

PATERNITY

Generally
Conclusive Presumption
Blood Tests
Declaration of Paternity
Uniform Parentage Act
Kelsey S.
Alleged Father

GENERALLY:

“The various statutory methods for establishing a presumption of paternity are contained in the Family Code. (See, e.g., Fam. Code § 7540 [child of wife cohabiting with husband who is not impotent or sterile conclusively presumed to be child of the marriage]; §§ 7571-7572 [paternity established where man identified by mother as natural father executes voluntary declaration of paternity at hospital where child is born]; § 7611, subd. (a) [presumption arises where man is married to mother and child is born during marriage or within 300 days afterward]; § 7611, subd. (b) [presumption arises where man attempted to marry mother prior to child’s birth, but marriage is or could be declared invalid]; § 7611, subd. (c) [presumption arises where man attempted to marry mother after child’s birth and is named on birth certificate with his consent or voluntarily undertakes legal support obligation].)” (*In re J.O.* (2009) 178 Cal.App.4th 139, 147.)

The juvenile court has exclusive jurisdiction to determine paternity when the dependency petition is filed. An alleged father may move to be declared the presumed father or the court may initiate the determination by taking evidence, affidavits, and so on, or by ordering a blood test. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 620.)

“Although more than one individual may fulfill the statutory criteria that gives rise to a presumption of paternity, ‘there can only be one presumed father.’” (*In re Jesusa V.* (2004) 32 Cal.4th 588, 603; *Brian C. v. Ginger K.* (2000) 77 Cal.App.4th 1198, 1223.)

“In dependency proceedings, ‘fathers’ are divided into four categories—natural, presumed, alleged, and de facto. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.) A natural father is one who has been established as a child’s biological father. (*Id.*, at p. 801.) Use of the term ‘natural father’ means that while the man’s biological paternity has been established, he ‘has not achieved presumed father status as defined in [former] Civil Code section 7004.’ (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15.) [¶] “ ‘Presumed fatherhood, for purposes of dependency proceedings, denotes one who ‘promptly comes forward and demonstrates a full commitment to . . . paternal

responsibilities—emotional, financial, and otherwise[.]” ’ (*In re Jerry P.*, *supra*, 95 Cal.App.4th at pp. 801-802.) A natural father can be a presumed father, but is not necessarily one; and a presumed father can be a natural father, but is not necessarily one. (*Id.* at pp. 801.) [¶] An alleged father may be the father of a dependent child. However, he has not yet been established to be the child’s natural or presumed father. (*In re Jerry P.*, *supra*, 95 Cal.App.4th at p. 801.) A de facto father is someone such as a stepparent who has, on a day-to-day basis, assumed the role of a parent for a substantial period of time. (*Id.* at p. 801; *In re Crystal J.* (2001) 92 Cal.App.4th 186, 190; Cal. Rules of Court, rule 1401(a)(8).) Use of the word ‘parent’ in the dependency statutes does not include de facto parents. (*In re Zacharia D.*, *supra*, 6 Cal.4th at p. 448 [observing that de facto parents are not ‘parents’ for purposes of reunification services].)” (*In re A.A.* (2003) 114 Cal.App.4th 771, 779.)

Presumptive father = legal father = the man with the rights and responsibilities of a father, even if not the biological father. Alleged father = one who allegedly is the biological or natural father, or otherwise entitled to become the presumptive (legal) father. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 449, fn. 15; *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 823, fn. 3; *In re Karen C.* (2002) 101 Cal.App.4th 932, 937-938 [“de jure” father under § 7611]; *In re Jerry P.* (2002) 95 Cal.App.4th 793 [an “equitable father” and “quasi presumed father” = *Kelsey S.* father]; *In re Joseph G.* (2000) 83 Cal.App.4th 712, 715 [a biological father was unable to become a presumed father]; see *In re Shereece B.* (1991) 231 Cal.App.3d 613, 622 [a non-presumed father has no parental rights over a child].)

Biological father = natural father where biological paternity is established but not legal paternity. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 801 [biological father = a natural father; might also be the presumed father].) Alleged father may be father whose biological paternity has not yet been determined or the biological paternity is established but not the legal paternity. (*Zacharia*, *supra*, at p. 449, fn. 15.)’ (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 596; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 801.)

De facto father = a stepfather who has assumed the role of a parent. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801; *In re Crystal J.* (2001) 92 Cal.App.4th 186, 190.)

The state has an “interest in preserving and protecting the developed parent-child . . . relationship which give young children social and emotional strength and stability.” (*In re Nicholas H.* (2002) 28 Cal.4th 56, 65, internal quotation marks omitted.)

“There is a compelling state interest in establishing paternity for all children.” (Fam. Code, § 7570, subd. (a).) “Establishing paternity is the first step toward a child support award, which, in turn, provides children with equal rights and access to benefits,

including, but not limited to, social security, health insurance, survivors' benefits, military benefits, and inheritance rights. Knowledge of family medical history is often necessary for correct diagnosis and treatment. Additionally, knowing one's father is important to a child's development." (Fam. Code, § 7570, subd. (a).)

"The Legislature has . . . made perfectly clear that public policy (and, we might add, common sense) favors, whenever possible, the establishment of legal parenthood with the concomitant responsibilities." (*Marriage of Buzzanca* (1998) 61 Cal.App.4th at p. 1423.)

Judicial determination of parentage is a mix of genetic truth and implication of public policy in favor of marriage and stability and against illegitimacy (and orphanage). (*In re Karen C.* (2002) 101 Cal.App.4th 932, 937.)

