

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

SB 616 (Rubio)
Version: June 20, 2022
Hearing Date: August 24, 2022
Fiscal: No
Urgency: No
AWM

PURSUANT TO SENATE RULE 29.10

SUBJECT

Child custody: child abuse and safety

DIGEST

This bill increases and expands ongoing domestic violence and child abuse educational requirements for judges, referees, commissioners, mediators, child custody recommending counselors, and evaluators involved in domestic violence and child custody proceedings; clarifies that, when making child custody and visitation orders, the health, safety, and welfare of the child and the safety of all family members is paramount; and provides examples of prohibited family reunification services, which cannot be ordered as a part of a child custody or visitation proceeding, including reunification therapy, treatments, programs, workshops or camps that are predicated on cutting off a child from a parent with whom the child is bonded.

EXECUTIVE SUMMARY

Children involved in contested custody and visitation matters in family court are often subject to abuse, including child abuse, child sexual abuse, and exposure to domestic violence. California has been diligent in establishing laws to protect children from these abuses, but children involved in family court disputes still experience harm that could potentially be prevented with protective custody and visitation orders that acknowledge the risk of an abusive parent. Research by the Centers for Disease Control on adverse childhood experiences confirms that children exposed to domestic violence in their households can suffer severe and lasting harm even if they are not the direct target of the abuse, further confirming the need to protect children from abuse and exposure to domestic violence.

This bill is intended to increase protections and help ensure that children in custody and visitation arrangements established in family court are safe from harm in several key ways. First, it increases and expands ongoing domestic violence and child abuse

educational requirements for judges, referees, commissioners, mediators, child custody recommending counselors, and evaluators involved in domestic violence and child custody proceedings, including imposing specific hourly training requirements. Second, the bill clarifies that, when making child custody and visitation orders, the health, safety, and welfare of the child and the safety of all family members is paramount. Finally, the bill provides examples of prohibited family reunification services, which cannot be ordered as a part of a child custody or visitation proceeding, including reunification therapy, treatments, programs, workshops or camps that are predicated on cutting off a child from a parent with whom the child is bonded. These added provisions may secure for the State additional federal funding under the newly reauthorized Violence Against Women Act; however, the judicial training requirements raise serious constitutional concerns regarding the separation of powers between the Legislature and the Judicial Branch. This bill is a gut-and-amend of an unrelated bill that had been pending in the Assembly Education Committee since 2021, so this is the first time this Committee has heard this bill.

This bill is sponsored by the Center for Judicial Excellence and supported by a number of organizations dedicated to protecting children, public entities and officials, and individuals. This bill is opposed by Family Reunion, Judicial Council of California, Mothers Against Child Abuse, Parental Alienation Europe, PAS-Intervention MD Chapter and The Hero's Circle.

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, and that 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 to encourage parents 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) Requires that custody of a child be granted according to a set order of preference, based on the best interests of the child, but that the order of preference establishes neither a preference, nor a presumption, for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest

discretion to choose a parenting plan that is in the best interest of the child. (Fam. Code, § 3040.)

- 3) Requires, when the policies set forth above are in conflict, a court's order regarding physical or legal custody or visitation to 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).)
- 4) Provides that when determining the best interests of a child, a court may consider any relevant factors and must consider: the health, safety, and welfare of the child; any history of abuse by any party seeking custody, any family members of any party seeking custody, or the intimate partner or cohabitant of any party seeking custody; the nature and amount of contact with the parents; and substance abuse by a parent. The court may not consider the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interests of the child. (Fam. Code, § 3011.)
- 5) Requires a court to grant reasonable visitation to a parent when it is shown that visitation is in the child's best interests. (Fam. Code, § 3100.)
- 6) Prohibits a court from ordering family reunification services as part of a child custody or visitation rights proceeding. (Fam. Code, § 3026.)
- 7) Creates a rebuttable presumption against custody of a child to a parent who, the court finds, has perpetrated domestic violence against the other party, the child, the child's sibling, or certain other individuals, as provided, within the previous five years. In considering whether to overcome the presumption against custody, a court must consider, among other things, whether giving that parent custody is in the child's best interests; whether the perpetrator has completed a batterer's treatment program, substance abuse program or parenting classes; and whether there have been subsequent acts of domestic violence. (Fam. Court, § 3044.)
- 8) Requires the Judicial Council to establish judicial training programs for judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council who perform duties in family law matters.
 - a) The training program must include a family law session in any orientation session conducted for newly appointed or elected judges and an annual training session in family law.
 - b) The training in 7)(a) must include instruction in all aspects of family law, including effects of gender, gender identity, and sexual orientation on family law proceedings, the economic effects of dissolution on the involved parties, and the effects of allegations of child abuse or neglect made during family law proceedings. (Gov. Code, § 68553; Cal. Rules of Court, Rule 10.463.)

