

AMENDED IN ASSEMBLY JULY 2, 2012

AMENDED IN SENATE MAY 25, 2012

SENATE BILL

No. 1476

Introduced by Senator Leno

February 24, 2012

An act to amend Sections 3040, 7601, and 7612 of, and to add Section 4052.5 to, the Family Code, relating to parentage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1476, as amended, Leno. Family law: parentage.

(1) Under existing law, a man is conclusively presumed to be the father of a child if he was married to and cohabiting with the child's mother, except as specified. Existing law also provides that if a man signs a voluntary declaration of paternity, it has the force and effect of a judgment of paternity, subject to certain exceptions. Existing law further provides that a man is rebuttably presumed to be the father if he was married to, or attempted to marry, the mother before or after the birth of the child, or he receives the child as his own and openly holds the child out as his own. Under existing law, the latter presumptions are rebutted by a judgment establishing paternity by another man.

This bill would authorize a court to find that a child has 2 presumed parents notwithstanding the statutory presumption of parentage of the child by another man. The bill would authorize the court to make this finding if doing so would serve the best interest of the child based on the nature, duration, and quality of the presumed or claimed parents' relationships with the child and the benefit or detriment to the child of continuing those relationships.

(2) The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the

child's parents, including the mother and child relationship and the father and child relationship, and governs proceedings to establish that relationship.

This bill would provide that a child may have a parent and child relationship with more than 2 parents.

(3) Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, the court must consider specified factors, including the health, safety, and welfare of the child. Existing law establishes an order of preference for allocating child custody and directs the court to choose a parenting plan that is in the child's best interest.

This bill would, in the case of a child with more than 2 legal parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, including stability for the child.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes the statewide uniform guideline for calculating court-ordered child support. The guideline directs a court to consider the parents' incomes, standard of living, and level of responsibility for the child.

This bill would, in the case of a child with more than 2 legal parents, ~~direct authorize~~ the court ~~not to divide~~ *deviate from the statewide uniform guideline when dividing* child support obligations among the parents ~~using the statewide uniform guideline~~. The bill would ~~instead~~ direct the court to divide the child support obligations among the parents based on the income of each of the parents and the amount of time spent with the child by each parent, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3040 of the Family Code is amended to
2 read:
3 3040. (a) Custody should be granted in the following order of
4 preference according to the best interest of the child as provided
5 in Sections 3011 and 3020:

1 (1) To both parents jointly pursuant to Chapter 4 (commencing
2 with Section 3080) or to either parent. In making an order granting
3 custody to either parent, the court shall consider, among other
4 factors, which parent is more likely to allow the child frequent and
5 continuing contact with the noncustodial parent, consistent with
6 Sections 3011 and 3020, and shall not prefer a parent as custodian
7 because of that parent's sex. The court, in its discretion, may
8 require the parents to submit to the court a plan for the
9 implementation of the custody order.

10 (2) If to neither parent, to the person or persons in whose home
11 the child has been living in a wholesome and stable environment.

12 (3) To any other person or persons deemed by the court to be
13 suitable and able to provide adequate and proper care and guidance
14 for the child.

15 (b) This section establishes neither a preference nor a
16 presumption for or against joint legal custody, joint physical
17 custody, or sole custody, but allows the court and the family the
18 widest discretion to choose a parenting plan that is in the best
19 interest of the child.

20 (c) In cases where a child has more than two legal parents, the
21 court shall allocate custody and visitation among the parents based
22 on the best interest of the child, including, but not limited to,
23 stability for the child. This may mean that not all parents share
24 legal or physical custody of the child.

25 SEC. 2. Section 4052.5 is added to the Family Code, to read:

26 4052.5. (a) In any case in which a child has more than two
27 legal parents, the court ~~shall not apply~~ *may deviate from* the
28 statewide uniform guideline. ~~Instead, the~~ *The* court shall divide
29 child support obligations among the parents based on income and
30 amount of time spent with the child by each parent, according to
31 the principles set forth in Section 4053 and the general formula
32 set forth in Section 4055, adjusted to permit recognition of more
33 than two parents.

34 (b) Nothing in this section shall be construed to require
35 reprogramming of the California Child Support Automation
36 System, established pursuant to Chapter 4 (commencing with
37 Section 10080) of Part 1 of Division 9 of the Welfare and
38 Institutions Code, a change to the statewide uniform guideline for
39 determining child support described in Section 4055, or a revision

1 by the Department of Child Support Services of its regulations,
2 policies, procedures, forms, or training materials.

3 SEC. 3. Section 7601 of the Family Code is amended to read:

4 7601. “Parent and child relationship” as used in this part means
5 the legal relationship existing between a child and the child’s
6 natural or adoptive parents incident to which the law confers or
7 imposes rights, privileges, duties, and obligations. The term
8 includes the mother and child relationship and the father and child
9 relationship. Nothing in this part shall be construed to preclude a
10 finding that a child has a parent and child relationship with more
11 than two parents.

12 SEC. 4. Section 7612 of the Family Code is amended to read:

13 7612. (a) Except as provided in Chapter 1 (commencing with
14 Section 7540) and Chapter 3 (commencing with Section 7570) of
15 Part 2 or in Section 20102, a presumption under Section 7611 is
16 a rebuttable presumption affecting the burden of proof and may
17 be rebutted in an appropriate action only by clear and convincing
18 evidence.

19 (b) If two or more presumptions arise under Section 7610 or
20 7611 that conflict with each other, or if a presumption under
21 Section 7611 conflicts with a claim pursuant to Section 7610, the
22 presumption which on the facts is founded on the weightier
23 considerations of policy and logic controls. In an appropriate
24 action, a court may find that a child has more than two natural or
25 adoptive parents if required to serve the best interest of the child.
26 In determining a child’s best interest under this section, a court
27 shall consider the nature, duration, and quality of the presumed or
28 claimed parents’ relationships with the child and the benefit or
29 detriment to the child of continuing those relationships.

30 (c) Unless a court orders otherwise, a presumption under Section
31 7611 is rebutted by a judgment establishing paternity of the child
32 by another man.

33 (d) Within two years of the execution of a voluntary declaration
34 of paternity, a person who is presumed to be a parent under Section
35 7611 may file a petition pursuant to Section 7630 to set aside a
36 voluntary declaration of paternity. The court’s ruling on the petition
37 to set aside the voluntary declaration of paternity shall be made
38 taking into account the validity of the voluntary declaration of
39 paternity, and the best interests of the child based upon the court’s
40 consideration of the factors set forth in subdivision (b) of Section

1 7575, as well as the best interests of the child based upon the
2 nature, duration, and quality of the petitioning party's relationship
3 with the child and the benefit or detriment to the child of continuing
4 that relationship. In the event of any conflict between the
5 presumption under Section 7611 and the voluntary declaration of
6 paternity, the weightier considerations of policy and logic shall
7 control.

8 (e) A voluntary declaration of paternity is invalid if, at the time
9 the declaration was signed, any of the following conditions exist:

- 10 (1) The child already had a presumed parent under Section 7540.
11 (2) The child already had a presumed parent under subdivision
12 (a), (b), or (c) of Section 7611.
13 (3) The man signing the declaration is a sperm donor, consistent
14 with subdivision (b) of Section 7613.