An order of child support by default judgment does not require any evidence or finding of paternity; and thus, would be error to use the judgment as evidence of paternity. (*County of Orange v. Superior Court (Rothert)* (2007) 155 Cal.App.4th 1253, 1259-1260; see also *County of Lake v. Palla* (2001) 94 Cal.App.4th 4718, 427.)

Family Support programs required under title IV-D of the Social Security Act to recoup welfare costs. (42 U.S.C. §§ 661-669b; *County of Yuba v. Savedra* (2000) 78 Cal.App.4th 1311, 1317-1318 [when entering default judgment, district attorney need not show any evidence to support the allegations in the complaint]; *Clark v. Superior Court* (1998) 62 Cal.App.4th 576, 579.) A county may bring an action for child support when (1) the child is receiving public assistance, (2) the party to a divorce proceeding has applied for public assistance, or requested to do so by the individual on whose behalf the enforcement efforts will be mad when the child is not receiving public assistance. (*County of Los Angeles v. Ferguson* (1979) 94 Cal.3d 549, 554; Welf. & Inst. Code, § 17400, subd. (a).)

Paternity order remains despite lies from the mother regarding the biological father. (see *San Mateo County Dept. of Child Support Services v. Clark* (2008) 168 Cal.App.4th 834, 841-843 [mother refused to make the child available for testing]; *In re Margarita* (1999) 72 Cal.App.4th 1288; *City and County of San Francisco v. Cartagena* (1995) 35 Cal.App.4th 1061, 1067-1068 [extrinsic fraud is not cause for reversing paternity judgment when tests show the 'father' is not the biological father]; *City and County of San Francisco v. Stanley* (1994) 24 Cal.App.4th 1724, 1728 [res judicata effect]; but see *County of Los Angeles v. Navarro* (2004) 120 Cal.App.4th 246, 249.)

When the court finds one person to be the father against another potential father, it must join the other alleged father and give him an opportunity to participate. (*County of Los Angeles v. Sheldon P.* (2002) 102 Cal.App.4th 1337, 1345.)

When a person tries to set aside the finding of another man being found to be the

presumed father, the then presumed father must be joined in the litigation. (*Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 864-865.)

Finding that one person is the presumed parent instead of another who had been a presumed parent does not amount to termination of parental rights. “A declaration of presumed fatherhood entitles the presumed father to reunification services and custody of the child [citation] but does not itself terminate the [other] father’s parental relationship with the child. [Citation.] Termination of parental rights requires further proceedings.” (*In re Jesusa V.* (2004) 32 Cal.4th 588, 610.)

The court can reconsider paternity because of new evidence under Family Code section 7575, subdivision (c)(1). (*Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 863.)

A finding of paternity can be collaterally attacked on the grounds of extrinsic fraud. (*Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1068; cf. *In re William K.* (2008) 161 Cal.App.4th 1, 10 [the mother having someone else sign the declaration of paternity was intrinsic fraud].)

When a biological father wishes to assert his paternity after the dispositional hearing, he must file a section 388 petition and must show his paternity would be in the minor’s best interest. (*In re Vincent M.* (2008) 161 Cal.App.4th 943, 956.)

Standing: County family support has standing to set aside a voluntary declaration of paternity. (*County of Los Angeles v. Sheldon P.* (2002) 102 Cal.App.4th 1337, 13475.)

Standing: Minor has standing to contest parentage under Family Code section 7650. (*Winn v. Superior Court* (2009) 176 Cal.App.4th 346, 354; *In re Karen C.* (2002) 101 Cal.App.4th 932, 936.)

Standing: A person has standing to contest on appeal that denied standing in the superior court when the court denied paternity status. (*In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, 1116-1117; *In re Paul H.* (2003) 111 Cal.App.4th 753, 759; *People v. Superior Court (Plascencia)* (2002) 103 Cal.App.4th 409, 414; see *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1294.)

Waiver: Denial of paternity can be appealed if the alleged father came forward, though he did not file a section 388 petition. (*In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, 1116.)

Standard of review: Substantial evidence. (*In re A.A.* (2003) 114 Cal.App.4th 771, 782; *Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241; *In re Spencer W.* (1996) 48 Cal.App.4th 1647, 1650.)

Remedy: Reverse termination of parental rights when the superior court fails to follow procedure to permit an alleged father become a presumed father. (*In re Paul H.* (2003) 111 Cal.App.4th 753, 760-761.)

CONCLUSIVE PRESUMPTION:

FamC § 7540 [**Marriage presumption**]

Except as provided in Section 7541, **the child of a wife cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage.**

FamC § 7541(a) Notwithstanding Section 7540, if the court find that the conclusions of all the experts, as disclosed by the evidence based on blood tests performed pursuant to [§ 7550 et seq.], are that the husband is not the father of the child, the question of the paternity of the husband shall be resolved accordingly.

(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purpose of establishing paternity by the presumed father of the child through or by the child's guardian ad litem. As used in this subdivision, "presumed father" has the meaning given in Sections 7611 and 7612.

Family Code 7540 section creates a conclusive presumption of paternity for a minor conceived during marriage unless rebutted within two years by a blood test requested by the mother, her husband, the minor, or a presumed father under Family Code section 7541.

Policy: "Traditionally, it was stated that the presumption was designed to preserve the integrity of the family unit, protect children from the legal and social stigma of illegitimacy, and promote individual rather than state responsibility for child support." (*County of Orange v. Leslie B.* (1993) 14 Cal.App.4th 976, 980.)