- 9) Requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council.
 - a) The training programs must include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence.
 - b) The domestic violence training programs must include instruction in all aspects of domestic violence, including, but not be limited to, training on the detriment to children of residing with a person who perpetrates domestic violence and the fact that domestic violence can occur without a party seeking or obtaining a restraining order, without a substantiated child protective services finding, and without other documented evidence of abuse. (Gov. Code, § 68555; Cal. Rules of Court, Rule 10.464.)

This bill:

- 1) Makes findings and declarations relating to the prevalence of child abuse and domestic violence in the United States and the Legislature's intent to increase the priority given to the safety of a child in any state court divorce, separation, visitation, paternity, child support, civil protection order, or family custody court proceeding affecting the custody and care of children.
- 2) Further clarifies that, when there is a conflict between the policies of ensuring the best interests of a child and ensuring that children have contact with both parents following a separation, the court's order must ensure that the health, safety, and welfare of the child and the safety of all family members "are paramount."
- 3) Clarifies the existing prohibition on a court ordering family reunification services, to specify that reunification therapy, treatments, programs, workshops, and/or camps predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached may not be ordered as part of a custody or visitation rights proceeding.
- 4) Requires all judges assigned to family law matters involving child custody proceedings, as well as judges, referees, commissioners, mediators, child custody recommending counselors, and evaluators involved in child custody proceedings, to participate in a program of continuing instruction in domestic violence, including child abuse.
- 5) Adds child-custody-recommending counselors and evaluators to the list of persons who perform duties in family law matters for whom the Judicial Council must establish a judicial training program.

- 6) Requires the training in 5) to be designed to improve the ability of judges, referees, commissioners, mediators, child-custody-recommending counselors, evaluators, and others who are deemed appropriate who perform duties in family law matters, to recognize and respond to child abuse, domestic violence, and trauma in all family victims, particularly children, and make appropriate custody decisions that prioritize child safety and well-being and are culturally responsive and appropriate for diverse communities.
- 7) Requires the training in 5) to include a minimum of 25 hours for the orientation session and a minimum of 20 training hours to be required every three years thereafter, and to include education, using all available resources, on all of the following:
 - a) Child sexual abuse.
 - b) Physical abuse.
 - c) Emotional abuse.
 - d) Coercive control.
 - e) Implicit and explicit bias, including biases relating to parents with disabilities.
 - f) Trauma.
 - g) Long-term and short-term impacts of domestic violence and child abuse on children.
 - h) Victim and perpetrator patterns and relationship dynamics within the cycle of violence.
- 8) Adds child custody recommending counselors and evaluators to the list of persons who perform duties in domestic violence matters for whom the Judicial Council must establish a judicial training program, expands the training program to require training on child abuse and the impact of domestic violence on children, and requires the program to be a minimum of 25 hours for orientation and a minimum of 20 hours every three years thereafter.

COMMENTS

1. Author's comment

According to the author:

We need to protect our children from abusive parents, and Piqui's Law will begin that process. SB 616 is named after a five-year-old boy who was murdered in 2017 by his father during a family court-ordered visitation in Los Angeles. Piqui's death was not a random, violent tragedy. According to the Center for Judicial Excellence, since 2008 there have been at least 860 reported cases of children murdered by an abusive parent during divorce or separation proceedings. Many children died during a family court-ordered visitation, despite prior evidence being presented that they were in danger.

