigrant Juvenile orders for persons up to age 21, and nunc pro tunc entry of orders if needed.

Amend Family Code Section 7613 to authorize voluntary agreements between parties who created embryos together but no longer wish to become parents together. Further amend this section and Sections 7551 and 7573.5 to make them consistent with these changes, and to remove redundant language.

Amend Family Code Sections 8616.5, 8714, 8802, 8912, [and] 9000 to make each prospective adoptive parent legally responsible for filing any post-adoption contact agreement with the court before finalization of the adoption, and for providing a file-marked copy of the agreement to all signatories.

2. This bill makes three changes to the state's parental rights and adoption framework

This bill is the annual adoption bill sponsored by the Academy of California Adoption-ART Lawyers. This bill makes three changes to current law, which the sponsors state "will appropriately modernize outdated adoption and assisted-reproduction laws to establish more fairness and better reflect current practice and realities."

a. SIJ findings

A child or person up to 21 years of age who is eligible for SIJ status, which grants them withholding of removal and the potential for lawful permanent residency, must obtain a superior court order making three findings before seeking SIJ status at the federal level.¹ The three findings are: (1) that the child is either a dependent of the court or has been legally placed into the custody of another person or entity appointed by the court;

¹ 8 U.S.C. § 1101(a)(27)(J).

(2) that reunification of the child with one or both parents is not in the child's best interest due to abandonment, abuse, or neglect; and (3) that it is not in the best interest of the child to be returned to their, or their parent's, previous country of residence.² Any superior court may make these findings upon request.³

This bill brings the statute authorizing a court to make the SIJ predicate findings into conformity with federal law by allowing, beginning January 1 2025, a superior court to make SIJ findings for a person up to 21 years of age, and allows the court to make SIJ findings nunc pro tunc, i.e., retroactive to a specific date, for a person up to 21 years of age.

b. Voluntary agreements regarding artificial embryos

California already has a robust legal framework regarding parentage when a child was conceived through genetic material from one or two donors.⁴ This bill adds a provision allowing persons who have created embryos through artificial means to enter into voluntary agreements regarding the control of the embryos and the parentage rights of the providers of the material if the embryos are used to conceive a child. When the donors are unmarried, they can enter into an agreement that allows one party to renounce all legal interest in the embryos; this person shall not be considered a legal parent of the child, and shall be treated in law as a donor, not a parent. The party who retains the interest has the sole right to determine the use of the embryos. If the parties who created the embryos are married, they may enter into an agreement regarding the embryos' disposition, but the agreement will not take effect unless and until the parties are legally divorced. The agreement may be filed with the court by either party, and the court shall issue an order establishing the nonparentage of the party declared a donor by the agreement. The bill also makes conforming changes regarding when a court may perform testing to determine parentage. Overall, these provisions provide a clear framework for the disposition of embryos and the parentage of any resulting children.

c. Postadoption contact agreements

Current law authorizes adoptive parents to enter into postadoption contact agreements with the adopted child's birth parents or other family members; the contacts may allow for visitation with the birth parents or other birth family, or for sharing information about the child in the future.⁵ Current law permits, but does not require, the agreement to be filed with the court prior to the finalization of the adoption.⁶

² Code Civ. Proc., § 155.

³ *Ibid.*

⁴ *E.g.*, Fam. Code §§ 7613, 7613.5, 7960-7962.

⁵ *Id.*, § 8616.5.

⁶ *Id.*, §§ 8714, 8802, 9000.

This bill requires any postadoption contact agreement to be filed with the court before the adoption is finalized, as specified. In 2022, the Legislature enacted AB 2845 (Patterson, 2022), which would have, among other things, expanded the use of postadoption contacts; the Governor vetoed the bill, stating in his veto message that the added costs imposed by the bill had not been accounted for in the budget.⁷ This bill takes a more modest approach to adoption contact agreements. First, the bill requires the petitioner in an adoption proceeding to inform the court whether there is a postadoption contact agreement and, if so, the contents of the agreement; this information must be submitted to the court on specified forms. If the parties have entered into an agreement, the form setting forth the terms of the agreement must contain the signatures of all of the participants. Second, the bill requires the petitioner to provide file-marked copies of the form setting forth the terms of the agreement to all signatories to the form, and to any licensed adoption agency that placed the child for adoption or consented to the adoption, within 30 days of receiving the file-marked copy. Third, the bill clarifies in statutes covering specific types of adoptions that a postadoption agreement must be filed with the court prior to the finalization of the adoption.