The conclusive presumption normally does not violate due process. (*Michael H. v. Gerald D.* (1989) 491 U.S. 110, 124-127 [even when biological father wishes a relationship with the minor, unless *Lisa R.* situation]; *Lehr v. Robertson* (1983) 463 U.S. 248 259-260 [same]; *Craig L v. Sandy S.* (2004) 125 Cal.App.4th 36, 47 [same, but if a relationship is permitted, a biological father can become a presumed father under § 7611, subd. (d)]; *Dawn D. v. Superior Court* (1998) 17 Cal.App.4th 932, 945 [same]; *Michelle W. v. Ronald W.* (1985) 39 Cal.3d 354, 362-363; *Rodney F. v. Karen M.* (1998) 61

Cal.App.4th 233, 239; *Miller v. Miller* (1998) 64 Cal.App.4th 111, 119-120; but see *In re Lisa R.* (1975) 15 Cal.3d 636, 650-651 [private interests of biological father outweighed the state's interest in furthering the policy of the conclusive presumption when biological father lived with the mother before and after birth, contributed to the child's support, and stayed active in the dependency proceeding while the mother and husband had died]; *In re Melissa G.* (1989) 213 Cal.App.3d 1082, 1085-1086; *County of Orange v. Leslie B.* (1993) 14 Cal.App.4th 976, 980-983 [marriage ended before child was born and biological father tried to avoid paying child support]; *Comino v. Kelley* (1994) 25 Cal.App.4th 678, 683 [marriage was a "business arrangement," biological father on the birth certificate]; *Alicia R. v. Timothy M.* (1994) 29 Cal.App.4th 1232 [marriage annulled two years after child born].)

The presumption must be rebutted by blood test, under Family Code 7541, before the child's second birthday. Otherwise, the presumption could be rebutted only upon evidence the father was sterile. (*In re Marriage of Freeman* (1996) 45 Cal.App.4th 1437, 1444-1445.) Only the minor's guardian ad litem and the presumed father under Family Code section 7611 or 7612 can petition for one. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585 [alleged father did not have standing to rebut the conclusive presumption of the mother's husband]; *Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36, 49.)

Family Code 7540 is not really a presumption but is instead "a rule of substantive law." (*Estate of Cornelious* (1984) 35 Cal.3d 461, 464; *Kusior v. Silver* (1960) 54 Cal.2d 603, 619; *Marriage of Freeman* (1996) 45 Cal.App.4th 1437, 1444-1445.)

The husband and wife must be cohabitating. No presumption without substantive cohabitation. (*Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, 1115 [separated wife's weekend tryst with husband away from home not enough]; *Comino v. Kelley* (1994) 25 Cal.App.4th 678, 981, 984 [marriage for business purposes only]; *City and County of San Francisco v. Stahleendorf* (1992) 7 Cal.App.4th 1191, 1914-1915 [spouses had not met at time of conception]; but see *In re Elijah V.* (2005) 127 Cal.App.4th 576, 586 [presumption applied when husband had sex with mother once nine months ago, though mother lived with the alleged father].)

Wife of a man, who had an affair, is not the presumed mother over the biological mother because blood tests under Family Code section 7541 would show lack of parentage. (*Amy G. v. M.W.* (2006) 142 Cal.App.4th 1, 15.)

BLOOD TESTS:

FamC § 7550-7558

Although blood tests showed it was 99.9% certain the man was the child's father, a party could introduce evidence to rebut this inference by showing the man never had access to the mother when she conceived. (*City and County of San Francisco v. Givens* (2000) 85 Cal.App.4th 51, 55-56; see also *County of El Dorado v. Misura* (1995) 33 Cal.App.4th 73, 83.)

A man need not establish biological evidence to become a presumed father. (*In re Nicholas H.* (2002) 28 Cal.4th 56, 59, 60, 63; *Comino v. Kelley* (1994) 25 Cal.App.4th 678, 685 [§ 7611(d)]; *Johnson v. Calvert* (1993) 5 Cal.4th 84, 91-92 [presumption of parenthood to the surrogate parents]; *In re Kiana A.* (2001) 93 Cal.App.4th 1109, 1116, 1117-1118 [father who took minor in home and provided the necessities of life should prevail over biological father in custody]; *Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, 1116-1117; see also § 7540, above; *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932 [§ 7611(a) & (b) husband had priority over allegedly biological father]; but see *Brian C. v. Ginger K.* (2000) 77 Cal.App.4th 1198; 1222; *In re Olivia H.* (1987) 196 Cal.App.3d 325, 330, disapproved on this point in *In re Nicholas H.* (2002) 28 Cal.4th 56, 70; *In re Marriage of Moschetta* (1994) 25 Cal.App.4th 1218 [baby given to surrogate parents].)

Family Code section 7551 authorizes blood tests to determine if an alleged father is or is not the natural father; it does not authorize blood tests of only presumed fathers. (*In re Raphael P.* (2002) 97 Cal.App.4th 716.) The court can sua sponte order blood test. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 586, fn. 3.)

Court can deny blood test for alleged father when there is a presumed father unless comply with Family Code section 7631. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 164.)

A request for paternity testing must be within two years of a declaration of paternity under Family Code section 7646. (*County of Orange v. Superior Court (Rothert)* (2007) 155 Cal.App.4th 1253, 1260.)

Court correctly denies blood test when the minor is in a secure home (and the man would not be found to be the father even with a positive blood test) in order to protect the minor's right to privacy. (*In re Joshua R.* (2002) 104 Cal.App.4th 1020, 1024-1025, 1027 [alleged father who learned of minor when 17 months old and waited through five years of dependency proceedings before requesting blood tests when new dependency petition was filed]; *Prato-Morrison v. Doe* (2002) 103 Cal.App.4th 222, 231.)