In response to the devastating numbers of children murdered by divorcing or separating parents in our country, Congress passed and President Biden signed the re-authorization of the Violence Against Women Act (VAWA). It includes groundbreaking new provisions under Title XV – Keeping Children Safe From Family Violence Act. The Act, also known as "Kayden's Law," provides financial incentives for State legislatures to modernize family court laws to better protect abused children and domestic violence survivors. This includes prioritizing child safety; restricting the use of unethical reunification programs; and mandating domestic violence and child abuse education for family court judges and other relevant court personnel.

California must lead the way in reforming our family law system in order to protect our children and victims from abuse that has led to murder. Tragically, California has the highest total number of these types of deaths in the entire country, three times more than Texas and five times more than New York. Piqui's Law will finally push for critical training that moves us towards preventing any more children from dying at the hands of abusers.

2. The long-lasting harms of childhood abuse and California's existing framework to minimize those harms

All too often, children involved in contested custody and visitation matters in family court are subject to abuse, including child abuse, child sexual abuse, and exposure to domestic violence. California has been at the forefront in establishing laws to protect children from these abuses, but children involved in family court disputes still experience harm that could potentially be prevented with more protective custody and visitation orders.

The Adverse Childhood Experiences (ACE) study, a collaboration between the Centers for Disease Control (CDC) and Kaiser Permanente, studied the effect of child abuse and related childhood adversarial experiences on health consequences through surveys and health exams of over 17,000 members of the Kaiser HMO beginning in 1995.¹ That study found that adverse childhood experiences, including exposure to abuse and household dysfunction, can cause immediate and long-term adverse impacts to children, including increased risk of alcoholism, heart disease, depression, illicit drug use, poor academic achievement, poor work performance, risk of domestic violence and suicide, and early death. The study has been replicated in other states, reaching the same conclusions.²

¹ Felitti *et al.*, *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, *American Journal of Preventative Medicine* (May 1998) Vol. 14, Issue 4, pp. 245-258.

² CDC, *Adverse Childhood Experiences Reported by Adults --- Five States, 2009*, *Morbidity and Mortality Weekly Report* (Dec. 17, 2010).

Simply put, it is harmful to children, both immediately and throughout their lives, to experience domestic violence or child abuse. Both direct child abuse and exposure to domestic violence harm children, and our statutes should support the prevention of these harms in family court through appropriate protective and custody orders.

California law already recognizes the harms caused to children by abuse and domestic violence, in a number of ways. When determining the best interests of a child – the key determination of a custody or visitation decision – the court must consider, among other factors, the health, safety, and welfare of the child, and any history of abuse or domestic violence by the parent seeking custody of the child against a child, the other parent, or other person with whom that parent has an intimate relationship. There are also legislative declarations of public policy for child custody which declare that the health, safety, and welfare of children is the court’s primary concern in determining the best interest of children when making any orders regarding the physical or legal custody of, or visitation with, children and the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.³ There is also a rebuttable presumption against custody to a batterer⁴ and a ban on “family reunification services” in a custody or visitation case under the Family Code.⁵

Despite California’s existing framework, there are still far too many tragic incidents where a court awards custody or visitation rights to a known abuser, resulting in the further abuse, and sometimes death, of the child. This bill is named after Piqui, a five-year-old boy whose father killed him after the court refused to halt visitation.

3. This bill seeks to improve California’s already-strong protections against child abuse in child custody and visitation proceedings by, among other things, adding training requirements for judges and other decisionmakers in family law matters

This bill makes several clarifications to the law to further strengthen California’s child custody laws so as to prevent child abuse. First, the bill clarifies that, in best interest determinations for purposes of child custody and visitation orders, when the state policies in favor of ensuring (a) the health, safety, and welfare of children; and (b) that children have frequent and continuing contact with both parents are in conflict, a court’s order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members is paramount.

Second, the bill clarifies that prohibited family reunification services, which cannot be ordered as a part of a child custody or visitation rights proceeding, include, but are not limited to, reunification therapy, treatments, programs, workshops or camps that are

³ *Id.*, § 3020.

⁴ *Id.*, § 3044.

⁵ *Id.*, § 3026.

predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached.

