

AMENDED IN SENATE MAY 14, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 274

**Introduced by Senator Leno
(Coauthor: Senator Beall)**

February 14, 2013

An act to amend Sections 3040, 4057, 7601, 7612, and 8617 of, and to add Section 4052.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Leno. Family law: parentage: child custody and support.

(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 more than 2 persons with a claim to parentage, as specified, are parents if the court finds that recognizing only 2 parents would be detrimental to the child. The bill would direct the court, in making this determination, to consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and

affection, and who has assumed that role for a substantial period of time.

(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. The bill would require any reference to 2 parents to be interpreted to apply to all of a child's parents where a child is found to have more than 2 parents, as specified.

(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, existing law requires the court to 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 parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, as specified.

(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. Existing law provides that the presumption may be rebutted by admissible evidence showing that application of the uniform guideline would be unjust or inappropriate because of one or more factors found to be applicable and the court provides certain information in writing, as specified.

This bill would direct the court to apply the statewide uniform guideline in a case where a child has more than 2 parents by dividing 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. The bill would require the court to divide child support obligations among the parents in a just and appropriate manner, as specified, if the court finds that applying the statewide uniform guideline to a child with more than 2 parents would be unjust and inappropriate, as specified.

(5) Under existing law, the birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.

This bill would provide that the termination of the parental duties and responsibility of the parent or parents may be waived by agreement of the parent or parents and the prospective adoptive parent.

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. The Legislature finds and declares all of the
2 following:

3 (a) Most children have two parents, but in rare cases, children
4 have more than two people who are that child's parent in every
5 way. Separating a child from a parent has a devastating
6 psychological and emotional impact on the child, and courts must
7 have the power to protect children from this harm.

8 (b) The purpose of this bill is to abrogate *In re M.C. (2011) 195*
9 *Cal.App.4th 197* insofar as it held that where there are more than
10 two people who have a claim to parentage under the Uniform
11 Parentage Act, courts are prohibited from recognizing more than
12 two of these people as the parents of a child, regardless of the
13 circumstances.

14 (c) This bill does not change any of the requirements for
15 establishing a claim to parentage under the Uniform Parentage
16 Act. It only clarifies that where more than two people have claims
17 to parentage, the court may, if it would otherwise be detrimental
18 to the child, recognize that the child has more than two parents.

19 (d) It is the intent of the Legislature that this bill will only apply
20 in the rare case where a child truly has more than two parents, and
21 a finding that a child has more than two parents is necessary to
22 protect the child from the detriment of being separated from one
23 of his or her parents.

24 SEC. 2. Section 3040 of the Family Code is amended to read:
25 3040. (a) Custody should be granted in the following order of
26 preference according to the best interest of the child as provided
27 in Sections 3011 and 3020:

28 (1) To both parents jointly pursuant to Chapter 4 (commencing
29 with Section 3080) or to either parent. In making an order granting

1 custody to either parent, the court shall consider, among other
 2 factors, which parent is more likely to allow the child frequent and
 3 continuing contact with the noncustodial parent, consistent with
 4 Sections 3011 and 3020, and shall not prefer a parent as custodian
 5 because of the gender of that parent. The court, in its discretion,
 6 may require the parents to submit to the court a plan for the
 7 implementation of the custody order.

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

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

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

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

21 (d) In cases where a child has more than two parents, the court
 22 shall allocate custody and visitation among the parents based on
 23 the best interest of the child, including, but not limited to,
 24 addressing the child's need for continuity and stability by
 25 preserving established patterns of care and emotional bonds. The
 26 court may order that not all parents share legal or physical custody
 27 of the child if the court finds that it would not be in the best interest
 28 of the child as provided in Sections 3011 and 3020.

29 SEC. 3. Section 4052.5 is added to the Family Code, to read:

30 4052.5. (a) The statewide uniform guideline, as required by
 31 federal regulations, shall apply in any case in which a child has
 32 more than two parents. The court shall apply the guideline by
 33 dividing child support obligations among the parents based on
 34 income and amount of time spent with the child by each parent,
 35 pursuant to Section 4053.