Standing: Under Family Code section 7541, subdivision (b), only the husband,

the presumed father, or the guardian-ad-litem of the child may petition for a blood test within two years to rebut the conclusive presumption. (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 239-240; *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 942.)

Standard of review: A trial court's order granting or denying a request for genetic testing is reviewed for abuse of discretion. (*Cruz v. Superior Court* (2004) 121 Cal.App.4th 646, 648; *In re Joshua R.* (2002) 104 Cal.App.4th 1020, 1025.)

DECLARATION OF PATERNITY:

FamC § 7573 [**Voluntary declaration of paternity**]

Except as provided in Sections 7575, 7576, and 7577, a completed voluntary declaration of paternity, as described in Section 7574, that has been filed with the Department of Child Support Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.

FamC § 7574 The voluntary declaration of paternity shall be executed on a form developed by the Department of Child Support Services The form . . . shall contain FamC § 7575 [Rescinding voluntary declaration of paternity within 60 days; rebutting presumption by blood tests.]

FamC § 7576 The following provisions shall apply for voluntary declarations signed on or before December 31, 1996:

(a) Except as provided in subdivision (d), the child of a woman and a man executing a declaration of paternity under this chapter is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(d) The presumption established by this chapter may be rebutted by any person requesting a blood or genetic test pursuant to [§ 7550 et seq.] . . . made within three years

(e) A presumption under this chapter shall not override all statutory presumptions of paternity except a presumption arising under Section 7540 or 7555.

FamC § 7577 [rescinding voluntary declaration by minor parents]

H&SC § 102425: Shall not list unmarried man as father on birth certificate unless sign declaration of paternity.

How voluntary declaration of paternity works. (*County of Los Angeles v. Sheldon P.* (2002) 102 Cal.App.4th 1337, 1343.)

Under Family Code section 7570, a voluntary declaration of paternity after January 1, 1997 is sufficient to create a presumed father. (*In re Raphael P.* (2002) 97

Cal.App.4th 716, 737-738 [because a man cannot be placed on a birth certificate without signing a declaration of paternity, may presume father did so once shown he was on the birth certificate]; *In re Liam L.* (2000) 84 Cal.App.4th 739, 746.)

Under Family Code section 7575, subdivision (b)(1) permits but does not require blood test evidence to rebut declaration of paternity under Family Code section 7573. (See *In re Nicholas H.* (2002) 28 Cal.4th 56, 63-64.)

Federal statute prohibits setting aside a voluntary declaration of paternity when AFDC is involved unless there is fraud, duress, or material mistake of fact. (42 U.S.C. § 66(a)(5)(D)(iii); *County of Los Angeles v. Sheldon P.* (2002) 102 Cal.App.4th 1337, 1347 [evidence of duress when the mother was told could not leave the hospital without naming a father].)

A California court must recognize a declaration of paternity from another state under the equal protection and the full faith and credit clauses of the federal Constitution. (*In re Mary G.* (2007) 151 Cal.App.4th 184, 198-203.)

There are five ways to attack a declaration of paternity:

(1) The person can be declared one by a father, mother, child support agency (Fam. Code, § 7575, subd. (b)(3)(A)); and if not, the alleged biological father can ask the court to order paternity testing (Fam. Code, § 7575, subd. (b)) which the court can order if paternity is relevant (Fam. Code, § 7551); if the test shows biological paternity, the court has discretion to set aside the declaration of paternity unless it is not in the minor's best interest (Fam. Code, § 7575, subd. (b)(1)).

(2) Either parent can set aside a paternity judgment under Code of Civil Procedure section 473 because of mistake, inadvertence, or excusable neglect.

(3) A showing of extrinsic fraud (see *Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1068)

(4) The mother, minor, or previously established father can seek to set aside paternity after genetic testing (Fam. Code, § 7646, subd. (a)), but the biological father does not have standing to request this.

(5) Any interested party can file under the Uniform Parentage Act (Fam. Code, § 7630, subd. (b)) to be declared a presumed father; the court would then need to determine which presumed father should be the legal father.

(*In re William K.* (2008) 161 Cal.App.4th 1, 8-10 [but the mother having someone else sign the declaration of paternity was intrinsic fraud].)

Standing: Only a child support agency, the mother, and the man who signed the declaration of paternity have standing under Family Code section 7575 to contest the paternity. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 164 [alleged father did not have standing to assert his biological paternity]; but *In re J.L.* (2008) 159 Cal.App.4th 1010, 1020-1025 [other father can contest declaration of paternity though not listed in Fam. Code, § 7575].)

UNIFORM PARENTAGE ACT:

FamC § 7610(a)

The natural mother is the one who gave birth to the child.

“ ‘Within the context of artificial reproductive techniques,’ . . . intentions that are voluntarily chosen, deliberate, express, and bargained-for ought presumptively to determine legal parenthood.” (*Johnson v. Calvert* (1993) 5 Cal.4th 84, 93.) Thus, the one who was contracted to be the mother, not the surrogate mother, was presumptively the “natural” mother. (*Ibid.*) Best interests of the child standard does not apply. (*Id.*, at pp. 93-94, fn. 10.)

FamC § 7611

A man is **presumed** to be the **natural father** of a child if he meets the conditions [of § 7540 or 7570] or in any of the following subdivisions:

(a) He and the child’s natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after judgment of separation is entered by a court.

(b) Before the child’s birth, he and the child’s natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law; although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce;

(2) If the attempted marriage is invalid without a court order, the child was born within 300 days after the termination of cohabitation.

(c) After the child’s birth, he and the child’s natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child’s father on the child’s birth certificate.

