

**2011 New Laws Workshop  
Tier 1 Bills**

**Family**

**AB 1349 (Hill)**  
**Chapter 185, Statutes of 2011**  
**Paternity: conflicting presumptions**

**Effective: 01/01/2012**

**Summary Description of New Law**

Authorizes a person who is rebuttably presumed to be a parent of a child to bring a motion to set aside a voluntary declaration of paternity within two years of the execution of that declaration. Provides that the court, in determining the motion, shall take into account the validity of the declaration and the best interests of the child as well as the nature and duration of the petitioner’s relationship with the child and the benefit or detriment of continuing that relationship. Further provides that a voluntary declaration of paternity is invalid if any of the following conditions were present at the time the declaration was executed: (1) the child had a presumed parent because he or she was the child of a marriage pursuant to Family Code section 7540; (2) the child already has a presumed parent under subdivisions (a), (b) or (c) of Family Code section 7611; or (3) the man signing the declaration is a sperm donor who had not executed an agreement to be the father of the child prior to the child’s conception.

Existing Law	New Law	Impact on Court
<p><b>1 Voluntary declaration of paternity</b> Provides that a voluntary declaration of paternity that is filed with the Department of Child Support Services shall have the same effect as a judgment of paternity by a court. Provides that the judgment effectuated by a voluntary declaration trumps other paternity presumptions, except for the marital</p>	<p><b>Voluntary declaration of paternity</b> Allows a presumed father to bring a motion to set aside a voluntary declaration of paternity within two years of the execution of the declaration. Provides that the court in determining the motion consider that validity of the declaration and the best interests of the child, and resolve any conflict between a</p>	<p>Make judges, judicial officers, and facilitators aware that set aside actions can be brought in cases in which judgment is via voluntary declaration.</p>

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	<b>Existing Law</b>	<b>New Law</b>	<b>Impact on Court</b>
	<p>presumption. Family Code § 7573; <i>Kevin Q. v. Lauren W.</i> (2009) 175 Cal.App. 4th 1557</p>	<p>presumption and a voluntary declaration based upon the weightier considerations of logic and public policy. Family Code §§ 7573 and 7612</p>	
<b>2</b>	<p><b>Validity of voluntary declaration of paternity</b> Provides that a mother who signs a voluntary declaration of paternity must declare that the man who signs the declaration is the only possible father of the child. Family Code § 7574</p>	<p><b>Validity of voluntary declaration of paternity</b> Explicitly provides that a voluntary declaration of paternity is invalid if, at the time it was executed, the child already had a presumed father pursuant to the conclusive or presumptive marital presumptions in sections 7540 and 7611. Family Code § 7612</p>	<p>Make judges, judicial officers, and facilitators aware that a voluntary declaration of paternity is invalid if there were presumed fathers by marital presumptions when declaration executed.</p>
<b>3</b>	<p><b>Unmarried sperm donor and paternity</b> Provides that a man who is not the husband of the woman who receives his donor semen for use in artificial insemination is not the natural father of the child thereby conceived.</p>	<p><b>Unmarried sperm donor and paternity</b> Provides that an unmarried sperm donor can be the natural father if he and the mother agree in writing and both sign an agreement that he be the natural father prior to the conception of the child. Provides</p>	<p>Make judges, judicial officers, and facilitators aware that sperm donors can be natural fathers if there is an agreement to that effect prior to conception, but that otherwise a voluntary declaration involving a</p>

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Existing Law	New Law	Impact on Court
Family Code § 7613(b)	that absent such an agreement, a voluntary declaration of paternity signed by the donor is invalid.  Family Code §§ 7612 and 7613(b)	sperm donor is invalid.

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**Family**

**AB 454 (Silva)**  
**Chapter 101, Statutes of 2011**  
**Protective orders: early termination**

**Effective: 01/01/2012**

**Summary Description of New Law**

Provides that any proceeding to terminate or modify a Domestic Violence Prevention Act protective order prior to its expiration requires notice to the protected person by personal service or by other means as authorized by the court, and requires the court to continue the proceeding if notice has not been accomplished prior to the hearing. Authorizes the protected person to waive such service if she or he is present in court and does not challenge the notice.

