

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

SB 599 (Caballero)  
Version: April 10, 2023  
Hearing Date: April 18, 2023  
Fiscal: Yes  
Urgency: No  
AWM

**SUBJECT**

Visitation rights

**DIGEST**

This bill clarifies and strengthens provisions requiring a family court to take into account a parent's acts of domestic violence or child abuse or the issuance of a protective order against a parent when making orders for custody or visitation, as well as provisions requiring the court to take into account the fact that a party is staying in a domestic violence shelter or other confidential location when issuing orders for the time, day, place, and manner of visitation or transfer of a child.

**EXECUTIVE SUMMARY**

Under California law, the polestar of a court's determination in a parental custody or visitation case is the best interest of the child. What constitutes the best interest of the child is an intensely fact-specific determination that requires the court to look at the child's relationship with each parent, whether either parent abuses substances, and whether either parent has committed acts of abuse. The Legislature has, over the past few decades, added more specific factors for a court to consider when a parent has been accused of domestic violence or child abuse or is restrained pursuant to a restraining or protective order, to ensure that courts are giving proper weight to evidence that a parent may present a threat to the child's safety.

This bill adds and clarifies provisions surrounding a trial court's custody or visitation determination when there are allegations of abuse by a parent, when a parent is restrained pursuant to a restraining or protective order, and when a parent is residing in a shelter for victims of domestic violence or other confidential location. The new measures include clarifying that a court may order visitation through virtual means, if the court determines that it is in the best interest of a child; requiring that a court, when ordering custody or visitation for a child when a parent has been accused of domestic violence, to make the time, date, manner, and location of a custody exchange or

visitation specific and state its reasons for finding that the order is in the best interest of the child, even where the parents have stipulated to the order; clarifying that a parent's submission of a person to be present for supervised visits does not require the court to order supervised visits or constitute a stipulation by the parent to supervised visits; and adding factors for the court to consider when a parent is residing in a shelter for victims of domestic violence or other confidential location, including a list of factors to be considered if the parent is there as a result of conduct by the other parent.

Additionally, this bill authorizes a superior court to elect to serve as a supervised visitation and custody exchange location, and permits a superior court to designate staff or contractors to provide supervised visitation and exchange services or assistance with those services.

This bill is sponsored by Giffords and is supported by the California Legislative Women's Caucus and the California Partnership to End Domestic Violence. This bill is opposed by the California Association of Certified Family Law Specialists.

### **PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) States that it is the public policy of this state to ensure that:
  - a) The health, safety, and welfare of children is the court's primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children;
  - b) Children have the right to be safe and free from abuse, because the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child; and
  - c) Children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and parents are encouraged to share the rights and responsibilities of child rearing in order to effect this policy, except when the contact would not be in the best interests of the child, as provided. (Fam. Code, § 3020(a), (b).)
- 2) Provides that, when the policies set forth in 1a) and c) above are in conflict, a court's order regarding physical or legal custody or visitation must be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members. (Fam. Code, § 3020(c).)
- 3) Requires a court, when determining the best interest of the child in a proceeding to determine child custody and visitation rights, to consider all of the following and any other factors it find relevant:
  - a) The health, safety, and welfare of the child.

- b) A history of abuse by one parent or any other person seeking custody against a child to whom the parent is related or with whom the parent has a caretaking relationship, as specified; the other parent; a parent, current spouse, of the parent, or a person with whom the parent has a dating or engagement relationship.
  - c) The nature and amount of contact with both parents.
  - d) The habitual or continual illegal use of controlled substances and the habitual or continual abuse of alcohol or prescribed controlled substances, as specified. (Fam. Code, §§ 3011, 3021.)
- 4) Requires a court to grant reasonable visitation rights to a parent when it is shown that visitation is in the best interest of the child pursuant to 2) and 3). (Fam. Code, § 3100(a).)
- a) When allegations about a parent pursuant to 3)(b) or 3(d) have been brought to the attention to the court in the proceedings, and the court makes an order for sole or joint custody or unsupervised visitation to that parent, the court shall state its reasons in writing or on the record, and ensure that any order regarding custody or visitation is specific as to the time, day, place, and manner. (Fam. Code, § 3011(a)(5)(A).)
  - b) If the court finds that a party seeking custody of the child has perpetrated domestic violence within the previous five years against the other party seeking custody, or against the child or the child's siblings, or against other enumerated persons, there is a rebuttable presumption that an award of sole or legal custody to the person who has perpetrated domestic violence is detrimental to the best interest of the child. (Fam. Code, § 3044(a).)
  - c) The requirements of 4)(a) do not apply if the parties stipulate in writing or on the record regarding custody or visitation. (Fam. Code, § 3011(a)(5)(B).)
- 5) Establishes the DVPA (Fam. Code, div. 10, §§ 6200 et seq.), which sets forth procedural and substantive requirements for the issuance of a protective order to, among other things, enjoin specific acts of abuse or prohibit the abuser from coming within a specified distance of the abused person. (Fam. Code, §§ 6218, 6300 et seq.)
- 6) Requires the court, prior to deciding whether to issue an order or when determining appropriate temporary custody or visitation orders, to consider the following information obtained pursuant to the search 4): the subject's conviction for a violent or serious felony; the subject's conviction for a misdemeanor involving domestic violence, weapons, or other violence; the subject's outstanding warrants; the subject's parole or probation status; prior restraining orders of the subject; and the subject's violation of a prior restraining order. The court may not consider information relating to a crime that did not result in a conviction. (Fam. Code, § 6306(b).)