(2) He is obliged to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

FamC § 7611.5 Where Section 7611 does not apply, a man shall not be presumed to be the natural father of a child if either of the following is true:

(a) The child was conceived as a result of an act in violation of Section 261 of the Penal Code and the father was convicted of that violation.

(b) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under the age of 15 years and the father was 21 years of age or older at the time of conception.

FamC § 7612(a) Except as provided in [§§ 7540 and 7570], a presumption under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7611 which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

Policy: “The statutory purpose of section 7611 is to distinguish between those fathers who have entered into some familial relationship with the mother and child and those how have not.” (*In re Sabrina H.* (1990) 217 Cal.App.3d 702, 708.)

Family Code section 7611 creates a rebuttable presumption affecting the burden of proof. (*Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 937.) Can be presumed father under section 7611 if married the mother, attempted to marry the mother, signed declaration of paternity, or received the minor in the home and held him out to be his. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 802]; *In re Kiana A.* (2001) 93 Cal.App.4th 1109, 1116 [review for substantial evidence].)

Family Code section 7611, subdivision (a) is broader than section 7540 because the UPA does not require the man to live with the mother “as husband and wife” at the time of conception. (See *Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, 1115.) One who was married with married with the mother at conception is presumed to be the father when the minor is born withing 300 days of the divorce, though they were separated at the time. (*Lisa I. v. Superior Court* (2005) 133 Cal.App.4th 605, 614.)

Wife of a man, who had an affair, is not the presumed mother over the biological mother. (*Amy G. v. M.W.* (2006) 142 Cal.App.4th 1, 12-14.)

Family Code section 7611, subdivision (d) does not apply when a step-parent co-parents the child but holds the child out as being only the partner’s child. (*Miller v. Miller* (1998) 64 Cal.App.4th 111, 118; *West v. Superior Court* (1997) 59 Cal.App.4th 302, 306, disapproved in *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 126; see *In re*

Spencer W. (1996) 48 Cal.App.4th 1647, 1653-1654 [live-in boyfriend]; *Curiale v. Reagan* (1990) 222 Cal.App.3d 1597, 1600 [lesbian partner], disapproved in *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 126; *Nancy S. v. Michele G.* (1991) 228 Cal.App.3d 831, 836 [lesbian partner], disapproved in *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 126; but see Family Code section 297.5 (operative Jan. 1, 2005) [“The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses.”].) A man cannot constructively receive a minor into his home; instead, he must rely on a due process claim under *Kelsey S. (In re Kyle F.)* (2003) 112 Cal.App.4th 538, 543.)

The statute does not apply when the biological parent sought to be declared a presumed parent when she continued to care for the minor in her home after the court terminated parental rights. (*In re Cody B.* (2007) 153 Cal.App.4th 1004, 1009-1013.)

There is no time period requirement for receiving a minor. Separation after seven weeks the baby entered the home was enough. (*Charisma B. v. Kristina S.* (2009) 175 Cal.App.4th 361, 374-375.) Father received the child into his home when the minor stayed with him every other weekend for his first year of life. (*In re Richard M.* (1975) 14 Cal.3d 783, 790-796.)

Biological father who is a sex registrant and allegedly molested the minor should not be found to be the presumed father. (*In re T.R.* (2005) 132 Cal.App.4th 1202, 1211-1212.)

UPA applies to maternity. (*Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 116; *id.* at p. 119 [both parents can be women]; *K.M. v. E.G.* (2005) 37 Cal.4th 130, 142-143 [K.M.’s egg in E.G. when there was no other parent and K.M. wished to be parent made them both parents]; see *Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156, 165-166 [lesbians parents by estoppel]; accord, *Charisma B. v. Kristina S.* (2009) 175 Cal.App.4th 361, 379-381 [registered domestic partner participated in partner’s conception, posted pregnancy on own website, parented until separated when child was seven weeks old]; *In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357-1359 [sister who held baby out as her own became presumed mother]; *In re Karen C.* (2002) 101 Cal.App.4th 932, 938-940 [admittedly nonbiological mother awarded presumed maternity when received the child in her home and held it out as her own after arranging with biological mother who failed to get an abortion to make informal adoption]; see *Robert B. v. Susan V.* (2003) 109 Cal.App.4th 1109, 1113 [maternity shown from being the genetic mother or by giving birth].)

The court has jurisdiction to ascertain the biological mother of an adopted child. (*Winn v. Superior Court* (2009) 176 Cal.App.4th 346, 353-355.)

Under Family Code section 7612, subdivision (a), rebut the presumed parenthood of nonbiological father only “in an appropriate action” by clear and convincing evidence. (*In re Nicholas H.* (2002) 28 Cal.4th 56, 59, 63; *Elisa B. v. Superior Court* (2005) 37 Cal.4th 108, 120, 122, 123 [non-biological parent who agreed to accept minor in her home as her own and there is no other parent besides the other mother, was presumed mother]; *In re J.O.* (2009) 178 Cal.App.4th 139, 147-151 [it is not rebutted because the father fails to provide support when there is not another man to become the legal father]; *Librers v. Black* (2005) 129 Cal.App.4th 114, 122-123 [*Nicholas H.* and *Jesusa V.* apply in nondependency cases]; *Craig L v. Sandy S.* (2004) 125 Cal.App.4th 36, 50-51, 52 [husband does not have precedent over biological father; determination depends on the strength of the marriage and their connection with the minor]; *In re Salvador M.* (2003) 111 Cal.App.4th 1353, 1357-1359 [sister who held baby out as her own became presumed mother]; *In re Karen C.* (2002) 101 Cal.App.4th 932, 938-940 [admittedly nonbiological mother awarded presumed maternity when received the child in her home and held it out as her own after arranging with biological mother who failed to get an abortion to make informal adoption]; see *In re A.A.* (2003) 114 Cal.App.4th 771, 784-788 [nonbiological father who provided for minor and maintained a relationship is the legal father over the biological father who did not]; *Robert B. v. Susan V.* (2003) 109 Cal.App.4th 1109, 1113 [maternity shown from being the genetic mother or by giving birth]; *In re Raphael P.* (2002) 97 Cal.App.4th 716, 736; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 797, 804.)