	Existing Law	New Law	Impact on Court
<p>1 <b>General notice requirements for motions</b></p> <p>Provides that generally a notice for a motion must be in writing and must state when and the grounds upon which it will be made, and any papers accompanying the motion must be served on the party who was not the filer of the motion.</p> <p>Code of Civil Procedure § 1010</p>	<p><b>General notice requirements for motions</b></p> <p>Specifically requires that a motion to modify or terminate a protective order of any kind which is filed by a party other than the protected person must be served upon the protected person using either personal service or, if the protected person participates in the Safe at Home confidential address program, must be served upon the Secretary of State in compliance with the requirements of Chapter 3.1 (commencing with Section 6205) of</p>	<p>Must ensure that proper notice has been accomplished before modifying or terminating protective orders.</p>	

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Existing Law	New Law	Impact on Court
	<p>Division 7 of Title 1 of the Government Code. Provides that the time for such notice shall be subject to Code of Civil Procedure section 1005. Requires the court to deny the motion without prejudice or continue the matter if notice cannot be accomplished, and allows the court to authorize an alternate means of service for good cause if it is likely to accomplish actual notice. Allows the protected person to waive the notice requirements if he or she is physically present in court and does not challenge the sufficiency of the notice.</p> <p>Code of Civil Procedure §§ 527.6, 527.8, and 527.85; Family Code § 6345; Welfare and Institutions Code §§ 213.5 and 15657.03</p>	

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**AB 687 (Fletcher)**  
**Chapter 462, Statutes of 2011**  
**Adoption**

**Effective: 01/01/2012**

**Summary Description of New Law**

Provides that when an inquiry is being made to determine the natural father of a child who is proposed for adoption that it include the names and whereabouts of every man presumed to be the father and the efforts made to give notice of the proposed adoption. Provides that notice of the adoption to the natural father is not required when the father’s relationship to the child has been previously terminated or when he has executed a written form waiving notice, denied paternity, relinquished the child for adoption, or consented to the adoption. Requires the court to issue an order dispensing with notice in these cases. Provides that a licensed private adoption agency is authorized to process non-dependent children adoptions through the Interstate Compact on the Placement of Children (ICPC) in specified circumstances. Provides that the court may issue an adoption order nunc pro tunc to a date when the adoptee was a minor if the adoptee is not a minor and it is in the best interests of the adoptee and will serve public policy. Provides that a petition challenging an adoption on the basis of fraud must be commenced within three years of the order, or 90 days of discovering the fraud. Specifies venue for adult adoptions, including for non-resident petitioners.

	Existing Law	New Law	Impact on Court
<p>1 <b>Inquiry of mother about natural father</b></p> <p>Requires that when an adoption is being pursued the court require the agency seeking the adoption inquire of the mother about the identity of the natural father and report its findings to the court. Requires that</p>	<p><b>Inquiry of mother about natural father</b></p> <p>Adds the following item to the required inquiry of the mother: the names and whereabouts, if known, of every man alleged or presumed to be the father of the child, and any efforts made to provide notice of the</p>	<p>No impact on court.</p>	

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Existing Law	New Law	Impact on Court
<p>inquiry to include: (1) whether the mother was married at conception or afterward; (2) whether the mother was cohabiting with a man at conception or birth; (3) whether the mother received support payments or promises of support with respect to the child; and (4) whether any man has formally or informally acknowledged or declared his paternity of the child.</p> <p>Family Code § 7663</p>	<p>adoption to those men. Requires that the report of this inquiry be filed in a written report with the court.</p> <p>Family Code § 7663</p>	
<p><b>2</b> <b>Circumstances in which notice of an adoption to an alleged father is not required</b></p> <p>Provides that notice of an adoption proceeding to an alleged father is not required when the alleged father has been served with notice that he may be the father of the child to be adopted and has failed to bring a paternity action within 30 days of that notice or the birth of child, whichever comes later. Additionally</p>	<p><b>Circumstances in which notice of an adoption to an alleged father is not required</b></p> <p>Consolidates provisions regarding when notice of an adoption proceeding to an alleged father is not required to include the existing exceptions as well as the following: (1) the man’s relationship to the child has previously been terminated or determined not to exist by a court; (2) the alleged or presumed father</p>	<p>Review court procedures to ensure that notice requirements are consistent with statute and ensure that orders dispensing with notice are entered in cases in which notice of adoption is not required.</p>

