

AMENDED IN SENATE MAY 25, 2012

SENATE BILL

No. 1476

Introduced by Senator Leno

February 24, 2012

An act to amend Sections 3040, 7601, and 7612 of, and to add Section 4052.5 to, the Family Code, relating to parentage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1476, as amended, Leno. Family law: parentage.

(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 a child has 2 presumed parents notwithstanding the statutory presumption of parentage of the child by another man. The bill would authorize the court to make this finding if doing so would serve the best interest of the child based on the nature, duration, and quality of the presumed or claimed parents' relationships with the child and the benefit or detriment to the child of continuing those relationships.

(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.

(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, the court must 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 legal parents, require the court to allocate custody and visitation among the parents based on the best interest of the child, including stability for the child.

(4) Under existing law, the parents of a minor child are responsible for supporting the child. Existing law establishes *the* statewide uniform ~~guidelines~~ *guideline* for calculating court-ordered child support. ~~These guidelines direct~~ *The guideline directs* a court to consider the parents' incomes, standard of living, and level of responsibility for the child.

This bill would, in the case of a child with more than 2 legal parents, direct the court *not* to divide child support obligations among the parents ~~based on using the statewide uniform guidelines, adjusted to permit recognition of more than 2 parents.~~ *guideline. The bill would instead direct the court to divide 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, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3040 of the Family Code is amended to
2 read:

3 3040. (a) Custody should be granted in the following order of
4 preference according to the best interest of the child as provided
5 in Sections 3011 and 3020:

6 (1) To both parents jointly pursuant to Chapter 4 (commencing
7 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 ~~Section~~ Sections 3011 and 3020, and shall not prefer a parent as
5 custodian because of that parent's sex. 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) This section establishes neither a preference nor a
14 presumption for or against joint legal custody, joint physical
15 custody, or sole custody, but allows the court and the family the
16 widest discretion to choose a parenting plan that is in the best
17 interest of the child.

18 (c) In cases where a child has more than two legal parents, the
19 court shall allocate custody and visitation among the parents based
20 on the best interest of the child, including, but not limited to,
21 stability for the child. This may mean that not all parents share
22 legal or physical custody of the child.

23 SEC. 2. Section 4052.5 is added to the Family Code, to read:

24 4052.5. (a) In any case in which a child has more than two
25 legal parents, *the court shall not apply the statewide uniform*
26 *guideline. Instead,* the court shall divide child support obligations
27 among the parents based on income and amount of time spent with
28 the child by each parent, according to the principles set forth in
29 Section 4053 and the general formula set forth in Section 4055,
30 adjusted to permit recognition of more than two parents.

31 (b) *Nothing in this section shall be construed to require*
32 *reprogramming of the California Child Support Automation*
33 *System, established pursuant to Chapter 4 (commencing with*
34 *Section 10080) of Part 1 of Division 9 of the Welfare and*
35 *Institutions Code, a change to the statewide uniform guideline for*
36 *determining child support described in Section 4055, or a revision*
37 *by the Department of Child Support Services of its regulations,*
38 *policies, procedures, forms, or training materials.*

39 SEC. 3. Section 7601 of the Family Code is amended to read:

1 7601. “Parent and child relationship” as used in this part means
2 the legal relationship existing between a child and the child’s
3 natural or adoptive parents incident to which the law confers or
4 imposes rights, privileges, duties, and obligations. The term
5 includes the mother and child relationship and the father and child
6 relationship. Nothing in this part shall be construed to preclude a
7 finding that a child has a parent and child relationship with more
8 than two parents.

9 SEC. 4. Section 7612 of the Family Code is amended to read:

10 7612. (a) Except as provided in Chapter 1 (commencing with
11 Section 7540) and Chapter 3 (commencing with Section 7570) of
12 Part 2 or in Section 20102, a presumption under Section 7611 is
13 a rebuttable presumption affecting the burden of proof and may
14 be rebutted in an appropriate action only by clear and convincing
15 evidence.

16 (b) If two or more presumptions arise under Section 7610 or
17 7611 that conflict with each other, or if a presumption under
18 Section 7611 conflicts with a claim pursuant to Section 7610, the
19 presumption which on the facts is founded on the weightier
20 considerations of policy and logic controls. In an appropriate
21 action, a court may find that a child has more than two natural or
22 adoptive parents if required to serve the best interest of the child.
23 In determining a child’s best interest under this section, a court
24 shall consider the nature, duration, and quality of the presumed or
25 claimed parents’ relationships with the child and the benefit or
26 detriment to the child of continuing those relationships.

27 (c) Unless a court orders otherwise, a presumption under Section
28 7611 is rebutted by a judgment establishing paternity of the child
29 by another man.

30 (d) Within two years of the execution of a voluntary declaration
31 of paternity, a person who is presumed to be a parent under Section
32 7611 may file a petition pursuant to Section 7630 to set aside a
33 voluntary declaration of paternity. The court’s ruling on the petition
34 to set aside the voluntary declaration of paternity shall be made
35 taking into account the validity of the voluntary declaration of
36 paternity, and the best interests of the child based upon the court’s
37 consideration of the factors set forth in subdivision (b) of Section
38 7575, as well as the best interests of the child based upon the
39 nature, duration, and quality of the petitioning party’s relationship
40 with the child and the benefit or detriment to the child of continuing

1 that relationship. In the event of any conflict between the
2 presumption under Section 7611 and the voluntary declaration of
3 paternity, the weightier considerations of policy and logic shall
4 control.

5 (e) A voluntary declaration of paternity is invalid if, at the time
6 the declaration was signed, any of the following conditions exist:

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

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

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