

AMENDED IN ASSEMBLY AUGUST 22, 2012

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, 4057, 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, *which is rebuttably presumed to be the correct amount of 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, authorize the court to deviate from the statewide uniform guideline when dividing child support obligations among the parents. The bill would 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, *unless the court finds that applying the statewide uniform guideline to a child with more than 2 legal parents would be unjust and inappropriate.*~~

(5) This bill would incorporate additional changes in Section 3040 of the Family Code proposed by SB 1064, that would become operative only if SB 1064 and this bill are both chaptered and become effective on or before January 1, 2013, and this bill is chaptered last.

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:

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

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

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

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

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

30 *SEC. 1.5. Section 3040 of the Family Code is amended to read:*

31 3040. (a) Custody should be granted in the following order of
32 preference according to the best interest of the child as provided
33 in Sections 3011 and 3020:

34 (1) To both parents jointly pursuant to Chapter 4 (commencing
35 with Section 3080) or to either parent. In making an order granting
36 custody to either parent, the court shall consider, among other
37 factors, which parent is more likely to allow the child frequent and
38 continuing contact with the noncustodial parent, consistent with

1 ~~Section~~ Sections 3011 and 3020, and shall not prefer a parent as
 2 custodian because of that parent’s sex. The court, in its discretion,
 3 may require the parents to submit to the court a plan for the
 4 implementation of the custody order.

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

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

10 (b) *The immigration status of a parent, legal guardian, or*
 11 *relative shall not disqualify the parent, legal guardian, or relative*
 12 *from receiving custody under subdivision (a).*

13 ~~(b)~~

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

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

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

25 4052.5. (a) ~~In any case in which a child has more than two~~
 26 ~~legal parents, the court may deviate from the statewide uniform~~
 27 ~~guideline. The court shall divide~~ *The statewide uniform guideline*
 28 *as required by federal regulations shall apply in any case in which*
 29 *a child has more than two legal parents unless the court finds that*
 30 *the application of the guideline in that case is a special*
 31 *circumstance pursuant to Section 4057. The court shall apply the*
 32 *guideline by dividing child support obligations among the parents*
 33 *based on income and amount of time spent with the child by each*
 34 *parent, according to the principles set forth in pursuant to Section*
 35 *4053 and the general formula set forth in Section 4055, adjusted*
 36 *to permit recognition of more than two parents.*

37 (b) Nothing in this section shall be construed to require
 38 reprogramming of the California Child Support Automation
 39 System, established pursuant to Chapter 4 (commencing with
 40 Section 10080) of Part 1 of Division 9 of the Welfare and

1 Institutions Code, a change to the statewide uniform guideline for
2 determining child support described in Section 4055, or a revision
3 by the Department of Child Support Services of its regulations,
4 policies, procedures, forms, or training materials.

5 *SEC. 3. Section 4057 of the Family Code is amended to read:*

6 4057. (a) The amount of child support established by the
7 formula provided in subdivision (a) of Section 4055 is presumed
8 to be the correct amount of child support to be ordered.

9 (b) The presumption of subdivision (a) is a rebuttable
10 presumption affecting the burden of proof and may be rebutted by
11 admissible evidence showing that application of the formula would
12 be unjust or inappropriate in the particular case, consistent with
13 the principles set forth in Section 4053, because one or more of
14 the following factors is found to be applicable by a preponderance
15 of the evidence, and the court states in writing or on the record the
16 information required in subdivision (a) of Section 4056:

17 (1) The parties have stipulated to a different amount of child
18 support under subdivision (a) of Section 4065.

19 (2) The sale of the family residence is deferred pursuant to
20 Chapter 8 (commencing with Section 3800) of Part 1 and the rental
21 value of the family residence in which the children reside exceeds
22 the mortgage payments, homeowner's insurance, and property
23 taxes. The amount of any adjustment pursuant to this paragraph
24 shall not be greater than the excess amount.

25 (3) The parent being ordered to pay child support has an
26 extraordinarily high income and the amount determined under the
27 formula would exceed the needs of the children.

28 (4) A party is not contributing to the needs of the children at a
29 level commensurate with that party's custodial time.

30 (5) Application of the formula would be unjust or inappropriate
31 due to special circumstances in the particular case. These special
32 circumstances include, but are not limited to, the following:

33 (A) Cases in which the parents have different time-sharing
34 arrangements for different children.

35 (B) Cases in which both parents have substantially equal
36 time-sharing of the children and one parent has a much lower or
37 higher percentage of income used for housing than the other parent.

38 (C) Cases in which the children have special medical or other
39 needs that could require child support that would be greater than
40 the formula amount.

1 (D) Cases in which a child is found to have more than two legal
2 parents.

3 ~~SEC. 3.~~

4 SEC. 4. Section 7601 of the Family Code is amended to read:

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

13 ~~SEC. 4.~~

14 SEC. 5. Section 7612 of the Family Code is amended to read:

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

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

32 (c) Unless a court orders otherwise, a presumption under Section
33 7611 is rebutted by a judgment establishing paternity of the child
34 by another man.

35 (d) Within two years of the execution of a voluntary declaration
36 of paternity, a person who is presumed to be a parent under Section
37 7611 may file a petition pursuant to Section 7630 to set aside a
38 voluntary declaration of paternity. The court’s ruling on the petition
39 to set aside the voluntary declaration of paternity shall be made
40 taking into account the validity of the voluntary declaration of

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

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

12 (1) The child already had a presumed parent under Section 7540.

13 (2) The child already had a presumed parent under subdivision
14 (a), (b), or (c) of Section 7611.

15 (3) The man signing the declaration is a sperm donor, consistent
16 with subdivision (b) of Section 7613.

17 *SEC. 6. Section 1.5 of this bill incorporates amendments to*
18 *Section 3040 of the Family Code proposed by both this bill and*
19 *Senate Bill 1064. It shall only become operative if (1) both bills*
20 *are enacted and become effective on or before January 1, 2013,*
21 *(2) each bill amends Section 3040 of the Family Code, and (3) this*
22 *bill is enacted after Senate Bill 1064, in which case Section 1 of*
23 *this bill shall not become operative.*