“We were careful in *Nicholas H.*, therefore, not to suggest that every man who begins living with a woman when she is pregnant and continues to do so after the child is born necessarily becomes a presumed father of the child, even against his wishes. The Legislature surely did not intend to punish a man like the one in *Nicholas H.* who voluntarily provides support for a child who was conceived before he met the mother, by transforming that act of kindness into a legal obligation.” (*Elise B. v. Superior Court* (2005) 37 Cal.4th 108, 124; accord *Charisma R. v. Kristina S.* (2006) 140 Cal.App.4th 301, 304-308 [*Elise B.* applies to same sex partner who is not a biological parent].)

Under Family Code section 7612, subdivision (b), can rebut the presumption of paternity pursuant to Family Code section 7611 through a blood test under Family Code section 7551. (*Brian C. v. Ginger K.* (2000) 77 Cal.App.4th 1198; *In re Kiana A.* (2001) 93 Cal.App.4th 1109, 1115 [applies when there are two presumed fathers under § 7611]; see *In re Nicholas H.* (2002) 28 Cal.4th 56, 63; *Librers v. Black* (2005) 129 Cal.App.4th 114, 122-123 [*Nicholas H.* and *Jesusa V.* apply in nondependency cases]; but see *In re Jesusa V.* (2004) 32 Cal.4th 588, 610 [presumed and biological father can fail to become a legal father when there is a better presumed father available].)

Under Family Code section 7612, subdivision (c) the presumption is rebutted by

judgment of paternity by another man. (See *In re Nicholas H.* (2002) 28 Cal.4th 56, 63; *In re A.A.* (2003) 114 Cal.App.4th 771, 789 [nonbiological father a presumed father because provided for the minor and maintained a relationship; biological father not the presumed father because did not, so § 7612, subd. (c) not apply]; but see *In re Jesusa V.* (2004) 32 Cal.4th 588, 612 [the Uniform Parentage Act is not affected by a declaration of paternity under §§ 7571 and 7573]; *Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 864 [the court must weigh the best interests of the minor in determining whether the biological father or another man would be the presumed father].)

Under Family Code section 7613, a sperm donor is not a natural father. However, rights of fatherhood attach if the sperm provider intended to be the father, not a mere donor. (*Robert B. v. Susan B.* (2003) 109 Cal.App.4th 1109, 1113 [man whose sperm meant for his wife was not a “donor” to mistaken recipient]; *Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239, 1273; *Jhordan C. v. Mary K.* (1986) 179 Cal.App.3d 386, 393-394; but see *Steven S. v. Deborah D.* (2005) 127 Cal.App.4th 319, 326 [though sperm donor held himself out to be the father].) When one person is a presumed parent by artificial insemination, so is the spouse under section 7613. (*Dunkin v. Boskey* (2000) 82 Cal.App.4th 171, 190-197.)

Parent who had parental rights terminated but continued to care for the minor and held the minor as his or her own cannot become a presumed parent under the UPA. (*In re Jerred H.* (2004) 121 Cal.App.4th 793, 796.)

Standing: Only the child, the mother, and a presumed father as a result of a putative marriage have standing to initiate an action under Family Code section 7611, subdivisions (a), (b), and (c). (Fam. Code, § 7630, subd. (a); *Lisa I. v. Superior Court* (2005) 133 Cal.App.4th 605, 613; *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 938; see *Said v. Jegan* (2007) 146 Cal.App.4th 1375, 1382 [alleged father had not standing].) Any “interested person: may bring an action for paternity alleged under subdivision (d). (Fam. Code, § 7630, subd. (b); *Said v. Jegan* (2007) 146 Cal.App.4th 1375, 1382 [including alleged father]; *Dawn D. v. Superior Court* (1998) 17 Cal.4th 932, 938.) A nonbiological father claiming to be a presumed father under § 7611, subd. (d) had standing. (*Librers v. Black* (2005) 129 Cal.App.4th 114, 125-126.)

Standing: A wife of a sperm donor did not have standing. (*Robert B. v. Susan B.* (2003) 109 Cal.App.4th 1109, 1115-11116; *Prato-Morrison v. Doe* (2002) 103 Cal.App.4th 222, 229.)

A step-mother did not have standing to file to become a presumed mother. (*Scott v. Superior Court* (2009) 171 Cal.App.4th 540, 545.)

A surrogate mother had standing. (*Johnson v. Calvert* (1993) 5 Cal.4th 84, 93.)

A boyfriend of another's wife who was the putative biological father was an interested person. (*Miller v. Miller* (1998) 64 Cal.App.4th 111, 116-117 [a second husband who took the child in as his own while the wife was still married to her first husband]; *Brian C. v. Ginber K.* (2000) 77 Cal.App.4th 1198; *Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36.)

The child had standing. (*In re Karen C.* (2002) 101 Cal.App.4th 932.)

