

AMENDED IN SENATE JUNE 22, 1998
AMENDED IN ASSEMBLY MAY 5, 1998
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 3032 to~~ *amend Section 3030* of the Family Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2745, as amended, Cardoza. 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 interest of the child.~~

This bill would ~~create a rebuttable presumption affecting the burden of proof that it is not in the child's best interest for the court to grant~~ *additionally prohibit the granting of custody or unsupervised* visitation rights to a parent convicted of murdering the child's other parent, ~~specify the types of evidence that would be sufficient to rebut the presumption,~~

~~and require that a court's finding of rebuttal of the presumption shall be unless the court finds, in writing or on the record, that there is no risk to the child's health, safety, or welfare. The bill would specify factors the court may consider in making that finding.~~ 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.

This bill would be operative only if AB 2386 is also enacted, as specified.

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 3032 is added to the Family~~
2 *SECTION 1. Section 3030 of the Family Code is*
3 *amended to read:*
4 3030. (a) No person shall be granted custody of, or
5 unsupervised visitation with, a child if the person is
6 required to be registered as a sex offender under Section
7 290 of the Penal Code where the victim was a minor, or
8 if the person has been convicted under Section 273a, 273d,
9 or 647.6 of the Penal Code, unless the court finds that
10 there is no significant risk to the child.
11 (b) No person shall be granted custody of, or visitation
12 with, a child if the person has been convicted under
13 Section 261 of the Penal Code and the child was
14 conceived as a result of that violation.
15 (c) *No person shall be granted custody of, or*
16 *unsupervised visitation with, a child if the person has*
17 *been convicted of murder in the first degree, as defined*
18 *in Section 189 of the Penal Code, and the victim of the*
19 *murder was the other parent of the child who is the*
20 *subject of the order, unless the court finds that there is no*
21 *risk to the child's health, safety, and welfare, and states*
22 *the reasons for its finding in writing or on the record. In*
23 *making its finding, the court may consider, among other*
24 *things, the following:*



1 (1) *The wishes of the child, if the child is of sufficient*
2 *age and capacity to reason so as to form an intelligent*
3 *preference.*

4 (2) *Credible evidence that the convicted parent was*
5 *a victim of abuse, as defined in Section 6203, committed*
6 *by the deceased parent. That evidence may include, but*
7 *is not limited to, written reports by law enforcement*
8 *agencies, child protective services or other social welfare*
9 *agencies, courts, medical facilities, or other public*
10 *agencies or private nonprofit organizations providing*
11 *services to victims of domestic abuse.*

12 (3) *Testimony of an expert witness, qualified under*
13 *Section 1107 of the Evidence Code, that the convicted*
14 *parent suffers from the effects of battered women's*
15 *syndrome.*

16 *Unless and until a custody or visitation order is issued*
17 *pursuant to this subdivision, no person shall permit or*
18 *cause the child to visit or remain in the custody of the*
19 *convicted parent without the consent of the child's*
20 *custodian or legal guardian.*

21 (d) *The court may order child support that is to be*
22 *paid by a person subject to subdivision (a)–~~or~~ (b), or (c)*
23 *to be paid through the district attorney's office, as*
24 *authorized by Section 4573 of the Family Code and*
25 *Section 11475.1 of the Welfare and Institutions Code.*

26 ~~(d)~~

27 (e) *The court shall not disclose, or cause to be*
28 *disclosed, the custodial parent's place of residence, place*
29 *of employment, or the child's school, unless the court*
30 *finds that the disclosure would be in the best–interests*
31 *interest of the child.*

32 *SEC. 2. This act shall become operative only if*
33 *Assembly Bill 2386 is also enacted and becomes effective*
34 *on or before January 1, 1999.*

35 *Code, to read:*

36 ~~3032. (a) There shall be a rebuttable presumption~~
37 ~~affecting the burden of proof that it is not in the best~~
38 ~~interest of the child for the court to order custody or~~
39 ~~visitation rights to a parent who has been convicted of~~
40 ~~murder in the first degree, as defined in Section 189 of the~~



1 Penal Code, if the victim of the murder was the other
2 parent of the child who is the subject of the order. Until
3 a custody or a visitation order is issued, no person shall
4 permit or cause the child to visit or remain in the custody
5 of the convicted parent without the consent of the child's
6 custodian or legal guardian. In considering the best
7 interest of the child, the court may consider whether the
8 child, if of suitable age to consent, consents to the custody
9 or visitation.

10 (b) The presumption described in subdivision (a) may
11 be rebutted by a showing of credible evidence that the
12 convicted parent was a victim of abuse, as defined in
13 Section 6203, committed by the deceased parent. That
14 evidence may include, but is not limited to, written
15 reports by law enforcement agencies, child protective
16 services or other social welfare agencies, courts, medical
17 facilities, or other public agencies or private nonprofit
18 organizations providing services to victims of domestic
19 abuse. The presumption may also be rebutted by
20 testimony of an expert witness, qualified under Section
21 1107 of the Evidence Code, that the convicted parent
22 suffers from the effects of battered women's syndrome.
23 Any finding by the court that the presumption described
24 in subdivision (a) has been rebutted shall be made in
25 writing or on the record.

