

AMENDED IN ASSEMBLY APRIL 27, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2745

**Introduced by Assembly Member Cardoza
(Principal coauthor: Assembly Member Kuehl)**

February 23, 1998

An act to add Section ~~3105~~ 3032 to the Family Code, relating to ~~visitation rights~~ *children*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2745, as amended, Cardoza. ~~Visitation rights~~ *Children: incarcerated parents.*

Existing law *prohibits the granting of custody of, or unsupervised visitation with, a child to a parent who has been convicted of specified offenses, except as specified.* Existing law also provides that visitation rights with a child may be granted to a parent after the parents have separated or dissolved their marriage, except where contact with the parent would not be in the ~~best interests~~ *interest* of the child.

This bill would ~~prohibit a court from granting~~ *create a rebuttable presumption affecting the burden of proof that it is not in the child's best interest for the court to grant custody or visitation rights to a parent convicted of murdering the child's other parent, except where the child, of suitable age, assents to the order,* and would *specify the types of evidence that would be sufficient to rebut the presumption.* The bill would also prohibit any person from taking a child to visit or remain in the custody of the convicted parent without a

custody or visitation order or the consent of the child’s custodian or guardian.

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 ~~3105~~ 3032 is added to the Family
2 Code, to read:

3 ~~3105. No court shall make an order providing~~
4 3032. (a) *There shall be a rebuttable presumption*
5 *affecting the burden of proof that it is not in the best*
6 *interest of the child for the court to order custody or*
7 *visitation rights to a parent who has been convicted of*
8 *murder in the first degree, as defined in Section 189 of the*
9 *Penal Code, if the victim of the murder was the other*
10 *parent of the child who is the subject of the order, unless*
11 ~~*the child is of suitable age to signify his or her assent and*~~
12 ~~*assents to the order; and, until a visitation order is issued.*~~
13 *Until a custody or a visitation order is issued, no person*
14 *shall permit or cause the child to visit or remain in the*
15 *custody of the convicted parent without the consent of*
16 *the child’s custodian or legal guardian. In considering the*
17 *best interest of the child, the court may consider whether*
18 *the child, if of suitable age to consent, consents to the*
19 *custody or visitation.*

20 (b) *The presumption described in subdivision (a) may*
21 *be rebutted by a showing of credible evidence that the*
22 *convicted parent was a victim of abuse, as defined in*
23 *Section 6203, committed by the deceased parent. That*
24 *evidence may include, but is not limited to, written*
25 *reports by law enforcement agencies, child protective*
26 *services or other social welfare agencies, courts, medical*
27 *facilities, or other public agencies or private nonprofit*
28 *organizations providing services to victims of domestic*
29 *abuse. The presumption may also be rebutted by*
30 *testimony of an expert witness, qualified under Section*
31 *1107 of the Evidence Code, that the convicted parent*



1 *suffers from the effects of battered women's syndrome.*
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