

**ASSEMBLY BILL**

**No. 1628**

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**Introduced by Assembly Member Fox**

February 10, 2014

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An act to amend Section 3104 of the Family Code, relating to visitation rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, as introduced, Fox. Visitation rights: grandparent rights.

Existing law provides that a grandparent may petition the court for visitation rights. The court may grant visitation if the court finds that the grandparent and grandchild have a preexisting relationship that has engendered a bond such that granting the grandparent visitation is in the best interest of the child and the court balances the interest of the child in having visitation with the grandparent against the parents' right to exercise their parental authority, subject to specified exceptions. Existing law prohibits a grandparent from filing a petition for visitation while the natural or adoptive parents are married, unless one or more of several circumstances are present, including that the child is not residing with either parent.

This bill would additionally permit a grandparent to file a petition for visitation while the natural or adoptive parents are married if one of the parents is incarcerated or involuntarily institutionalized.

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

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

1 SECTION 1. Section 3104 of the Family Code is amended to  
2 read:

3 3104. (a) On petition to the court by a grandparent of a minor  
4 child, the court may grant reasonable visitation rights to the  
5 grandparent if the court does both of the following:

6 (1) Finds that there is a preexisting relationship between the  
7 grandparent and the grandchild that has engendered a bond such  
8 that visitation is in the best interest of the child.

9 (2) Balances the interest of the child in having visitation with  
10 the grandparent against the right of the parents to exercise their  
11 parental authority.

12 (b) A petition for visitation under this section ~~may~~ *shall* not be  
13 filed while the natural or adoptive parents are married, unless one  
14 or more of the following circumstances exist:

15 (1) The parents are currently living separately and apart on a  
16 permanent or indefinite basis.

17 (2) One of the parents has been absent for more than one month  
18 without the other spouse knowing the whereabouts of the absent  
19 spouse.

20 (3) One of the parents joins in the petition with the grandparents.

21 (4) The child is not residing with either parent.

22 (5) The child has been adopted by a stepparent.

23 (6) *One of the parents is incarcerated or involuntarily*  
24 *institutionalized.*

25 At any time that a change of circumstances occurs such that none  
26 of these circumstances exist, the parent or parents may move the  
27 court to terminate grandparental visitation and the court shall grant  
28 the termination.

29 (c) The petitioner shall give notice of the petition to each of the  
30 parents of the child, any stepparent, and any person who has  
31 physical custody of the child, by personal service pursuant to  
32 Section 415.10 of the Code of Civil Procedure.

33 (d) If a protective order as defined in Section 6218 has been  
34 directed to the grandparent during the pendency of the proceeding,  
35 the court shall consider whether the best interest of the child  
36 requires that any visitation by that grandparent should be denied.

37 (e) There is a rebuttable presumption that the visitation of a  
38 grandparent is not in the best interest of a minor child if the natural

1 or adoptive parents agree that the grandparent should not be granted  
2 visitation rights.

3 (f) There is a rebuttable presumption affecting the burden of  
4 proof that the visitation of a grandparent is not in the best interest  
5 of a minor child if the parent who has been awarded sole legal and  
6 physical custody of the child in another proceeding, or the parent  
7 with whom the child resides if there is currently no operative  
8 custody order objects to visitation by the grandparent.

9 (g) Visitation rights may not be ordered under this section if  
10 that would conflict with a right of custody or visitation of a birth  
11 parent who is not a party to the proceeding.

12 (h) Visitation ordered pursuant to this section shall not create  
13 a basis for or against a change of residence of the child, but shall  
14 be one of the factors for the court to consider in ordering a change  
15 of residence.

16 (i) When a court orders grandparental visitation pursuant to this  
17 section, the court in its discretion may, based upon the relevant  
18 circumstances of the case:

19 (1) Allocate the percentage of grandparental visitation between  
20 the parents for purposes of the calculation of child support pursuant  
21 to the statewide uniform guideline (Article 2 (commencing with  
22 Section 4050) of Chapter 2 of Part 2 of Division 9).

23 (2) Notwithstanding Sections 3930 and 3951, order a parent or  
24 grandparent to pay to the other, an amount for the support of the  
25 child or grandchild. For purposes of this paragraph, “support”  
26 means costs related to visitation such as any of the following:

27 (A) Transportation.

28 (B) Provision of basic expenses for the child or grandchild, such  
29 as medical expenses, day care costs, and other necessities.

30 (j) As used in this section, “birth parent” means “birth parent”  
31 as defined in Section 8512.

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