

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



PA 14-104—sSB 155  
*Judiciary Committee*

**AN ACT CONCERNING PROBATE COURTS**

**SUMMARY:** This act makes numerous unrelated changes in the laws that govern (1) adult adoption, (2) paternity of children born out of wedlock, and (3) disclosure of juvenile court records. It also establishes a framework that allows a party in certain probate court cases to petition the court to make specified findings that a person may use to apply for federal Special Juvenile Immigration Status (SJIS) (see BACKGROUND). SJIS allows abused, neglected, or abandoned immigrant children to stay in the United States legally.

Among the changes to adult adoption laws, the act:

1. broadens an exception to the automatic termination of parental rights in adult adoptions,
2. establishes new hearing notice requirements and factors the court must consider before approving such an adoption, and
3. specifies that an adopted person (adult or minor child) can inherit from or through a parent who died before the adoption occurred.

The act standardizes how paternity of a child born out of wedlock is established when a person dies intestate (i.e., without a will). In determining the inheritance rights of such a child, or his or her father, the act requires the child's paternity to be established by (1) court adjudication or (2) written acknowledgment signed by both the mother and father. It also specifies the timeframe within which a paternity claim may be filed.

The act also expands the circumstances in which probate court judges and employees can access confidential records of juvenile matters from the Superior Court.

Lastly, the act makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2014

§§ 1 & 2 — ADULT ADOPTIONS

*Legal Relationships*

By law, a person over age 18 may be adopted by an older nonrelative under a written agreement approved by the probate court. In general, a court's final adoption decree terminates the legal relationship between the adoptee and his or her biological parents and their relatives regarding (1) the applicability of certain statutes, (2) inheritance rights, and (3) the construction of documents and instruments executed before or after the decree was issued. Under prior law, however, the adoptee's legal relationship with the surviving parent did not terminate when an adult's parent died and the adult was subsequently adopted by

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the surviving parent's spouse, with the surviving parent's written consent.

The act broadens this exception to include adult adoptions under a wider range of circumstances, regardless of whether the adoptee's biological parents are living or the adoptive parent is a biological parent's spouse. It does so by (1) allowing one of the adult adoptee's parents to join in the adoption agreement and preserving that parent's legal relationship with the adoptee and (2) terminating the legal relationship between the adult adoptee and the parent who did not join the agreement. Under the act, the adoption does not affect the adoptee's rights to inherit from or through a parent who died before the adoption.

### *Notice and Approval*

Prior law allowed the court to provide public notice of the time and place of the hearing on the adult adoption agreement. The act instead requires the court to notify (1) each party to the adoption agreement and (2) the spouse of the proposed adoptive parent, if he or she is not a party to the agreement. It allows the court to also notify other people interested in the proposed adoptive parent's or adoptee's welfare.

The act requires the court to approve the adoption agreement if it finds that the (1) proposed adoptive parent and adoptee share a relationship like that between a parent and his or her adult child and (2) adoption is in their best interests. Under prior law, the court could approve the agreement if it found that approval was in the public interest and for the adopted person's welfare.

### § 1 — ADOPTED MINOR CHILD'S INHERITANCE RIGHTS

Under the act, adoption does not affect an adopted minor's rights to inherit from or through a parent who died before the adoption occurred. Under prior law, an adopted minor retained those inheritance rights only in cases where the spouse of the surviving biological parent adopted the minor.

### §§ 3-6 — ESTABLISHING PATERNITY AND INHERITANCE RIGHTS OF A CHILD BORN OUT OF WEDLOCK

When a person dies without a will, the intestate succession laws determine to whom and how the person's property is distributed. The act standardizes the method for establishing paternity of a child born out of wedlock for these purposes and aligns it with the procedure for establishing paternity for other legal purposes. Under this procedure, as prescribed by the act, the paternity of a child born out of wedlock is established either (1) through a court proceeding after the mother files a petition and serves process on the putative father or (2) by the father's written acknowledgment. The written acknowledgement must be accompanied by (1) an attested waiver of a right to a (a) blood test, (b) trial, and (c) an attorney and (2) written affirmation of paternity executed and sworn by the child's mother.

The act requires the use of this method of establishing paternity when determining the distribution of property to a:

1. child born out of wedlock, when his or her father dies intestate (§ 4);

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2. surviving spouse, when the other spouse dies intestate or the will does not fully dispose of all property (§ 3);
3. father and his relatives, when his child born out of wedlock dies intestate (§ 5); and
4. father and his relatives, when his child born out of wedlock dies intestate with no surviving children or legal representative (§ 6).

Under prior law, an intestate father of a child born out of wedlock was considered the child's parent if:

1. he and the mother married each other after the child's birth;
2. he was adjudicated the child's father by a court of competent jurisdiction;
3. he acknowledged under oath in writing that he was the child's father; or
4. after his or the child's death, the probate court established paternity by clear and convincing evidence that the father had acknowledged in writing that he was the child's father and had openly treated the child as his.

For a father or his relatives to qualify for inheritance from or through an intestate child born out of wedlock, prior law required the father's paternity to be established by (1) a court of competent jurisdiction before the father's death or (2) the probate court after the father's death, if it has been demonstrated by clear and convincing evidence that the father acknowledged his paternity in writing and openly treated the child as his.

