

Introduced by Senator Wieckowski

February 27, 2015

An act to amend Sections 3111, 3118, and 3170 of, and to add Section 3117.5 to, the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as introduced, Wieckowski. Child custody.

Existing law requires the court to require an evaluation, investigation, or assessment in any contested proceeding involving child custody or visitation rights where the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse. Existing law establishes certain minimum requirements for the evaluation, investigation, or assessment.

This bill would require the Judicial Council to, not later than January 1, 2016, develop a form that every investigator or evaluator conducting an investigation would be required to submit to the court. The bill would require the form to delineate each requirement and require that the investigator or evaluator provide documentation in, or attached to, the form, showing that each task has been completed as required. The bill would provide that on or after January 1, 2016, an investigation that is not documented on the Judicial Council form would not meet the minimum requirements for an investigation as required by the provisions described above. The bill would require, on or after January 1, 2016, that documentation showing compliance with those requirements and the results of the investigation be submitted to the court on the form developed by the Judicial Council.

Existing law also requires a court, if it appears on the face of a petition, application, or other pleading to modify or obtain a temporary

or permanent custody or visitation order that custody, visitation, or both are contested, to set the contested issues for mediation. Existing law provides that domestic violence cases shall be handled in accordance with a separate written protocol approved by the Judicial Council.

This bill would require the Judicial Council to, not later than January 1, 2016, develop a form to be used to help implement the separate written protocol approved by the Judicial Council.

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

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

1 SECTION 1. Section 3111 of the Family Code is amended to
2 read:

3 3111. (a) In any contested proceeding involving child custody
4 or visitation rights, the court may appoint a child custody evaluator
5 to conduct a child custody evaluation in cases where the court
6 determines it is in the best interests of the child. The child custody
7 evaluation shall be conducted in accordance with the standards
8 adopted by the Judicial Council pursuant to Section 3117, and all
9 other standards adopted by the Judicial Council regarding child
10 custody evaluations. If directed by the court, the court-appointed
11 child custody evaluator shall file a written confidential report on
12 his or her ~~evaluation~~. *evaluation on the form developed pursuant*
13 *to Section 3117.5.* At least 10 days before any hearing regarding
14 custody of the child, the report shall be filed with the clerk of the
15 court in which the custody hearing will be conducted and served
16 on the parties or their attorneys, and any other counsel appointed
17 for the child pursuant to Section 3150. The report may be
18 considered by the court.

19 (b) The report shall not be made available other than as provided
20 in subdivision (a) or Section 3025.5, or as described in Section
21 204 of the Welfare and Institutions Code or Section 1514.5 of the
22 Probate Code. Any information obtained from access to a juvenile
23 court case file, as defined in subdivision (e) of Section 827 of the
24 Welfare and Institutions Code, is confidential and shall only be
25 disseminated as provided by paragraph (4) of subdivision (a) of
26 Section 827 of the Welfare and Institutions Code.

1 (c) The report may be received in evidence on stipulation of all
2 interested parties and is competent evidence as to all matters
3 contained in the report.

4 (d) If the court determines that an unwarranted disclosure of a
5 written confidential report has been made, the court may impose
6 a monetary sanction against the disclosing party. The sanction
7 shall be in an amount sufficient to deter repetition of the conduct,
8 and may include reasonable attorney's fees, costs incurred, or both,
9 unless the court finds that the disclosing party acted with substantial
10 justification or that other circumstances make the imposition of
11 the sanction unjust. The court shall not impose a sanction pursuant
12 to this subdivision that imposes an unreasonable financial burden
13 on the party against whom the sanction is imposed. This
14 subdivision shall become operative on January 1, 2010.

15 (e) The Judicial Council shall, by January 1, 2010, do the
16 following:

17 (1) Adopt a form to be served with every child custody
18 evaluation report that informs the report recipient of the
19 confidentiality of the report and the potential consequences for the
20 unwarranted disclosure of the report.

21 (2) Adopt a rule of court to require that, when a court-ordered
22 child custody evaluation report is served on the parties, the form
23 specified in paragraph (1) shall be included with the report.

24 (f) For purposes of this section, a disclosure is unwarranted if
25 it is done either recklessly or maliciously, and is not in the best
26 interests of the child.

