

**Senate Bill No. 1476**

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Passed the Senate August 29, 2012

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*Secretary of the Senate*

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Passed the Assembly August 27, 2012

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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, 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 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.

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

SECTION 1. Section 3040 of the Family Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4052.5. (a) The statewide uniform guideline as required by federal regulations shall apply in any case in which a child has more than two legal parents unless the court finds that the application of the guideline in that case is a special circumstance pursuant to Section 4057. The court shall apply the guideline by dividing child support obligations among the parents based on income and amount of time spent with the child by each parent, pursuant to Section 4053.

(b) Nothing in this section shall be construed to require reprogramming of the California Child Support Automation System, established pursuant to Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code, a change to the statewide uniform guideline for determining child support described in Section 4055, or a revision by the Department of Child Support Services of its regulations, policies, procedures, forms, or training materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

7601. "Parent and child relationship" as used in this part means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. The term includes the mother and child relationship and the father and child relationship. Nothing in this part shall be construed to preclude a finding that a child has a parent and child relationship with more than two parents.

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

7612. (a) Except as provided in Chapter 1 (commencing with Section 7540) and Chapter 3 (commencing with Section 7570) of Part 2 or in Section 20102, 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 7610 or 7611 that conflict with each other, or if a presumption under Section 7611 conflicts with a claim pursuant to Section 7610, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. In an appropriate action, a court may find that a child has more than two natural or adoptive parents if required to serve the best interest of the child. In determining a child's best interest under this section, a court shall consider 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.

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

(d) Within two years of the execution of a voluntary declaration of paternity, a person who is presumed to be a parent under Section 7611 may file a petition pursuant to Section 7630 to set aside a voluntary declaration of paternity. The court's ruling on the petition to set aside the voluntary declaration of paternity shall be made taking into account the validity of the voluntary declaration of paternity, and the best interests of the child based upon the court's consideration of the factors set forth in subdivision (b) of Section 7575, as well as the best interests of the child based upon the nature, duration, and quality of the petitioning party's relationship with the child and the benefit or detriment to the child of continuing that relationship. In the event of any conflict between the presumption under Section 7611 and the voluntary declaration of paternity, the weightier considerations of policy and logic shall control.

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

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

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 3040 of the Family Code proposed by both this bill and

Senate Bill 1064. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2013, (2) each bill amends Section 3040 of the Family Code, and (3) this bill is enacted after Senate Bill 1064, in which case Section 1 of this bill shall not become operative.















Approved \_\_\_\_\_, 2012

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*Governor*