

AMENDED IN ASSEMBLY JUNE 15, 2000

AMENDED IN ASSEMBLY JUNE 7, 2000

AMENDED IN SENATE JUNE 1, 1999

AMENDED IN SENATE MAY 25, 1999

AMENDED IN SENATE APRIL 27, 1999

SENATE BILL

No. 1173

Introduced by Senator Vasconcellos

February 26, 1999

An act to amend Sections 3021 and 6346 of, and to add Section 3105 to, the Family Code, relating to de facto parents.

LEGISLATIVE COUNSEL'S DIGEST

SB 1173, as amended, Vasconcellos. De facto parents: visitation rights.

Existing law generally requires a court, in making a child custody order, to grant reasonable visitation rights to a noncustodial parent unless it would be detrimental to the best interest of the child. Existing law authorizes the court to grant reasonable visitation rights to a stepparent, grandparent, and if either parent of an unemancipated minor child is deceased, to the children, siblings, parents, and grandparents of the deceased parent, as specified.

This bill would define the terms "de facto parent" and "domestic partners," and would authorize a court, except in actions under the Domestic Violence Prevention Act, to conduct a proceeding to grant reasonable visitation rights to

a de facto parent, *including the authority to order child support payments*, if the court makes required findings. The bill would also require the Judicial Council to monitor the implementation of these provisions and to report to the Legislature, as specified.

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 that
2 given the changing configuration of the California family,
3 California judges have found themselves in situations in
4 which they lack authority to act in what they deem to be
5 the child’s best interest. Therefore, it is the intent of the
6 Legislature to provide California judges sufficient
7 authority to act in those cases where the child’s best
8 interest currently cannot be considered.

9 SEC. 2. Section 3021 of the Family Code is amended
10 to read:

11 3021. This part applies in any of the following:

- 12 (a) A proceeding for dissolution of marriage.
- 13 (b) A proceeding for nullity of marriage.
- 14 (c) A proceeding for legal separation of the parties.
- 15 (d) An action for exclusive custody pursuant to Section
16 3120.
- 17 (e) A proceeding to determine physical or legal
18 custody or for visitation in a proceeding pursuant to the
19 Domestic Violence Prevention Act (Division 10
20 (commencing with Section 6200)).

21 In an action under Section 6323, nothing in this
22 subdivision shall be construed to authorize physical or
23 legal custody, or visitation rights, to be granted to any
24 party to a Domestic Violence Prevention Act proceeding
25 who has not established a parent and child relationship
26 pursuant to paragraph (2) of subdivision (a) of Section
27 6323.

28 (f) A proceeding to determine physical or legal
29 custody or visitation in an action pursuant to the Uniform



1 Parentage Act (Part 3 (commencing with Section 7600)
2 of Division 12).

3 (g) A proceeding to determine physical or legal
4 custody or visitation in an action brought by the district
5 attorney pursuant to Section 11350.1 of the Welfare and
6 Institutions Code.

7 (h) A proceeding to establish visitation pursuant to
8 Section 3105.

9 SEC. 3. Section 3105 is added to the Family Code, to
10 read:

11 ~~3105. (a) As used in this section, a “de facto parent”~~

12 *3105. (a) As used in this section, a “de facto parent”*
13 *is a former domestic partner of a child’s custodial parent*
14 *or legal guardian who, during the domestic partnership*
15 *assumed, for a substantial period of time, the role of a*
16 *parent, seeking to fulfill both the child’s physical and*
17 *psychological needs for care and affection. For purposes*
18 *of this section, “domestic partner” has the same meaning*
19 *as provided in Section 297. For domestic partners who*
20 *terminated their relationship prior to January 1, 2001,*
21 *compliance with paragraph (9) of subdivision (b) of*
22 *Section 297 shall not be necessary.*

23 *(b) On petition to the court by a de facto parent of a*
24 *minor child, the court may conduct a proceeding under*
25 *this part to grant reasonable visitation rights to the de*
26 *facto parent if the court finds that the petitioner meets*
27 *the definition of de facto parent provided in subdivision*
28 *(a) and finds all of the following:*

29 *(1) A preexisting parental relationship between the de*
30 *facto parent and the child was established with the*
31 *encouragement or assent of the child’s parent or legal*
32 *guardian.*

33 *(2) The de facto parent has openly held out to the*
34 *public that he or she is the child’s parent.*

35 *(3) The child has engendered a bond with the de facto*
36 *parent.*

37 *(4) Visitation is in the best interest of the child.*

38 *(5) The de facto parent is not a party, between the*
39 *date when the petition for visitation is filed and when the*
40 *petition is granted or denied, against whom any action or*