36 (b) Consistent with federal regulations, after calculating the
 37 amount of support owed by each parent under the guideline, the
 38 presumption that the guideline amount of support is correct may
 39 be rebutted if the court finds that the application of the guideline
 40 in that case would be unjust or inappropriate due to special

1 circumstances, pursuant to Section 4057. If the court makes that
2 finding, the court shall divide child support obligations among the
3 parents in a manner that is just and appropriate based on income
4 and amount of time spent with the child by each parent, applying
5 the principles set forth in Section 4053 and this article.

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

14 SEC. 4. Section 4057 of the Family Code is amended to read:

15 4057. (a) The amount of child support established by the
16 formula provided in subdivision (a) of Section 4055 is presumed
17 to be the correct amount of child support to be ordered.

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

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

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

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

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

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

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

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

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

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

14 SEC. 5. Section 7601 of the Family Code is amended to read:

15 7601. (a) “Parent and child relationship” as used in this part
16 means the legal relationship existing between a child and the child’s
17 natural or adoptive parents incident to which the law confers or
18 imposes rights, privileges, duties, and obligations. The term
19 includes the mother and child relationship and the father and child
20 relationship.

21 (b) This part does not preclude a finding that a child has a parent
22 and child relationship with more than two parents.

23 (c) For purposes of state law, administrative regulations, court
24 rules, government policies, common law, and any other provision
25 or source of law governing the rights, protections, benefits,
26 responsibilities, obligations, and duties of parents, any reference
27 to two parents shall be interpreted to apply to every parent of a
28 child where that child has been found to have more than two
29 parents under this part.

30 SEC. 6. Section 7612 of the Family Code is amended to read:

31 7612. (a) Except as provided in Chapter 1 (commencing with
32 Section 7540) and Chapter 3 (commencing with Section 7570) of
33 Part 2 or in Section 20102, a presumption under Section 7611 is
34 a rebuttable presumption affecting the burden of proof and may
35 be rebutted in an appropriate action only by clear and convincing
36 evidence.

37 (b) If two or more presumptions arise under Section 7610 or
38 7611 that conflict with each other, or if a presumption under
39 Section 7611 conflicts with a claim pursuant to Section 7610, the

1 presumption which on the facts is founded on the weightier
2 considerations of policy and logic controls.

3 (c) In an appropriate action, a court may find that more than
4 two persons with a claim to parentage under this division are
5 parents if the court finds that recognizing only two parents would
6 be detrimental to the child. In determining detriment to the child,
7 the court shall consider all relevant factors, including, but not
8 limited to, the harm of removing the child from a stable placement
9 with a parent who has fulfilled the child's physical needs and the
10 child's psychological needs for care and affection, and who has
11 assumed that role for a substantial period of time. A finding of
12 detriment to the child does not require a finding of unfitness of
13 any of the parents or persons with a claim to parentage.

14 (d) Unless a court orders otherwise after making the
15 determination specified in subdivision (c), a presumption under
16 Section 7611 is rebutted by a judgment establishing paternity of
17 the child by another man.

18 (e) Within two years of the execution of a voluntary declaration
19 of paternity, a person who is presumed to be a parent under Section
20 7611 may file a petition pursuant to Section 7630 to set aside a
21 voluntary declaration of paternity. The court's ruling on the petition
22 to set aside the voluntary declaration of paternity shall be made
23 taking into account the validity of the voluntary declaration of
24 paternity, and the best interests of the child based upon the court's
25 consideration of the factors set forth in subdivision (b) of Section
26 7575, as well as the best interests of the child based upon the
27 nature, duration, and quality of the petitioning party's relationship
28 with the child and the benefit or detriment to the child of continuing
29 that relationship. In the event of any conflict between the
30 presumption under Section 7611 and the voluntary declaration of
31 paternity, the weightier considerations of policy and logic shall
32 control.

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

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

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

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

40 SEC. 7. Section 8617 of the Family Code is amended to read:

1 8617. (a) Except as provided in subdivision (b), the existing
2 parent or parents of an adopted child are, from the time of the
3 adoption, relieved of all parental duties towards, and all
4 responsibility for, the adopted child, and have no right over the
5 child.

6 (b) The termination of the parental duties and responsibilities
7 of the existing parent or parents under subdivision (a) may be
8 waived by agreement of the existing parent or parents and the
9 prospective adoptive parents.