- 7) Requires a court, when a protective order has been directed to a parent pursuant to 5), to consider whether the best interest of the child requires that visitation by that parent should be limited to supervised visitation or whether visitation should be suspended, limited, or denied.
  - a) The court must consider, as part of its deliberations, the nature of the acts from which the parent was enjoined and the period of time that has elapsed since the order was entered.
  - b) A parent may submit to the court the name of a person that the parent deems suitable to supervise visitation. (Fam. Code, § 3100(b).)
- 8) Requires, where the court issues an order for visitation in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order to specify the time, day, place, and manner of the transfer of the child so as to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. (Fam. Code, § 3100(c).)
- 9) Requires the court, when making an order for visitation where one of the parties is staying in a place designated as a shelter for victims of domestic violence or other confidential location, to craft the order so that the time, day, place, and manner of transfer are designed to prevent disclosure of the location of the shelter or other confidential location. (Fam. Code, § 3100(d).)
- 10) Requires the Judicial Council of California to develop standards for supervised visitation providers in accordance with enumerated statutory considerations and in consultation with visitation centers, children's advocacy groups, and other stakeholders. (Fam. Code, § 3200(a), (b).)
- 11) States that it is the intent of the Legislature that the safety of children, adults, and visitation supervisors be a precondition to providing visitation services. Once safety is assured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is provide. (Fam. Code, § 3200(c).)

This bill:

- 1) Makes findings and declarations regarding the prevalence of intimate partner violence and child abuse and the lack of professionally supervised visitation centers.
- 2) Requires a court, when making an order in a custody proceeding and determining whether to grant visitation rights to a parent who is the subject of a restraining order, to consider, in addition to existing considerations:
  - a) Whether a protective order issued under section 136.3 of the Penal Code has been directed at the parent.

- b) Whether the best interest of the child requires that visitation by that parent be suspended, denied, or limited to virtual visitation.
- 3) Clarifies that, when a parent submits to the court a name of a person whom the parent deems suitable to be present during supervised visitation, the court may order supervised visitation with that person, but the submission of a name does not require the court to order supervised visitation and the submission does not constitute stipulation to supervised visitation by the submitting parent.
- 4) Clarifies that the court, in deciding whether and what type of visitation is in the best interest of the child under 2), shall consider the nature of the acts that led to the protective order, the period of time that has elapsed since the issuance of the order, and whether the restrained party has committed further acts of abuse.
- 5) Requires, where a court orders visitation, including virtual visitation, in a case in which domestic violence is alleged, the visitation order to specify the time, day, place, and manner of the visitation or virtual visitation to minimize the opportunity for abuse, including coercive control.
- 6) Clarifies that when a court finds that a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, any court order providing for visitation or parent-child contact shall be designed to prevent disclosure of the location of the shelter or confidential location and to protect all adults and children living in that location.
- 7) Requires, if the court finds under 6) that one parent is residing in a shelter or confidential location due to domestic violence or fear of domestic violence from the other parent, the court shall order in-person visitation with the other parent only if the court finds that in-person visitation is in the best interest of the child, taking into account all of the following:
  - a) The other parent's access to firearms and ammunition, including, but not limited to, whether the other parent is prohibited from having firearms and ammunition.
  - b) If the other parent is the subject of a protective order or restraining order, whether the parent has violated that order, and the nature of any violation.
  - c) Information obtained by the court issuing the protective order, as specified.
  - d) The potential for disclosure of the confidential location.
- 8) Requires a court to make its findings under 6) and 7) in writing or on the record.
- 9) Defines "visual visitation" as the use of audiovisual electronic communication tools to provide contact between a parent and their children as part of a parenting plan or custody order. Virtual visitation may be supervised or unsupervised, based on the court's determination of the best interest of the child.