Finally, the bill expands already required court training for judges and other court personnel involved with child custody and domestic violence cases. Current law requires all judges, referees, commissioners, and mediators involved in child custody or domestic violence matters to participate in a program of continuing instruction in domestic violence, including child abuse. This bill expands the group to include other actors who make decisions in family law cases, specifically, child-custody-recommending counselors and evaluators. The training must use available resources to specifically include training on:

- Child sexual abuse;
- Physical abuse;
- Emotional abuse;
- Coercive control;
- Implicit and explicit bias, including biases relating to parents with disabilities;
- Trauma;
- Long- and short-term impacts of domestic violence and child abuse on children; and
- Victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence.

The training must be for at least 25 hours in the first year and then an additional 20 hours every three years thereafter. According to the Center for Judicial Excellence, the sponsor of the bill, “our courts are not sufficiently trained in recognizing nor responding to fatal threats when dozens of California children are being returned home in body bags,” and the enhanced training will help ensure judges and other court professionals are better trained to recognize and protect against child abuse and domestic violence in child custody cases. They also believe that these additional provisions could help California secure additional funding under the newly reauthorized Violence Against Women Act (VAWA).⁶ According to the sponsor, however, the federal Department of Justice has not yet published regulations setting forth the criteria for applying for funding, so it is not clear whether passing this bill will allow California to draw down VAWA funding or how much funding would be awarded.

Judicial Council recently submitted formal opposition to this bill. Their letter raises concerns that the bill’s training requirements create duplicative, unfunded training requirements that “give rise to serious concerns about impartiality and neutrality.” Several other bill opponents also express concern that the specific categories of training may result in judicial bias. Judicial Council notes that new trial court judges sitting in family law cases already go through significant training, including 30 hours of family

⁶ See S. 3623, 117th Congress (2021-2022), signed as part of the omnibus appropriations package.

law assignment training, and opine that the addition of another 25 hours will result in “significant unfunded cost impacts to the courts and the judicial branch.” Because this bill was not heard by the Assembly Appropriations Committee, there has been no formal analysis of the likely costs of the bill.

Judicial Council also argues that the bill’s mandate that judges undergo a specific number of hours of training, and the degree of specificity of the required training, violate the principle of separation of powers. While existing law requires Judicial Council to establish training programs, existing law does not dictate the number of hours of training must be provided or dictate the subject matter of the training with the specificity of this bill. This bill thus presents an unprecedented Legislative intervention into the Judicial Branch’s conduct. While there is no case law specifically establishing to what degree the Legislature may impose on the Judiciary’s prerogative to train its own judicial officers and staff, as a general rule, “the focus in questions of separation of powers is ‘the degree to which [the] governmental arrangements comport with, or threaten to undermine, either the *independence and integrity* of one of the branches or levels of government, or the ability of each to fulfill its mission in checking the others so as to preserve the *interdependence* without which independence can become domination.’”⁷ Because this bill imposes a substantial and specific encroachment into the Judicial Branch’s intra-branch training, it raises serious concerns that it unconstitutionally undermines the independence and integrity of the Judicial Branch. Moreover, to the extent that the bill’s training requirements could implicate who may be assigned in family law and child custody cases, the bill could run afoul of the Chief Justice’s broad discretionary authority over the judicial assignment process.⁸

4. Arguments in support

According to the Center for Judicial Excellence, the sponsor of the bill:

Domestic violence and child abuse are complex issues, which can be difficult to spot. A recent study showed that California family court mediators are approximately twice as likely to ignore, minimize or refute evidence of child abuse than mediators in other states. (Stahly, 2022.) This is one of the reasons that our judges and other court personnel need to be better equipped to identify abuse and make more informed decisions about child placement.

Congress and President Biden have recognized this crisis and are putting a significant financial incentive behind their effort to encourage states to modernize their custody laws and prioritize child safety. Currently, family courts too often

⁷ *City of Sacramento v. California State Legislature* (1986) 187 Cal.App.3d 393, 398-99 (emphases in original, citation omitted). Relatedly, to the extent the bill would impose a specific training requirement

⁸ See, e.g., *Mahler v. Jud. Council of California* (2021) 67 Cal.App.5th 82, 96-97 (“Judicial precedent has established that the Chief Justice, as Chair of the Judicial Council, is invested with ‘discretion of the broadest character’ in the assignment of judges.”).

allow rampant junk science and victim-blaming to force child abuse victims into ongoing visitation or custody with their parental abuser. VAWA has earmarked federal money for states that update and modernize their custody laws by prioritizing child safety. This funding will be available to eligible states from FY 2023 through 2027. If SB 616 is enacted this year, California will be the first state in the nation to adopt multiple portions of Kayden’s Law that are required to draw down these funds...