1 *proceeding is brought that is based upon an allegation of*
2 *domestic violence, child abuse, or neglect.*

3 *(c) In determining whether to grant reasonable*
4 *visitation rights pursuant to subdivision (b), the court*
5 *shall give strong consideration to the wishes of the*
6 *custodial parent or legal guardian and shall balance the*
7 *interest of the child in having visitation with the de facto*
8 *parent against the right of the custodial parent or legal*
9 *guardian to exercise his or her parental authority.*

10 *(d) At any time that a change of circumstances*
11 *eliminates the factual basis of one or more of the findings*
12 *in subdivision (b), or for other good cause, the custodial*
13 *parent or legal guardian may move that the court*
14 *terminate de facto parent visitation.*

15 *(e) The petitioner under subdivision (b) shall give*
16 *notice of the petition to the parent or legal guardian of the*
17 *child, and any person who has physical custody of the*
18 *child, by personal service pursuant to Section 415.10 of the*
19 *Code of Civil Procedure.*

20 *(f) If a protective order, as defined in Section 6218, has*
21 *been directed to the de facto parent to whom visitation*
22 *may be granted pursuant to this section, the court shall*
23 *consider whether the best interest of the child requires*
24 *that visitation by the de facto parent be denied. It is*
25 *presumed that it is not in the best interest of the child to*
26 *have visitation with a de facto parent if that person has*
27 *engaged in perpetrating acts of domestic violence, child*
28 *abuse, or neglect, against any child or if that person has*
29 *engaged in perpetrating acts of domestic violence against*
30 *the parent or legal guardian of the child with whom the*
31 *de facto parent is seeking visitation within the previous*
32 *five years.*

33 *(g) Visitation ordered pursuant to this section shall not*
34 *create a right to custody nor shall it limit the ability of a*
35 *custodial parent to change the residence of the child.*

36 *(h) When a court orders visitation pursuant to this*
37 *section, the court, in its discretion, may, based upon the*
38 *relevant circumstances of the case, make the following*
39 *orders:*



1 (1) Allocate the percentage of de facto parent
2 visitation between the custodial and noncustodial parents
3 for purposes of the calculation of child support payable by
4 the custodial and noncustodial parent pursuant to the
5 statewide uniform guideline (Article 2 (commencing
6 with Section 4050) of Chapter 2 of Part 2 of Division 9).

7 (2) Notwithstanding Sections 3930 and 3951, order a de
8 facto parent to pay to the custodial parent or legal
9 guardian, an amount for the support of the child. For
10 purposes of this paragraph, “support” means costs related
11 to visitation, including any of the following:

12 (A) Transportation.

13 (B) Provision of basic expenses for the child, including
14 medical expenses, day care costs, and other necessities.

15 (i) The Judicial Council shall monitor the
16 implementation of this section and shall report twice to
17 the Legislature, on January 1, 2002, and on January 1, 2004,
18 regarding the effect of this section during the preceding
19 two-year period.

20 (j) Nothing in this section shall be construed to require
21 any custodial parent to pay child support or other
22 remuneration to any person determined to be a de facto
23 parent.

24 ~~is a person who has assumed, for a substantial period of~~
25 ~~time, the role of a parent, seeking to fulfill both the child’s~~
26 ~~physical and psychological needs for care and affection.~~

27 ~~(b) On petition to the court by a de facto parent of a~~
28 ~~minor child, the court may conduct a proceeding under~~
29 ~~this part to grant reasonable visitation rights to the de~~
30 ~~facto parent if the court finds all of the following:~~

31 ~~(1) A preexisting parental relationship between the de~~
32 ~~facto parent and the child was established with the~~
33 ~~encouragement or assent of the child’s parent or legal~~
34 ~~guardian.~~

35 ~~(2) The de facto parent has received the child in his or~~
36 ~~her home and has openly held out to the public that he~~
37 ~~or she is the child’s parent.~~

38 ~~(3) The de facto parent and the custodial parent or~~
39 ~~legal guardian were domestic partners. For purposes of~~
40 ~~this section, “domestic partners” are two adults of the~~



1 ~~same sex who have chosen to share one another's lives in~~
2 ~~an intimate and committed relationship of mutual caring.~~

