

Assembly Bill No. 1628

CHAPTER 328

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

[Approved by Governor September 15, 2014. Filed with
Secretary of State September 15, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) There is a rebuttable presumption that the visitation of a grandparent is not in the best interest of a minor child if the natural or adoptive parents agree that the grandparent should not be granted visitation rights.

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

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

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

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

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

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

(A) Transportation.

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

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

O