

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 23, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 375

Introduced by Assembly Member Nielsen

February 23, 2009

An act to amend Section 3064 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 375, as amended, Nielsen. Child custody: child sexual abuse.

Existing law requires the court to refrain from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. For purposes of this provision, immediate harm to the child includes, but is not limited to, having a parent who has committed acts of domestic violence, or the sexual abuse of the child, where the court determines that the acts of domestic violence or of sexual abuse are of recent origin or are a part of a demonstrated and continuing pattern of those respective acts.

This bill would *revise that provision to prohibit the court from making, rather than refrain from making, that order. The bill would also prohibit, unless there is ~~the specific a showing described above of immediate danger to the health and safety of the child or immediate risk that the child will be removed from the State of California,~~ a court from granting a request to modify a child custody order on an ex parte basis if there is a finding that there has been sexual abuse of, or domestic violence against, the child, if the court determines that the act of sexual abuse*

or domestic violence is of recent origin, or part of a demonstrated and continuing or escalating pattern of acts of sexual abuse of, or domestic violence against, the child, and if the request for modification of the custody order is made by a person who is alleged to have perpetrated a recent act or a pattern of acts of sexual abuse of, or domestic violence against, the child and it is alleged that the person is seeking the modification in order to gain greater access to the child. Under those circumstances, a hearing regarding modification of the custody order would be conducted in open court. *The bill would make a related change.* The bill would also define “recent origin,” for purposes of these provisions, to apply to acts occurring within the previous 5 years.

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

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

- 1 SECTION 1. Section 3064 of the Family Code is amended to
- 2 read:
- 3 3064. (a) The court shall ~~refrain from making~~ *not make* an
- 4 order granting or modifying a custody order on an ex parte basis
- 5 unless there has been a showing of immediate harm to the child
- 6 or immediate risk that the child will be removed from the State of
- 7 California.
- 8 (b) (1) Unless there is a showing of immediate ~~harm to~~ *danger*
- 9 *to the health and safety of* the child or immediate risk that the child
- 10 will be removed from the State of California, the court may not
- 11 grant a request to modify a custody order on an ex parte basis if
- 12 all of the following apply:
- 13 (A) There is a finding that there has been sexual abuse of, or
- 14 domestic violence against, the child.
- 15 (B) The court determines that the act of sexual abuse or domestic
- 16 violence is of recent origin, or part of a demonstrated and
- 17 continuing or escalating pattern of acts of sexual abuse of, or
- 18 domestic violence against, the child.
- 19 (C) The request for modification of the custody order is made
- 20 by a person who is alleged to have perpetrated a recent act or a
- 21 pattern of acts of sexual abuse of, or domestic violence against,
- 22 the child and it is alleged that the person is seeking the modification
- 23 in order to gain greater access to the child.

1 (2) If all of the circumstances described in subdivision (b) apply,
2 the court shall conduct a hearing regarding modification of the
3 custody order in open court.

4 (c) “Immediate harm to *or immediate danger to the health and*
5 *safety of the child*” includes, but is not limited to, the following:

6 (1) Having a parent who has committed acts of domestic
7 violence, where the court determines that the acts of domestic
8 violence are of recent origin or are a part of a demonstrated and
9 continuing pattern of acts of domestic violence.

10 (2) Sexual abuse of the child, where the court determines that
11 the acts of sexual abuse are of recent origin or are a part of a
12 demonstrated and continuing pattern of acts of sexual abuse.

13 (3) For purposes of this section, the phrase “recent origin” refers
14 to acts occurring within the previous five years.

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