KELSEY S.:

A man who comes forward before the baby was born and makes an effort to care for the child and hold the child out as his own, but is prevented from doing so by the mother or others (CPS) may have a due process claim of paternity. (*In re Kelsey S.* (1992) 1 Cal.4th 816, 847-849; *Gabriel P. v. Suedi D.* (2006) 141 Cal.App.4th 850, 854-855, 858-859 [mother claimed baby was someone else's, would not let him see the child, and resisted paternity testing]; *In re Andrew L.* (2004) 122 Cal.App.4th 178, 192-193 [man who works, has two kids, and a home ready to receive the minor, who came forward as soon as learned he might be the biological father, and was unable to find the mother before; minors were with caretakers a short period]; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 797, 810-811 [applies also to nonbiological father], *In re Kyle F.* (2003) 112 Cal.App.4th 538, 544-545 [18 year old father had right to try to bring the minor into his home who was born from a 16 year old girlfriend, despite committing statutory rape]; *Adoption of Alexander M.* (2001) 94 Cal.App.4th 430, 440, 441 [when a biological father not permitted to establish paternity, can prevent adoption if show (1) he is committed to be a father, (2) he is fit, and (3) adoption not in minor's best interest]; see *In re Baby Boy V.* (2006) 140 Cal.App.4th 1108, 1117-1118 [the court should have inquired further when alleged father came forward after the mother refused to reveal his identity]; *In re Kiana A.* (2001) 93 Cal.App.4th 1109, 1117 [need not qualify as *Kelsey S.* father if statutorily qualify]; *In re Sarah C.* (1992) 8 Cal.App.4th 964, 972-973 [only acknowledging the child as his for a few months was insufficient]; but see *In re Jason J.* (2009) 175 Cal.App.4th 922, 933 [not qualify when never sought to provide for the minor or reunification services]; *Adoption of O.M.* (2008) 169 Cal.App.4th 672, 679-681 [father in and out of custody and made some financial contributions while the mother was pregnant was insufficient]; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 956-960 [requiring to show paternity would be in the minor's best interest did not violate due process]; *In re William K.* (2008) 161 Cal.App.4th 1, 10-11 [man could not become legal father when planned pregnancy with mother but was soon arrested, mother had someone else sign the declaration of paternity, and father said he was only possibly the father until the result of the paternity tests]; *Adoption of Arthur M.* (2007) 149 Cal.App.4th 704, 720 [17 year-old boyfriend of 16 year-old mother was not a *Kelsey S.* father when he stayed away in order to avoid rape charge, argued with the mother and gave no support]; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 582-584 [not legal father when sent diapers for a

year and \$300 and did not attempt to timely establish paternity]; *In re Nicholas H.* (2002) 28 Cal.4th 56, 70 [not consider if father has a constitutional right of his own to establish paternity]; *In re Julia U.* (1998) 64 Cal.App.4th 532, 540-542.)

Policy: Courts should be cautious in finding a constitutional right to paternity when a statute does not apply. (*Lisa I. v. Superior Court* (2005) 133 Cal.App.4th 605, 622 [*Kelsey S.* should apply only when the mother surrenders the minor to a third party].)

Parentage by estoppel. “Significantly, a husband’s obligation to support his ex-wife’s child, may arise quite apart from the presumption set forth in sections 7540 and 7541 and apart from whether he is the biological father of the children. A line of cases holds that the conduct of a husband with no biological ties to a child may nonetheless stop the husband from avoiding parental responsibilities even after the husband’s marriage to the child’s mother is dissolved.” (*In re Marriage of Freeman* (1996) 45 Cal.App.4th 1437, 1447, citing *Clevenger v. Clevenger* (1961) 189 Cal.App.2d 658; accord, *Kristine H. v. Lisa R.* (2005) 37 Cal.4th 156, 165-166 [lesbians parents by estoppel when agreed to judgment of maternity which could not be denied, upon separation, for child support]; *Spellens v. Spellens* (1957) 49 Cal.2d 210, 220-221; *Dietrich v. Dietrich* (1953) 41 Cal.2d 497, 505; *Watson v. Watson* (1952) 39 Cal.2d 305, 307; but se *County of San Diego v. Arzaga* (2007) 152 Cal.App.4th 1336, 1347-1348 [not apply when man said he *believed* he was the father but stopped acting as the father when learned was not the biological father]; *Marriage of Pedregon* (2003) 107 Cal.App.4th 1284, 1290 [man who held himself out to be the father for 12 years, the only father the minor ever knew, was estopped from denying paternity for support]; *Marriage of Hinman* (1992) 6 Cal.App.4th 711, 716; *Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239, 1268-1269; *In re Marriage of Valle* (1975) 53 Cal.App.3d 837; *In re Marriage of Johnson* (1979) 88 Cal.App.3d 848; *Harlan v. Harlan* (1945) 70 Cal.App.2d 567, 661-662.)

But the courts will not let the parties foreclose judicial determination of parenthood. (*County of Shasta v. Caruthers* (1995) 31 Cal.App.4th 1838, 1849 [mother’s settlement with father did not preclude paternity determination and support award]; *Marriage of Buzzanca* (1998) 61 Cal.App.4th 1410, 1426-1428 [wife’s promise to assume all responsibilities for child born of surrogate did not abrogate husband’s duty of support].)

The overarching consideration in deciding if due process precludes the application of paternity laws is whether an existing father-child relationship between the father and the child will be affected. (*Brian C. v. Ginger K.* (2000) 77 Cal.App.4th 1198, 1200.) A “biological father’s mere desire to establish a personal relationship with the child is not a fundamental liberty interest protected by the due process clause.” (*Dawn D. v. Superior*

Court (1998) 17 Cal.4th 932, 942; see also *Michelle W. v. Ronald W.* (1985) 39 Cal.3d 354, 362-363; *Michael H. v. Gerald D.* (1989) 491 U.S. 110, 113-115; *Quillion v. Wolcott* (1978) 434 U.S. 246.) There is no constitutional right to paternity when he has no relationship with the minor. (*Lisa I. v. Superior Court* (2005) 133 Cal.App.4th 605, 614-621.)