SB 616 does not specifically mandate a separate training, as these hours can be woven into the Judicial Council’s existing training programs, including those detailed in Family Code Section 1816, or spread out over time. This legislation leaves it to the Judicial Council’s discretion as to how they want to meet the bill’s requirements.

5. Arguments in opposition:

According to the Judicial Council of California, writing in opposition:

The judicial branch is fundamentally based on impartiality and neutrality. Bias in the courts erodes confidence in the court system. The highly specific training topics mandated by SB 616 gives rise to concerns regarding who the possible training experts could be, and whether the training topics implicate an advocacy agenda intended to improperly influence judicial impartiality and neutrality rather than pedagogically sound education and training.

And finally, SB 616 creates internally inconsistent conflicts for judicial officers sitting in Family Law assignments. While the fundamental tenets of child custody determinations include consideration of the best interests, and ensuring the safety, of the child, SB 616 would prohibit a court from separating a child from a parent to whom a child is bonded or attached even if the court determines that the child is bonded or attached to the parent found to be the abuser.

According to Family Reunion, writing in opposition:

SB 616 has only one purpose. That purpose is to impose bias in training, evidence and adjudication in favor of accusers. The courts already have enormous experience in handling accusations of domestic abuse or child abuse, having processed hundreds of thousands of individual cases. Nothing in SB 616 advances impartial decision making. SB 616 exists only to impede impartial decision making.

SUPPORT

Center for Judicial Excellence (sponsor)
Advocates for Child Empowerment and Safety

California Protective Parents Association
California Women's Law Center
Children's Law Center of California
County of Los Angeles
County of Los Angeles, Office of the District Attorney
County of Los Angeles, Office of the Sheriff
Crime Survivors Resource Center
Family Violence Appellate Project
Incest Survivors' Speakers Bureau of California
Just-A-Word Ministries
Legislative Coalition to Prevent Child Abuse
One Mom's Battle
Parents of Murdered Children, Inc., Los Angeles Chapter
United States Senator Dianne Feinstein
West Sacramento Mayor Martha Guerrero
12 individuals

OPPOSITION

Family Reunion
Judicial Council of California
Mothers Against Child Abuse
Parental Alienation Europe
PAS-Intervention MD Chapter
The Hero's Circle

RELATED LEGISLATION

Pending Legislation:

SB 1265 (Rubio, 2022) creates a procedure whereby, if a person who is the subject of a restraining order and also has court-ordered custody or visitation with children is arrested for or charged with a crime involving assaultive conduct or use of a weapon on another person, the protected party may file for an ex parte modification to the visitation or custody order. SB 1265 is pending before the Assembly Judiciary Committee.

SB 1182 (Eggman, 2022) in relevant part requires, if a court finds that a parent's mental illness is a factor in a child custody or visitation order, the court must explain its decision and provide the parent with resources for mental health treatment. SB 1182 is awaiting the Governor's signature.

Prior Legislation:

SB 935 (Min, Ch. 88, Stats. 2022) clarified that a court may renew a DVPA protective order multiple times, subject to termination, modification, or subsequent renewal, as specified.

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.

AB 1179 (Blanca Rubio, Ch. 127, Stats. 2019) required Judicial Council, on or before January 1, 2021, to adopt a form to be used in an evaluation or assessment of allegations of child abuse in a contested proceeding involving child custody or visitation rights.

AB 2044 (Stone, Ch. 941, Stats. 2018) strengthened the presumption against custody for perpetrators of domestic violence by extending the presumption to individuals whom a court found to have perpetrated domestic violence within the previous five years against specified individuals.

PRIOR VOTES:

Assembly Floor (Ayes 76, Noes 4)
Assembly Judiciary Committee (Ayes 11, Noes 0)
[Prior votes not relevant]
