

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

AB 429 (Megan Dahle)
Version: February 4, 2021
Hearing Date: June 8, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Child support: access to records

DIGEST

This bill, as of January 1, 2023, eliminates the provisions governing the confidentiality of proceedings and records under the Uniform Parentage Act (UPA), except in parentage cases involving assisted reproduction.

EXECUTIVE SUMMARY

“The law favors maximum public access to judicial proceedings and court records. [Citations.] Judicial records are historically and presumptively open to the public and there is an important right of access which should not be closed except for compelling countervailing reasons.” (*In re Marriage of Lechowick* (1998) 65 Cal.App.4th 1406, 1413, citation omitted.) The UPA governs the parent-child relationships and the rights and duties flowing from the relationship. Under the UPA, judicial proceedings and records pertaining to parentage actions are presumptively confidential. Such actions frequently involve determinations of child custody, visitation, and support. Yet if the parents were married, those same determinations would typically be open to the public.

This disparity reflects an anachronistic concern with protecting children from the stigma commonly associated with nonmarital birth when the UPA was enacted in 1975. Proponents of this bill argue that social norms have evolved such that there is no longer a compelling reason for parentage actions to be secret. This bill would thus eliminate the UPA’s confidentiality provisions, except as they apply to parents of children conceived through assisted reproduction. The bill is sponsored by the Family Law Section of the California Lawyers Association and supported by the Child Support Directors Association and organizations that represent family law practitioners. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the right to privacy under the Federal Constitution and California Constitution. (U.S. Const., 14th Amend.; *Griswold v. Connecticut* (1965) 381 U.S. 479, 484; Cal. Const. art. I, § 1.)
- 2) Provides that the public has a presumptive right of access under the First Amendment to the United States Constitution to ordinary civil trials and proceedings. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212.) Furthermore:
 - a. Provides, under the California Constitution, that “[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § (b)(1).)
 - b. Provides that this right of access does not supersede or modify the right of privacy provided under the California Constitution, nor affect any statute, court rule, or other authority protecting that right. (*Id.* at (b)(3).)
- 3) Requires that the sittings of every court be public, except as provided in Family Code section 214 or any other provision of law. (Code Civ. Proc. § 124.) Provides that a court may, when it considers it necessary in the interests of justice and the persons involved, direct the trial of any issue of fact joined in a proceeding under the Family Code to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel. (Fam. Code § 214.)¹
- 4) Establishes the UPA (§ 7600 et seq.), which governs the parent-child relationships and the rights and duties flowing from the relationship.
- 5) Provides that a hearing or trial held under the UPA may be held in closed court without admittance of any person other than those necessary to the action or proceeding. (§ 7643(a).)
- 6) Provides that all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in a public agency or elsewhere, are subject to inspection or copying only in exceptional cases upon an order of the court for good cause shown (*id.*), except in the following circumstances:
 - a. the papers or records are requested by the parties to the action, or their attorneys or agents, if authorized by the parties; or

¹ All further section references are to the Family Code unless otherwise specified.

- b. the papers or records are required by a local child support agency for purposes of establishing parentage and establishing and enforcing child support orders (*id.* at (b)).

This bill:

- 1) Eliminates, as of January 1, 2023, the provisions governing the confidentiality of proceedings and records under the UPA, except in parentage cases involving assisted reproduction.
- 2) Requires the Judicial Council to create or modify forms, as it deems appropriate, to require parties who initiate actions or proceedings relating to parentage involving assisted reproduction to designate the action or proceeding as such.

COMMENTS

1. Public access to judicial proceedings and records

The United States Supreme Court has held that there is a First Amendment right of public access to criminal proceedings. “As a matter of law and virtually immemorial custom, public trials have been the essentially unwavering rule in ancestral England and in our own Nation. [Citation.] Such abiding adherence to the principle of open trials ‘[reflects] a profound judgment about the way in which law should be enforced and justice administered.’ [Citation.]” (*Richmond Newspapers v. Va.* (1980) 448 U.S. 555, 593, Brennan, J., concurring.) “Open trials assure the public that procedural rights are respected, and that justice is afforded equally. Closed trials breed suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential, therefore, if trial adjudication is to achieve the objective of maintaining public confidence in the administration of justice.” (*Id.* at 595.) The California Supreme Court held that this right of access presumptively applies to ordinary civil trials and proceedings. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212.)

Family Code section 214, in turn, provides: “Except as otherwise provided in this code or by court rule, the court may, when it considers it necessary in the interests of justice and the persons involved, direct the trial of any issue of fact joined in a proceeding under this code to be private, and may exclude all persons except the officers of the court, the parties, their witnesses, and counsel.”² Additionally, the Family Code contains specific provisions that close certain proceedings to the public. (See, e.g., §§

² This section protects from public scrutiny not only the proceeding itself, but also any transcript of it and documents introduced into the court’s files at or in connection with it, including pleadings and exhibits. (*In re Marriage of Lechowick* (1998) 65 Cal.App.4th 1406, 1415.) However, court files in family law cases should be treated no differently than the court files in any other cases for purposes of considering the appropriateness of granting a motion to seal any of those files. (*Id.* at 1414.)

