

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1579 (Committee on Judiciary)

Version: March 8, 2021

Hearing Date: June 8, 2021

Fiscal: No

Urgency: No

JT

SUBJECT

Family law omnibus

DIGEST

This bill makes clarifying, technical, and non-controversial changes relating to family law.

EXECUTIVE SUMMARY

This bill is the Assembly Judiciary Committee's annual omnibus family law bill, which would correct inaccurate cross references in two sections of the Family Code. The bill has no known support or opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes a rebuttable presumption that an award of sole or joint physical or legal custody to a party found to have perpetrated domestic violence against specified individuals in the previous five years is detrimental to the best interest of the child. (Fam. Code § 3044(a).)¹ Specifies that the individuals against whom domestic violence is perpetrated for these purposes includes a child, the other parent, or a parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship, as provided in Section 3011. (*Id.*) Refers to an obsolete provision in that section. (*Id.*)
- 2) Requires a court, in an evidentiary hearing or trial in which custody orders are sought and where there has been an allegation of domestic violence, to determine

¹ All further section references are to the Family Code unless otherwise indicated.

whether the rebuttable presumption described above applies before issuing a custody order, unless the court finds that a continuance is necessary, in which case the court may issue a temporary custody order for a reasonable amount of time, provided that the order complies with sections 3011 and 3020, which set forth factors a court must consider in making a determination of the best interests of a child, and section 3020. (§ 3044(g).) Refers to an obsolete provision in section 3011. (*Id.*)

- 3) Provides that any supervised visitation maintained or imposed by the court must be administered in accordance with a specified provision of the California Standards of Judicial Administration recommended by the Judicial Council. (§ 3201.) Refers to an obsolete section of those standards. (*Id.*)

This bill corrects the cross references described above.

COMMENTS

1. Fixes outdated and unclear cross references

When determining the best interest of a child for purposes of custody and visitation determinations, a court may consider any relevant factors, and must consider the following: the health, safety, and welfare of the child; any history of abuse or neglect by the party seeking custody; the nature and amount of contact with the parents; and substance abuse by a parent. (§ 3011; see also § 3020.) SB 495 (Durazo, Ch. 551, Stats. 2019) made amendments to prohibit a court from considering the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interests of the child. In so doing, the bill re-ordered the subdivisions in that section but did not make corresponding changes in the cross references thereto contained in section 3044, which establishes a rebuttable presumption that an award of sole or joint physical or legal custody to a party found to have perpetrated domestic violence against specified individuals in the previous five years is detrimental to the best interest of the child. (§ 3044(a), (g).) This bill changes those provisions to conform to the updated version of section 3011.

The bill also updates a cross-reference in section 3201, which requires that any court-ordered supervised visitation be administered according to Section 26.2 of the California Standards of Judicial Administration recommended by the Judicial Council. There is no Section 26.2 of the California Standards of Judicial Administration. Instead, Standard 5.20 of the California Standards of Judicial Administration provides uniform standards of practice for providers of supervised visitation. The bill corrects that cross reference.

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 654 (Min, 2021) requires a court that grants unsupervised visitation to parents with histories of abuse, neglect, or substance abuse to state its reasons for doing so in writing or on the record. The bill also provides that if a child addresses a court regarding custody or visitation, they generally must be permitted to do so without the parties being present.

Prior Legislation:

AB 3365 (Committee on Judiciary, 2020) would have made clarifying and technical changes to family law; however, the bill's contents were instead deposited into AB 3364 (Committee on Judiciary, Ch. 36, Stats. 2020).

AB 1817 (Committee on Judiciary, Ch. 115, Stats. 2019) made clarifying and technical changes to family law.

AB 3248 (Committee on Judiciary, Ch. 504, Stats. 2018) made clarifying and technical changes to family law.

AB 1692 (Committee on Judiciary, Ch. 330, Stats. 2017) made clarifying and technical changes to family law.

AB 2882 (Committee on Judiciary, Ch. 474, Stats. 2016) made clarifying and technical changes to family law.

AB 1519 (Committee on Judiciary, Ch. 416, Stats. 2015) made clarifying and technical changes to family law.

PRIOR VOTES:

Assembly Floor (Ayes 78, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