It does not violate due process or equal protection that the mother of a man who had an affair is not the legal mother over the biological mother. (*Amy G. v. M.W.* (2006) 142 Cal.App.4th 1, 16-18.)

Kelsey S. does not require a greater showing of unfitness in order to terminate parental rights. (*In re Charlotte D.* (2009) 45 Cal.4th 1140, 1148.)

Standing: *Kelsey S.* requires that an alleged father be able to challenge another's declaration of paternity, though not listed under Family Code section 7575.

Waiver: *Kelsey S.* claim waived when it was not presented in the trial court. (*In re Jason J.* (2009) 175 Cal.App.4th 922, 932; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 582.)

ALLEGED FATHER:

“While a biological father is not entitled to custody under section 361.2, or reunification services under section 361.5 if he does not attain presumed father status prior to termination of any reunification period, he may move under section 388 for a hearing to reconsider the juvenile court's earlier rulings based on new evidence or changed circumstances.” (*In re Zacharia D.* (1993) 6 Cal.4th 435, 454, fn. omitted.)

An alleged father is only entitled to notice and an opportunity to establish paternity in a dependency proceeding. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 160.) CPS must give notice to any alleged father of a dependency proceeding. (See also *In re Joseph G.* (2000) 83 Cal.App.4th 712, 715.) The alleged father must only “be given notice and ‘an opportunity to appear and assert a position and attempt to change his paternity status.’ [Citation.]” (*In re Paul H.* (2003) 111 Cal.App.4th 753, 760.) “Each alleged father is entitled to notice so that he can challenge his paternity status.” (*In re Eric E.* (2006) 137 Cal.App.4th 252, 257.)

Due process clause requires the state must give notice to any alleged or potential biological father before terminating parental rights. (*Stanley v. Illinois* (1972) 405 U.S. 645, 657; *In re Paul H.* (2003) 111 Cal.App.4th 753, 760.)

“The significance of the biological connection is that it offers the natural father an opportunity that no other male possesses to develop a relationship with offspring. If he

grasps that opportunity and accepts some measure of responsibility for the child's future, he may enjoy the blessing of the parent-child relationship and make uniquely valuable contributions to the child's development. If he fails to do so, the Federal Constitution will not automatically compel a State to listen to his opinion of where the child's best interests lie." (*Lehr v. Robertson* (1983) 463 U.S. 248, 262, fn. omitted.) Parental obligations and rights "do not spring full-blown from the biological connection between parent and child. They require relationships more enduring." (*Id.* at p. 260; *Cuban v. Mohammed* (1979) 441 U.S. 380, 397.) A natural but not presumed father can block adoption only if it is in the minor's best interests. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 824-825.)

An alleged father is not a party to a dependency proceeding and is not entitled to reunification services. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 454; *In re Joseph G.* (2000) 83 Cal.App.4th 712, 715; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.) "The primary purpose of achieving presumed father status in the dependency context is for the presumed father to have the right to reunification services and to custody." (*In re Eric E.* (2006) 137 Cal.App.4th 252, 258.) "A request for presumed father status after the expiration of the reunification period is made by filing a section 388 petition." (*In re Eric E.* (2006) 137 Cal.App.4th 252, 258; *id.* at pp. 260-262 [thus, must show it is in the minor's best interests].)

An alleged father cannot come forward the last minute and try to become a presumed father to try to stop an adoption. A biological father must make a diligent effort to assume a parental role as soon as he learns he might be the child's father. (*Adoption of Michael H.* (1995) 10 Cal.4th 1043 1050; *In re Zacharia D.* (1993) 6 Cal.4th 435, 450; *In re Kelsey S.* (1992) 1 Cal.4th 816, 849; *Adoption of Alexander M.* (2001) 94 Cal.App.4th 430, 438 [a biological father can come forward to establish paternity under Fam. Code, §§ 7630, 7631, but the petition by the mother or potential adopters for adoption will be granted unless not in the minor's best interests]; *In re Emily R.* (2000) 80 Cal.App.4th 1344, 1356; *In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180 [not an abuse of discretion to deny a continuance for alleged father to establish paternity].)

An alleged father who came forward during the dependency as soon as he learned he might be the biological father was entitled to established presumptive fatherhood and participate the dependency proceedings. (*In re Julia U.* (1998) 64 Cal.App.4th 532, 542, 544; cf. *In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1228-1231.)

The state cannot terminate parental rights without showing the presumed father is unfit. (*Stanley v. Illinois* (1972) 405 U.S. 645, 657; *In re Kelsey S.* (1992) 1 Cal.4th 816, 830-834, 849.)

Appealability: Alleged father who never came forward does not have standing to appeal dependency order. (*In re Joseph G.* (2000) 83 Cal.App.4th 712, 715; *In re Margarita D.* (1999) 72 Cal.App.4th 1288, 1298; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

Appealability: Alleged father who did come forward has standing to appeal dependency order. (*In re Emily R.* (2000) 80 Cal.App.4th 1344, 1356; *City and County of San Francisco v. Stanley* (1994) 24 Cal.App.4th 1724, 1727 [involuntary finding of paternity appealable as a final order under Code Civil Procedure section 904.1, subdivision (a)(1) and Family Code section 17404, subdivision (a)].)

Standard of review: Substantial evidence. (*Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233, 241.)