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Existing Law	New Law	Impact on Court
<p>provides that notice may be dispensed with by an order of the court when a person identified as the natural father cannot be located or his whereabouts are unknown. Family Code §§ 7664 and 7666</p>	<p>has executed a written form to waive notice, deny his paternity, relinquish the child for adoption or consent to the adoption. Requires the court to issue an order dispensing with notice in any of those situations. Family Code § 7666</p>	
<p><b>3 Hearing for termination of parental rights of father</b> Provides that an action to terminate the parental rights of a father of a child to be adopted shall be set for hearing no more than 45 days after the filing of the petition and the completion of service. Family Code § 7667</p>	<p><b>Hearing for termination of parental rights of father</b> Provides that an action to terminate the parental rights of a father of a child to be adopted shall be set for hearing no more than 45 days after the filing of the petition. Requires that notice be provided at least 10 days before the hearing. Family Code §§ 7666 and 7667</p>	<p>Revise court procedures to ensure that hearing and notice times are consistent with new statutory requirements.</p>
<p><b>4 Authority for ICPC</b> Provides that the Department of Social Services is the appropriate public authority for purposes of the</p>	<p><b>Authority for ICPC</b> Provides that a full service, licensed private adoption agency may process ICPC paperwork for a non-dependent child when that agency has provided</p>	<p>No court impact.</p>

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Existing Law	New Law	Impact on Court
<p>ICPC. Family Code § 7903</p>	<p>adoption related services to a birth parent or prospective adoptive parent. Family Code § 7913</p>	
<p><b>5 Nunc pro tunc dissolution</b> Authorizes a court to enter a judgment of dissolution on the date that it could have originally been entered if the court finds that it was not entered via mistake, negligence, or inadvertence (referred to as “nunc pro tunc”). Family Code § 2346</p>	<p><b>Nunc pro tunc adoption</b> Authorizes a court to enter a nunc pro tunc adoption order when it will serve the best interests of the child and public policy, such as cases in which the adoption of a minor is delayed beyond the child’s 18th birthday due to factors outside the control of the adoptee and the adoptive family. Provides that the adoption shall not be dated earlier than the date of the termination of the adoptee’s parental rights. Provides that the nunc pro tunc adoption shall not impact the eligibility for publicly funded benefits. Family Code § 8601.5</p>	<p>Make judges and judicial officers aware of authority to enter nunc pro tunc adoption orders.</p>
<p><b>6 Witness for consent to stepparent</b></p>	<p><b>Witness for consent to stepparent</b></p>	

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<b>Existing Law</b>	<b>New Law</b>	<b>Impact on Court</b>
<p><b>adoption</b></p> <p>Provides that the consent of a birth parent to a stepparent adoption shall be signed in the presence of a notary public, court clerk, probation officer, qualified court investigator, or county welfare department staff member and shall be filed immediately with the court. Upon filing requires the clerk of the court to notify the probation officer or the county welfare department.</p> <p>Family Code § 9003</p>	<p><b>adoption</b></p> <p>Provides that an authorized representative of a licensed adoption agency may witness the consent. Requires the consent to be filed with the adoption petition if the petition has not yet been filed. Requires the notice to the probation officer or county welfare department to occur after the adoption request is filed.</p> <p>Family Code § 9003</p>	<p>No court impact.</p>
<p><b>7 Proceeding to set aside an adoption order</b></p> <p>Provides that a proceeding to vacate or set aside an adoption be filed within one year after the entry of the adoption order, unless the action is based upon fraud, in which case it must be filed within three years of entry of the order.</p> <p>Family Code § 9102</p>	<p><b>Proceeding to set aside an adoption order</b></p> <p>Provides that an action to vacate or set aside based upon fraud be filed within three years of the adoption or 90 days after the discovery of the fraud, whichever is earlier. Requires the court in any action to set aside an adoption to first determine if the facts presented are legally sufficient to set aside the order. If they are</p>	<p>Revise procedures to ensure that actions to vacate or set aside adoptions for fraud are filed within the statutory timeframe.</p>

