

Assembly Bill No. 2386

CHAPTER 705

An act to amend Section 3030 of the Family Code, and to amend Section 362.1 of the Welfare and Institutions Code, relating to children.

[Approved by Governor September 21, 1998. Filed with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2386, Bordonaro. Children: incarcerated parents.

Existing law prohibits, in specified proceedings, the granting of custody of, or unsupervised visitation with, a child to a parent who has been convicted of specified offenses, except as specified. With respect to a dependent child of the juvenile court, existing law requires that an order placing the child in foster care, and ordering reunification services, shall provide for visitation between the child and the parent or guardian.

This bill would additionally prohibit the granting of custody or unsupervised visitation rights in those specified proceedings to a parent convicted of murdering the child's other parent, unless the court finds, in writing or on the record, that there is no risk to the child's health, safety, or welfare, and 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. The bill's prohibitions would also apply to visitation between a parent and a dependent child placed in foster care, as specified.

This bill would be operative only if AB 2745 is also enacted, as specified.

This bill would incorporate additional changes in Section 3030 of the Family Code proposed by AB 1645, that would become operative only if AB 1645 and this bill are both chaptered and become effective January 1, 1999, and this bill is chaptered last.

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

SECTION 1. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a,



273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child.

(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

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

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

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

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

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

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

SEC. 1.5. Section 3030 of the Family Code is amended to read:

3030. (a) No person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.



(b) No person shall be granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation.

(c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child who is the subject of the order, unless the court finds that there is no risk to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:

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

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

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

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

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

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

SEC. 2. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. In order to maintain ties between the parent or guardian and any siblings and the child, and to provide information relevant to deciding if, and when, to return a child to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order placing a child in foster care, and ordering reunification services, shall provide as follows:

(a) (1) Subject to paragraph (2), for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.



(2) No visitation order shall jeopardize the safety of the child. To protect the safety of the child, the court may keep the child's address confidential. If the parent of the child has been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the other parent of the child, the court shall order visitation between the child and the parent only if that order would be consistent with Section 3030 of the Family Code.

(b) For visitation between the child and any siblings, or for the suspension of interaction between the child and any siblings, pursuant to subdivision (b) of Section 16002, if the court notes in the order the reasons for its determination that sibling interaction is detrimental to the child.

SEC. 3. This act shall become operative only if Assembly Bill 2745 is also enacted and becomes effective on or before January 1, 1999.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 3030 of the Family Code proposed by both this bill and AB 1645. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 3030 of the Family Code, and (3) this bill is enacted after AB 1645, in which case Section 1 of this bill shall not become operative.