- 10) Requires a court, in making a determination of the best interest of the child in a custody proceeding, to consider additional the information set forth in 1)-9).
- 11) Permits a superior court location to serve as a supervised visitation and exchange location, and permits a superior court to designate employees and contractors to provide supervised visitation and exchange services or assistance with those services.

## COMMENTS

### 1. Author's comment

According to the author:

A majority of the 10 million annual domestic violence victims in the United States are parents, and unfortunately, those children are often also exposed to harm. Children have the right to be safe and free from domestic violence, yet when a victim leaves an abusive partner, the family is often at the highest risk for violence afflicted by the restrained parent. In cases where visitation or parent/child contact may be appropriate during custodial arrangements, technology, when used safely and appropriately, provides opportunities to decrease the risk associated with in person visitation and exchange, specifically when parents and children are living in confidential locations. However, under some circumstances, including where such technology might be used to further abuse or harass, no visits may in the best interests of the child.

SB 599 seeks to establish simple yet significant ways this type of violence can be prevented after families escape domestic violence. This bill will authorize superior court locations to serve as supervised visitation and exchange locations for custodial visits, as a means to prioritize the safety of all children and adults due to safety measures built into these locations. This bill also clarifies options for virtual visitation, or no visitation, when the custodial parent and children are living in a confidential location due to prior domestic abuse afflicted by the restrained party.

### 2. Custody and visitation determinations

“Under California’s statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child.”<sup>1</sup> That scheme “allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.”<sup>2</sup> When determining the best interest of a child, a court

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<sup>1</sup> *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255; see §§ 3011, 3020, 3040 & 3041.

<sup>2</sup> Fam. Code, § 3040.

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.<sup>3</sup> The analysis is always informed by the fact that the right to participate in the raising of one's child is a protected constitutional right that cannot be cast aside without good cause.<sup>4</sup>

In the past several years, several measures enacted by the Legislature have been focused on "requir[ing] family courts to give due weight to the issue of domestic violence."<sup>5</sup> The goal of these measures is to escape the status quo wherein "it has been too easy for courts to ignore evidence of domestic abuse or assume that it will not happen again."<sup>6</sup> Accordingly, while California law still establishes joint custody as the preferred custodial framework,<sup>7</sup> statutes also make clear that this preference is wholly subject to the best interest of the child,<sup>8</sup> and, where a parent has been accused of or found to have committed domestic violence or abuse, courts must take extra precautions in order to ensure that the child's safety and welfare are paramount.<sup>9</sup>

3. This bill clarifies the considerations and procedures for when a court makes a custody or visitation order in a case where one parent has been accused of domestic violence or is the subject of a protective order

This bill is intended to provide more guidance to courts when they make custody and visitation orders in cases where one parent has been accused of domestic violence or is the subject of a restraining or a protective order. The bill does not alter the foundational basis for all custody decisions – the best interest of the child – but rather adds additional specification regarding the factors the court should consider when determining what is in the child's best interest.

First, the bill clarifies that, when a parent in a custody or visitation proceeding is the subject of a protective order, the court shall consider whether the best interest of the child require visitation to be suspended, denied, or limited to supervised or virtual visitation (which can also be supervised or unsupervised). Stakeholders report that courts are already ordering virtual visitation – which is defined as audiovisual

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<sup>3</sup> *Id.*, §§ 3011, 3020.

<sup>4</sup> *E.g.*, *Troxel v. Granville* (2000) 530 U.S. 57, 65-66.

<sup>5</sup> *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, 806.

<sup>6</sup> *Ibid.* Even with the mandatory presumption that joint or sole custody should not be awarded to a parent who has been found to have committed domestic violence or child abuse against specified persons in the prior five years, trial courts have repeatedly failed to apply the presumption or explain its order granting custody to an abuser using the mandatory factors set forth in statute. (*E.g.*, *City and County of San Francisco v. H.H.* (2022) 76 Cal.App.5th 531, 544; *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 664; *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1499-1500.)

<sup>7</sup> Fam. Code, § 3040.

<sup>8</sup> *Id.*, §§ 3011, 3020, 3044.

<sup>9</sup> *Id.*, §§ 3044, 3100.

commination tools to provide contact between the parent and child – so this addition simply clarifies the court’s authority to take such a step. The bill also requires the court to clarify the time, place, manner, and date of the visitation or exchange in its order, regardless of whether the parties have stipulated to the custody or visitation.