4. Amendments

The author has agreed to several minor amendments to clarify and strengthen the bill, including to ensure that state law is consistent with federal law regarding the entry of orders making the necessary SIJ determinations. The amendments are as follows, subject to any nonsubstantive changes the Office of Legislative Counsel may make:

Amendment 1

In Section 2 of the bill, which makes changes to Code of Civil Procedure section 155 that will take effect January 1, 2025, will be amended as follows (additions are underlined, deletions are in strikethrough):

155. (a) (1) A superior court has jurisdiction under California law to make judicial determinations regarding the dependency and/or custody and care of children within the meaning of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101 et seq. and 8 C.F.R. Sec. 204.11), which includes, but is not limited to, the juvenile, probate, and family court divisions of the superior court. These courts have jurisdiction to make the ~~factual findings~~ judicial determinations necessary to enable a child to petition the United States Citizenship and Immigration Services for classification as a special immigrant juvenile pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code.

⁷ Governor's veto message to Assem. on Assem. Bill No. 2845 (Sept. 27, 2022) Recess J. No. 10 (2021-2022 Reg. Sess.) p. 6777.

(2) The judicial determinations set forth in paragraph (1) of subdivision (b) may be made for a child up to 21 years of age at any point in a proceeding regardless of the division of the superior court or type of proceeding if the prerequisites of that subdivision are met. A nunc pro tunc entry is permissible and shall not require proof of any clerical or other error, as long as the determinations could have been made as of the nunc pro tunc date.

(b) (1) If an order is requested from the superior court making the necessary ~~findings~~ determinations regarding special immigrant juvenile status pursuant to Section 1101(a)(27)(J) of Title 8 of the United States Code, and there is evidence to support those ~~findings~~ determinations, which may consist solely of, but is not limited to, a declaration by the child who is the subject of the petition, the court shall issue the order, which shall include all of the following ~~findings~~ determinations, each of which shall be supported by reference to the relevant provisions of California law:

(A) The child was either of the following:

(i) Declared a dependent of the court.

(ii) Legally committed to, or placed under the custody of, a state agency or department, or an individual or entity appointed by the court. The court shall indicate the date on which the dependency, commitment, or custody was ordered and the factual basis for making such order.

(B) That reunification of the child with one or both of the child's parents was determined not to be viable because of abuse, neglect, abandonment, or a similar basis pursuant to California law. The court shall indicate the date on which reunification was determined not to be viable and the factual basis for making such determination.

(C) That it is not in the best interest of the child to be returned to the child's, or the child's parent's, previous country of nationality or country of last habitual residence. The court shall indicate the factual basis for making such determination.

(2) The superior court may make additional ~~findings~~ determinations under this section that are supported by evidence only if requested by a party. The asserted, purported, or perceived motivation of the child seeking classification as a special immigrant juvenile shall not be admissible in making the findings under this section. The court shall not include nor reference the asserted, purported, or perceived motivation of the child seeking classification as a special immigrant juvenile in the court's findings under this section.

(c) In any judicial proceedings in response to a request that the superior court make the ~~findings~~ determinations necessary to support a petition for classification as a

special immigrant juvenile, information regarding the child's immigration status that is not otherwise protected by state confidentiality laws shall remain confidential and shall be available for inspection only by the court, the child who is the subject of the proceeding, the parties, the attorneys for the parties, the child's counsel, and the child's guardian.

(d) In any judicial proceedings in response to a request that the superior court make the findings necessary to support a petition for classification as a special immigrant juvenile, records of the proceedings that are not otherwise protected by state confidentiality laws may be sealed using the procedure set forth in California Rules of Court 2.550 and 2.551.

(e) This section shall be operative on January 1, 2025.

Amendment 2

At p. 15, in line y, delete line 36 after "ADOPT-310" and all of line 37 and insert "and that form shall be signed by all adult parties to the agreement, and, if applicable pursuant to subdivision (d), by the child who is the subject of the adoption."

SUPPORT

Academy of California Adoption-ART Lawyers (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: AB 20 (Gipson, 2023) requires a local child support agency, when a child who is a dependent or ward of the juvenile court and parental rights have been terminated, to discuss a postadoption contact agreement providing for postadoption contact with specified family members. AB 20 is pending before this Committee.

Prior Legislation:

AB 2845 (Patterson, 2022) would have expanded the use of post-adoption contact agreements to maintain ties between an adopted child and their birth family and specified what a court must consider before ruling on a petition to terminate parental rights. AB 2895 was vetoed by Governor Newsom, whose veto message cited cost concerns as the reason for the veto.

AB 2495 (Patterson, Ch. 159, Stats. 2022) was the Academy of California Adoption-ART Lawyers' annual adoption bill for 2022 and made multiple changes to adoption and family law in California, including changing rules for determining whether an embryo donor is an intended parent, clarifying rules regarding not concealing a prospective adoptive child from the adoption agency, clarifying who can file for an adoption and when, and expanding venue options for step-parent adoptions and readoptions of children adopted in other countries.

AB 993 (Patterson, 2021) was the Academy of California Adoption Lawyers' annual adoption bill from 2021 and contained many of the same provisions in AB 2049. AB 993 died in the Senate Appropriations Committee.

PRIOR VOTES:

Assembly Floor (Ayes 66, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