1818 [conciliation proceedings], 7884 [proceeding to declare child free from parental custody and control], 8611 [adoption proceedings].) In particular, section 7643, the subject of this bill, provides for the confidentiality of hearings and records under the UPA.

“The [UPA] establishes the framework for judicial determinations of parentage, and governs paternity and custody disputes, private adoptions and dependency proceedings.” (*In re D.S.* (2012) 207 Cal.App.4th 1088, 1094 [citation omitted].) The UPA was part of a package of legislation introduced in 1975 (SB 347, Beilenson, Ch. 1244, Stats, 1975) based on a model act from the National Conference of Commissioners on Uniform State Laws. The UPA was originally intended to eliminate the pejorative legal distinction between legitimate and illegitimate children. “The major premise of the act is to provide for substantive equality of children regardless of the marital status of the parents.” (*Griffith v. Gibson* (1977) 73 Cal.App.3d 465, 470.) The UPA thus applies to adjudications in connection with the “parent and child relationship,” defined as “the legal relationship existing between a child and the child’s natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations.” (§ 7601(b).) The UPA further provides that “the parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.” (§ 7602.) In recent years, the UPA has been updated and modernized as it relates to same-sex parents, genetic testing, and children conceived with donated gametes. (See AB 2684, Bloom, Ch. 876, Stats. 2018.)

A hearing or trial under the UPA may be held in closed court. (§ 7643(a).) Other than the final judgement, records pertaining to the action or proceeding are not available to the public, except to the parties and their attorneys or agents, local child support agencies, or in exceptional cases upon order of the court for good cause. (*Id.* at (a), (b).) As a result, when parentage actions involve determinations of child support and custody, they are presumptively closed to the public, even though they would not be if the child was born to married parents.

2. Equal public access to proceedings and records, regardless of parents’ marital status

The purpose of designating a file confidential is to protect the parties from the outside world knowing about the proceedings. (*Louden v. Olpin* (1981) 118 Cal.App.3d 565, 569.) However, in the case of the UPA, these confidentiality provisions arise out of an outdated stigma towards children born out of wedlock. The UPA is based on a 1973 proposal from the National Conference of Commissioners on Uniform State Laws (NCCUSL). At common law, a child whose mother was not married was considered “illegitimate,” and the father had no legal rights or obligations to the child. Consequently, before 1973, the parentage laws in most states failed to recognize two legal parents for children born to unmarried mothers. Recognizing that such treatment of children was becoming socially and legally untenable, the NCCUSL drafted and promulgated a uniform act that identified two legal parents for both children born in

and outside of wedlock. The model uniform act ultimately led to changes in parentage laws of every state in the country, including California.

In 1975, California enacted its own version of the UPA, thereby abolishing the concept of illegitimacy in the state. (§ 7600 et seq.) The UPA established a procedure to determine the existence or nonexistence of the parent-child relationship, and abolished most distinctions between children of married and unmarried parents. (See §§ 7630, 7650, 7602.) Because the nature of paternity actions were considered to be especially sensitive, the uniform act promulgated by the NCCUSL contained provisions that made all papers and documents part of the permanent court record subject to inspection only by the parties and their attorneys. California's UPA likewise incorporated these confidentiality provisions. (§ 7643.)

While the confidentiality provisions in the 1973 act were omitted from the revised versions issued by the NCCUSL in 2000 and 2002, California's provision remains largely intact. The most significant change that provision came via AB 1679 (Evans, Ch. 50, Stats. 2008), which added agents of a party, and of the party's attorney, to the list of persons who are permitted to inspect court files pertaining to paternity actions if so authorized. This Committee's analysis of the bill stated, without elaboration, that the NCCUSL omitted confidentiality provisions from the revised act, but stated nevertheless that "a repeal of the statute would be premature and unjustified as there are many valid arguments as to why paternity records should remain confidential, even if the stigma of having a child out of wedlock has significantly diminished since 1973."³

This view no longer seems to be the consensus. Today, roughly 40 percent of children are born to unmarried parents.⁴ Additionally, the average age at which a person gets married is 27 years of age, compared to 20 years of age in 1960.⁵ The bill is supported by organizations that represent family law practitioners who agree that the UPA's confidentiality provisions no longer serve a compelling purpose. The Family Law Section of the Los Angeles County Bar Association writes:

There is no longer a stigma attached to children born outside of marriage and thus no compelling reason to override the constitutional right of access to court records and proceedings. Moreover, removing the restrictions on access to such records will allow family lawyers to better represent their clients in these proceedings, with ease of access to files and records, and also allow information pertaining to those litigants to be

³ Sen. Jud. Analysis of AB 1679 (2007-2008 Reg. Sess.), as amended March 3, 2008 (June 10, 2008 hearing), at p. 3.