Second, bill requires the court, when a parent in a custody or visitation proceeding is the subject of a restraining or protective order, to consider the surrounding circumstances – the nature of the acts that led to the protective order, the period of time that has elapsed, and whether the parent has committed further acts of abuse – in determining the best interest of the child. The bill also clarifies that, while a parent may submit a name for a person whom the parent believes would be suitable to supervise visitation with the child, the submission may not be treated as a parent’s stipulation to supervised visitation, and the submission does not require the court to order supervised visitation if it is not in the best interest of the child. Finally, the bill requires the court to make clear, in any order awarding custody or visitation in such circumstances, the time, place, date, and manner of the exchange of the child or visitation, so as to avoid the potential for abuse (including coercive control), even where the parties have stipulated to the custody or visitation.

Third, the bill expands requirements for a custody or visitation order issued when a parent is staying in a shelter for victims of domestic violence or another confidential location. In all such cases, the bill requires the court to design its order to prevent the disclosure of the shelter or confidential location and to protect all adults and children living in that location. And if the parent is residing in a shelter or confidential location due to domestic violence or fear of domestic violence from the other parent, the court must consider, in determining the best interest of the child, factors including the other parent’s access to firearms, the potential for disclosure of the confidential location and, if the other parent is the subject of a protective or restraining order, whether the other parent has violated that order.

4. This bill permits a superior court to elect to serve as a supervised visitation and exchange location

Current law grants the Judicial Council of California to develop standards and requirements for supervised visitation and exchange locations – places where parents can visit with their children or exchange the child to the other parent’s custody under supervision, where the court has deemed it necessary or where families have agreed to it. This bill permits, but does not require, a superior court to opt to serve as such a location, and to designate employees and contractors to provide services or assistance with the visitation and exchange services.



5. Arguments in support

According to Giffords, the sponsor of the bill:

More than 10 million people in the United States are victims of domestic violence every year, with approximately one in five children witnessing abuse, and 60 percent experiencing maltreatment themselves. While domestic violence restraining orders and custody arrangements help to mitigate contact with the restrained party, there have been incidents where violence, and sometimes death, still ensure at the hands of the restrained parent. Additionally, the prevalence of firearms – both registered and unregistered – is significant: there are over 393 million privately owned firearms in the U.S., more than any other country in the world. No matter how well we do in California to implement existing firearm prohibitions, we know that in the most dangerous cases, access to firearms remains a possibility. Therefore, it is critical to have options in place designed to reduce those risks...

Suspending visitation, providing safer alternatives, including the use of publicly funded, secure courthouses, or establishing virtual visits provide safer options that can prevent firearms-involved domestic violence tragedies. This bill would clarify that virtual visitation, especially when a parent and children are living in a confidential location to escape the abusive partner, is an important consideration.

**SUPPORT**

Giffords (sponsor)  
California Legislative Women’s Caucus  
California Partnership to End Domestic Violence

**OPPOSITION**

California Association of Certified Family Law Specialists<sup>10</sup>

**RELATED LEGISLATION**

Pending Legislation: SB 331 (Rubio, 2023) among other things, states that the provisions relating to expert witnesses in the Evidence Code apply to a person offered to testify as an expert in a child custody proceeding in which a parent has been alleged to have committed domestic violence or child abuse, as specified. SB 331 is pending before the Senate Judiciary Committee.

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<sup>10</sup> The concerns raised by the California Association of Certified Family Law Specialists (CACFLS) mostly addressed portions of a prior version of the bill that have since been amended out; CACFLS has not weighed in on the current version of the bill at the time this analysis was published.

Prior Legislation:

SB 1265 (Rubio, 2022) would have established an ex-parte process to modify a child custody or visitation order if a person restrained by a protective order who has court-authorized in-person custody or visitation with children has been arrested for or charged with a crime involving assaultive conduct or use of a weapon upon another person. SB 1265 died in the Assembly Judiciary Committee.

SB 654 (Min, Ch. 768, Stats. 2021) required 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, and 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.

SB 495 (Durazo, Ch. 551, Stats. 2019) prohibited a court from considering sex, gender identity, gender expression, or the sexual orientation of a parent, legal guardian, or relative in making a best interest determination for purposes of awarding child custody or visitation rights.

SB 2044 (Stone, Ch. 941, Stats. 2018) updated child custody and visitation statutes in an effort to further protect children from parents who have perpetrated domestic violence or child abuse and further ensure that the health, safety, and welfare of children are paramount in the determination of what custody or visitation orders are in the best interest of children, including requiring a court awarding custody to a parent found to have perpetrated domestic violence within the past five years to state its reasons in writing or on the record.

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