

ASSEMBLY BILL

No. 2517

Introduced by Assembly Member Tran

February 23, 2006

An act to amend Section 3104 of the Family Code, relating to minor children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2517, as introduced, Tran. Minor children: visitation rights.

Existing law authorizes the court, on petition by a grandparent of a minor child, to grant reasonable visitation rights to the grandparent if the court both finds that there is a preexisting relationship between the grandparent and grandchild, as specified, such that visitation is in the child's best interest, and the court balances the interest of the child in having visitation with the grandparent against the rights of parents to exercise their parental authority.

Existing law further prohibits a petition for visitation from being filed while the natural or adoptive parents are married, unless the parents are currently living separately and apart, one parent has been absent for more than one month without the other spouse knowing the whereabouts of the absent spouse, one of the parents joins in the petition with the grandparents, or the child is not residing with either parent.

This bill would also authorize a petition for visitation to be filed when the child has been adopted by a stepparent.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

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 may 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.*

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

1 natural or adoptive parents agree that the grandparent should not
2 be granted visitation rights.

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

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

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

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

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

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

28 (A) Transportation.

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

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