⁴ Centers for Disease Control and Prevention, National Center for Health Statistics, available at <https://www.cdc.gov/nchs/pressroom/states/california/california.htm> (as of May 28, 2021). California is slightly below the national average with 37.5 percent of all births to unmarried mothers. (*Ibid.*)

⁵ Hans Johnson, *Birth Rates in California, 9 California Counts Population Trends and Profiles 2*, Public Policy Institute of California (Nov. 2007).

available in other party-related proceedings, such as domestic violence, child support, and child custody proceedings.

By eliminating the UPA's confidentiality provisions, this bill would, in effect, declare that the mere fact that a child is born out of wedlock no longer justifies blocking public scrutiny of proceedings under the UPA. The author notes that "[l]itigants in these cases, just like litigants in other cases, will instead be able to request an order that records be filed under seal in a specific case."

However, the bill continues to provide for the confidentiality of parentage hearings and court records for a parent who used assisted reproduction, including use of surrogates or donated semen or ova. Specifically, once the bill's provisions become operative on January 1, 2023, the substance of the current confidentiality provisions would be preserved and would remain applicable to actions brought by parties to an assisted reproduction agreement. (See §§ 7613, 7630(f), 7960 et seq.)

3. Support

In support of the bill, the sponsor, the Family Law Section of the California Lawyers Association, writes:

Under existing law, all papers, records and hearings pertaining to parentage actions are confidential under Family Code Section 7643. This requires a level of secrecy in child custody and child support cases involving unmarried or single parents that is not required in cases involving married or formerly married parents.

Section 7643 was originally enacted as Civil Code Section 7014 in 1975 as part of California's adoption of the Uniform Parentage Act (UPA). The UPA in turn was drafted in 1973. At that time, births outside marriage only accounted for 11.3% of all births in the United States. In 2018, births outside marriage accounted for 37.1% of all births in California. Family Code section 7643 is an anachronism. The confidentiality provisions relate back to a time when it was considered immoral to have a child born out of wedlock. It was this perceived stigma that formed the basis for including confidentiality provisions in the UPA.

The California Association of Certified Family Law Specialists (ACFLS) writes:

AB 429 is intended to eliminate the confidentiality of parentage actions which currently exists under Section 7643 of the Family Code by correcting an inconsistency that exists among the various Family Law types of actions. This update to the law puts the relatively similar parentage and divorce cases on an equal field regarding access. Allowing

access to these files would also aid other litigants with related cases. For example, if a domestic violence victim is seeking a restraining order in their Dissolution action and the other party has a DV order from a UPA case, under the current law the DV victim in the Dissolution cannot access the TRO in the UPA case because they are not a party to that case. However, if the DV order was a part of a Dissolution action that information would be available to the unmarried litigant. The UPA/DV cases may contain crucial information relevant to the Dissolution DV case. If passed, AB 429 will ensure that information from parentage actions which could be relevant in other proceedings (e.g., domestic violence restraining orders and financial information) will be available to interested parties. It will also ease the financial burden on litigants in UPA actions by enabling counsel to access and review parentage actions when consulting potential clients or reviewing documents electronically.

ACFLS understands that lack of confidentiality of these parentage cases may cause some concern, but there are still means to keep information confidential. The shift in the law is not to expose sensitive information such as mental health or personally identifying information (e.g., social security numbers) to the public. That information can still be protected through other avenues, just like in other types of family law cases involving children of married parents and proceedings initiated by local child support agencies. There is no legitimate reason why children of unmarried parents should be treated differently or unequally to children of married parents.

SUPPORT

Family Law Section of the California Lawyers Association (sponsor)
California Association of Certified Family Law Specialists
Child Support Directors Association
Los Angeles County Bar Association, Family Law Section

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 578 (Jones, 2021) clarifies and strengthens an existing statute that makes proceedings under the Lanterman-Petris Short Act presumptively nonpublic.

AB 993 (Patterson, 2021) makes various changes to adoption and family law in California.

Prior Legislation:

AB 2390 (Patterson, 2020) would have made several substantial changes to the UPA pertaining to parents using assisted reproduction. AB 2390 died in the Assembly Judiciary Committee.

AB 2745 (Dahle, 2020) would have authorized certain proceedings under the UPA to be held in closed court. The bill died in the Senate Judiciary Committee.

AB 2684 (Bloom, Ch. 876, Stats. 2018) updated and modernized the UPA as it relates to same-sex parents, genetic testing, and children conceived with donated gametes.

AB 3248 (Assembly Judiciary Committee, Ch. 504, Stats. 2018) authorized local child support agencies to inspect and copy UPA case files for purposes of establishing paternity and establishing and enforcing child support orders.

AB 1403 (Committee on Judiciary, Ch. 510, Stats. 2013) made technical and clarifying changes to the UPA to codify case law, and made the Act's provisions gender neutral where appropriate.

PRIOR VOTES:

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