3 ~~(4) The child has engendered a bond with the de facto~~
4 ~~parent.~~

5 ~~(5) Visitation is in the best interest of the child.~~

6 ~~(6) The de facto parent is not a party, between the~~
7 ~~date when the petition for visitation is filed and when the~~
8 ~~petition is granted or denied, to any action or proceeding~~
9 ~~that is based upon an allegation of domestic violence.~~

10 ~~(e) In determining whether to grant reasonable~~
11 ~~visitation rights pursuant to subdivision (b), the court~~
12 ~~shall give strong consideration to the wishes of the~~
13 ~~custodial parent or legal guardian and shall balance the~~
14 ~~interest of the child in having visitation with the de facto~~
15 ~~parent against the right of the custodial parent or legal~~
16 ~~guardian to exercise their parental authority.~~

17 ~~(d) At any time that a change of circumstances~~
18 ~~eliminates the factual basis of one or more of the findings~~
19 ~~in subdivision (b), or for other good cause, the custodial~~
20 ~~parent or legal guardian may move that the court~~
21 ~~terminate de facto parent visitation and the court, upon~~
22 ~~consideration of the best interest of the child, may grant~~
23 ~~the termination or modify the order of visitation.~~

24 ~~(e) The petitioner under subdivision (b) shall give~~
25 ~~notice of the petition to the parent or legal guardian of the~~
26 ~~child, and any person who has physical custody of the~~
27 ~~child, by personal service pursuant to Section 415.10 of the~~
28 ~~Code of Civil Procedure.~~

29 ~~(f) If a protective order, as defined in Section 6218, has~~
30 ~~been directed to the de facto parent to whom visitation~~
31 ~~may be granted pursuant to this section, the court shall~~
32 ~~consider whether the best interest of the child requires~~
33 ~~that visitation by the de facto parent be denied. It is~~
34 ~~presumed that it is not in the best interest of the child to~~
35 ~~have visitation with a de facto parent if that person has~~
36 ~~engaged in perpetrating acts of domestic violence, child~~
37 ~~abuse, or neglect, against any child or if that person has~~
38 ~~engaged in perpetrating acts of domestic violence against~~
39 ~~the parent or legal guardian of the child with whom the~~



1 ~~de facto parent is seeking visitation within the previous~~
2 ~~five years.~~

3 ~~(g) Visitation ordered pursuant to this section shall not~~
4 ~~create a right to custody nor shall it limit the ability of a~~
5 ~~custodial parent to change the residence of the child.~~

6 ~~(h) When a court orders visitation pursuant to this~~
7 ~~section, the court, in its discretion, may, based upon the~~
8 ~~relevant circumstances of the case, make the following~~
9 ~~orders:~~

10 ~~(1) Allocate the percentage of de facto parent~~
11 ~~visitation between the parents for purposes of the~~
12 ~~calculation of child support pursuant to the statewide~~
13 ~~uniform guideline (Article 2 (commencing with Section~~
14 ~~4050) of Chapter 2 of Part 2 of Division 9).~~

15 ~~(2) Notwithstanding Sections 3930 and 3951, order a~~
16 ~~parent or de facto parent to pay to the other, an amount~~
17 ~~for the support of the child. For purposes of this~~
18 ~~paragraph, “support” means costs related to visitation,~~
19 ~~including any of the following:~~

20 ~~(A) Transportation.~~

21 ~~(B) Provision of basic expenses for the child, including~~
22 ~~medical expenses, day care costs, and other necessities.~~

23 ~~(i) The Judicial Council shall monitor the~~
24 ~~implementation of this section and shall report twice to~~
25 ~~the Legislature, on January 1, 2002, and on January 1, 2004,~~
26 ~~regarding the effect of this section during the preceding~~
27 ~~two-year period.~~

28 ~~(j) Nothing in this section shall be construed to require~~
29 ~~any custodial parent to pay child support or other~~
30 ~~remuneration to any person determined to be a de facto~~
31 ~~parent.~~

32 SEC. 4. Section 6346 of the Family Code is amended
33 to read:

34 6346. The court may make appropriate custody and
35 visitation orders pursuant to the Uniform Parentage Act
36 (Part 3 (commencing with Section 7600) of Division 12)
37 after notice and a hearing under this section when the
38 party who has requested custody or visitation has not
39 established a parent and child relationship under
40 subparagraph (B) of paragraph (2) of subdivision (a) of



1 Section 6323, but has taken steps to establish that
2 relationship by filing an action under the Uniform
3 Parentage Act. However, the court shall not have
4 jurisdiction to issue a visitation order to a de facto parent,
5 pursuant to Section 3105, in any action pursuant to this
6 division.

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