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Existing Law	New Law	Impact on Court
	<p>legally sufficient requires the court to take into consideration the best interests of the child when making its ruling.</p> <p>Family Code § 9102</p>	
<p><b>8 Venue for adult adoption petitions</b></p> <p>Provides that a petition for an adult adoption shall be filed in the county in which either the proposed adoptee or the prospective adoptive parent resides.</p> <p>Family Code § 9321</p>	<p><b>Venue for adult adoption petitions</b></p> <p>Provides that a petition for an adult adoption may be filed in the county of residence of either party, or in the county in which the proposed adoptee was born, or in the county in which an office of the public or private agency that placed the proposed adoptee for foster care or adoption as a minor or dependent child is located. Allows nonresident petitioners to file in the county of the public or private agency as well.</p> <p>Family Code § 9213</p>	<p>Make judges and judicial officers aware of new venue options for adult adoptions.</p>

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**Family**

**SB 651 (Leno)**  
**Chapter 721, Statutes of 2011**  
**Family law: domestic partnerships**

**Effective: 01/01/2012**

**Summary Description of New Law**

Eliminates differences between domestic partnerships and marriage to: (1) remove the requirement that domestic partners have a common residence; (2) allow minors to enter into domestic partnerships with a court order; and (3) establish a confidential domestic partnership process akin to confidential marriage licenses. Provides parties with jurisdiction to file a dissolution case in California for a same-sex marriage even if neither of the parties resides in California if the marriage was entered into in California, and neither party resides in a state that will dissolve a same-sex marriage.

	Existing Law	New Law	Impact on Court
<b>1</b>	<p><b>Requirement of common residence for domestic partnership</b></p> <p>Requires persons seeking to establish a domestic partnership to have a common residence as defined.</p> <p>Family Code § 297</p>	<p><b>Requirement of common residence for domestic partnership</b></p> <p>Eliminates the requirement that domestic partners must have a common residence.</p> <p>Family Code § 297</p>	No impact on court.
<b>2</b>	<p><b>Procedure to enter into domestic partnerships</b></p> <p>Requires persons seeking to establish a domestic partnership to be at least 18 years of age.</p>	<p><b>Procedure to enter into domestic partnerships</b></p> <p>Establishes a procedure for a person under the age of 18 to enter into a domestic partnership with a court order and the consent of the minor's</p>	Revise procedures to incorporate a process for obtaining a court order to allow minors to enter into domestic

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Existing Law	New Law	Impact on Court
Family Code § 297	parent(s) or guardian(s), unless the court finds there is no parent or guardian capable of granting the consent, in which case the court may provide the consent. Requires the court order and consent to be filed with the court and also with the Secretary of State with the Declaration of Domestic Partnership.  Family Code § 297.1	partnerships.
<p><b>3 Residency requirements to petition for dissolution in California</b></p> <p>Provides that a judgment of dissolution cannot be entered by the court unless at least one of the parties resides in California for at least six months before filing the petition, and in the county in which the petition is filed for at least three months before filing the petition.</p> <p>Family Code § 2320</p>	<p><b>Residency requirements to petition for dissolution in California</b></p> <p>Allows as an exception to the residency requirement, a California court to enter a judgment of dissolution for a same sex marriage in which both parties are nonresidents if the marriage was entered in California, and neither party resides in a state that will enter a dissolution. Provides that there is a rebuttable presumption that the state will not enter a dissolution if</p>	<p>Make judges and judicial officers aware of new jurisdictional expansion.</p>

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Existing Law	New Law	Impact on Court
	<p>the state does not recognize same sex marriages. Provides that the county in which the parties were married is the proper venue for filing the petition, and that the petition shall be subject to California law.</p> <p>Family Code § 2320(b)</p>	



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**Family**

<b>New Law</b>	<b>Why New Law is Significant to Trial Courts / Actions to Consider</b>
<p>family justice center as a multi-agency, multi-disciplinary service center where public and private agencies assign staff members to provide services to victims of crime from one location in order to reduce the number of times victims must tell their story, reduce the number of places victims must go to for help, and increase access to services and support for victims and their children.</p>	