### § 7 — PATERNITY CLAIMS INVOLVING CHILDREN BORN OUT OF WEDLOCK

By law, if a person claiming to be the father of a child born out of wedlock receives notice from the Superior Court of a petition filed to terminate his parental rights, he has 60 days to file a paternity claim with the probate court in the district where either the mother or the child resides. The act specifies that the paternity claim may be filed at any time during the child's life, regardless of his or her age, and also after the child's death, but no later than 60 days after the notice date.

The act also eliminates a requirement that the probate court administrator appoint a three-judge court to hear the paternity claim.

### §§ 8 & 9 — PROBATE COURT PROCEEDINGS ON SIJS

The act allows probate courts, in certain family matters, to make findings that someone may use to apply to the U.S. Citizenship and Immigration Services (USCIS) for SIJS. Federal law allows a person with SIJS to stay in the United States legally. Under federal law, one of the criteria for getting SIJS is for a child to be determined a dependent of a juvenile court (8 USC § 1101(a)(27)(J)).

#### *SIJS Petitions*

The act allows a party, at any time during a case for parental removal, guardian appointment, termination of parental rights, or adoption approval, to petition the court to make the specific findings used for SIJS purposes. A hearing on the petition may be held at the same time as the underlying case.

The act requires the probate court to send notice of the SIJS petition hearing,

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by first class mail, to the commissioner of children and families. In parental removal or guardian appointment cases, notice must also be sent by first class mail to (1) both parents and (2) the child, if he or she is age 12 or older. In termination of parental rights or adoption approval cases, notice must also be sent by first class mail to the:

1. parents, including anyone who was removed as guardian;
2. father of any child born out of wedlock who, at the time of the petition, (a) was adjudicated the father by a court, (b) acknowledged paternity in writing, (c) provided regular support to the child, (d) was named on the birth certificate, (e) filed a paternity claim, or (f) was named by the mother in a petition to establish paternity;
3. guardian or others the court deems appropriate; and
4. attorney general.

If the court previously granted the request to remove a parent as guardian, appoint a guardian, terminate parental rights, or approve adoption, the act allows the statutory or adoptive parent, guardian, or attorney for the child to petition the court to make findings for SIJS purposes. It also requires the court to notify, by first class mail, the statutory or adoptive parent, guardian, attorney for the child, and the child (if age 12 or older) of the SIJS petition hearing.

### *Written Findings for SIJS Purposes*

Under the act, if the court grants (or has already granted) the underlying request to remove a parent, appoint a guardian, terminate parental rights, or approve adoption, the court must make written findings for SIJS purposes on:

1. the child's age and marital status,
2. whether the child is dependent on the court,
3. whether it is not in the child's best interests to be returned to the child's or parent's country of nationality or last customary residence, and
4. whether reunification of the child with one or both of the child's parents is not viable because the child was abandoned or denied the care necessary for his or her well-being.

Under the act, a child under age 18 must be considered dependent on the court if the court has:

1. removed his or her parent or another person as guardian,
2. appointed a guardian or co-guardian for him or her,
3. terminated the parental rights of his or her parent, or
4. approved his or her adoption.

In parental removal or guardian appointment cases, reunification is not viable under the act if the child was:

1. neglected,
2. uncared for, or
3. intentionally physically injured by a person responsible for his or her well-being or a person given access to the child by the responsible person.

Under the act, reunification is not viable in termination of parental rights or adoption approval cases, if:

1. an ongoing parent-child relationship does not exist and allowing time to establish or reestablish such a relationship is not in the child's best

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- interests,
2. a parent remains unable to assume a responsible position in the child's life,
  3. the parent's parental rights related to another child were terminated, or
  4. the parent committed certain crimes.

### § 10 — DISCLOSURE OF JUVENILE RECORDS

The act expands the circumstances in which probate court judges and employees may obtain access to records of juvenile matters. PA 14-173, § 2, contains identical provisions.

Previously, for nondelinquency juvenile matters, a probate court could access records related to (1) a contested case about a minor's guardianship or termination of parental rights that it transferred to Superior Court or (2) an appeal from the probate court to the Superior Court. The act instead allows probate court judges and employees to access any nondelinquency records when required to perform their duties. Nondelinquency matters include cases involving:

1. uncared for, neglected, or abandoned children and youth and related adoptions;
2. termination of parental rights of parents of children committed to state agencies;
3. families with service needs;
4. contested matters of termination of parental rights or removal of guardians transferred from probate courts;
5. emancipation of minors; and
6. appeals from probate courts on adoption, termination of parental rights, or removal of a parent or guardian.

The act also gives probate court judges and employees access to juvenile delinquency records when required to perform their duties. Under existing law, access to juvenile delinquency records is permitted, under certain conditions, to various entities, including attorneys representing a child or youth, a child's or youth's parent or guardian until the child reaches the age of majority or emancipation, certain government officials and agencies, certain courts, and the subject of the record.

The act specifies that its provisions governing disclosure and confidentiality of juvenile records do not prohibit a party from making a timely:

1. objection to the admissibility of one of these records, or any part of one, in a superior or probate court proceeding or
2. motion to seal one of these records under superior or probate court rules.

### BACKGROUND

#### *SIJS*

By law, the Department of Homeland Security USCIS may grant SIJS to an immigrant in the United States if:

1. he or she has been declared dependent on a juvenile court or a juvenile court has legally committed him or her to, or placed him or her under the

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- custody of, a state agency or department, or a person or entity appointed by a state or juvenile court located in the United States;
2. his or her reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and
  3. it was determined in an administrative or judicial proceeding that it would not be in the child's best interest to be returned to his or her parent's previous country of nationality or last habitual residence (8 USC § 1101(a)(27)(J)).

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