27 SEC. 2. Section 3117.5 is added to the Family Code, to read:

28 3117.5. (a) The Judicial Council shall, no later than January
29 1, 2016, develop a form to be used by every investigator or
30 evaluator conducting a child custody evaluation. The form shall
31 delineate each requirement required by Section 3118 and require
32 that the investigator or evaluator provide documentation in, or
33 attached to, the form showing that each task has been completed
34 as required. For purposes of this section, a child custody evaluation
35 means an investigation and analysis of the health, safety, welfare,
36 and best interest of a child with regard to disputed custody and
37 visitation issues conducted pursuant to Sections 3111 or 3118,
38 Section 730 of the Evidence Code, or Article 1 of Chapter 15 of
39 Title 4 of Part 4 of the Code of Civil Procedure.

1 (b) Child custody evaluations filed with the court on and after
2 January 1, 2016, shall be submitted on the report form developed
3 pursuant to subdivision (a).

4 SEC. 3. Section 3118 of the Family Code is amended to read:

5 3118. (a) In any contested proceeding involving child custody
6 or visitation rights, where the court has appointed a child custody
7 evaluator or has referred a case for a full or partial court-connected
8 evaluation, investigation, or assessment, and the court determines
9 that there is a serious allegation of child sexual abuse, the court
10 shall require an evaluation, investigation, or assessment pursuant
11 to this section. When the court has determined that there is a serious
12 allegation of child sexual abuse, any child custody evaluation,
13 investigation, or assessment conducted subsequent to that
14 determination shall be considered by the court only if the
15 evaluation, investigation, or assessment is conducted in accordance
16 with the minimum requirements set forth in this section in
17 determining custody or visitation rights, except as specified in
18 paragraph (1). For purposes of this section, a serious allegation of
19 child sexual abuse means an allegation of child sexual abuse, as
20 defined in Section 11165.1 of the Penal Code, that is based in
21 whole or in part on statements made by the child to law
22 enforcement, a child welfare services agency investigator, any
23 person required by statute to report suspected child abuse, or any
24 other court-appointed personnel, or that is supported by substantial
25 independent corroboration as provided for in subdivision (b) of
26 Section 3011. When an allegation of child abuse arises in any other
27 circumstances in any proceeding involving child custody or
28 visitation rights, the court may require an evaluator or investigator
29 to conduct an evaluation, investigation, or assessment pursuant to
30 this section. The order appointing a child custody evaluator or
31 investigator pursuant to this section shall provide that the evaluator
32 or investigator have access to all juvenile court records pertaining
33 to the child who is the subject of the evaluation, investigation, or
34 assessment. The order shall also provide that any juvenile court
35 records or information gained from those records remain
36 confidential and shall only be released as specified in Section 3111.

37 (1) This section does not apply to any emergency court-ordered
38 partial investigation that is conducted for the purpose of assisting
39 the court in determining what immediate temporary orders may
40 be necessary to protect and meet the immediate needs of a child.

1 This section does apply when the emergency is resolved and the
2 court is considering permanent child custody or visitation orders.

3 (2) This section does not prohibit a court from considering
4 evidence relevant to determining the safety and protection needs
5 of the child.

6 (3) Any evaluation, investigation, or assessment conducted
7 pursuant to this section shall be conducted by an evaluator or
8 investigator who meets the qualifications set forth in Section
9 3110.5.

10 (b) The evaluator or investigator shall, at a minimum, do all of
11 the following:

12 (1) Consult with the agency providing child welfare services
13 and law enforcement regarding the allegations of child sexual
14 abuse, and obtain recommendations from these professionals
15 regarding the child's safety and the child's need for protection.

16 (2) Review and summarize the child welfare services agency
17 file. No document contained in the child welfare services agency
18 file may be photocopied, but a summary of the information in the
19 file, including statements made by the children and the parents,
20 and the recommendations made or anticipated to be made by the
21 child welfare services agency to the juvenile court, may be recorded
22 by the evaluator or investigator, except for the identity of the
23 reporting party. The evaluator's or investigator's notes
24 summarizing the child welfare services agency information shall
25 be stored in a file separate from the evaluator's or investigator's
26 file and may only be released to either party under order of the
27 court.

28 (3) Obtain from a law enforcement investigator all available
29 information obtained from criminal background checks of the
30 parents and any suspected perpetrator that is not a parent, including
31 information regarding child abuse, domestic violence, or substance
32 abuse.

33 (4) Review the results of a multidisciplinary child interview
34 team (hereafter MDIT) interview if available, or if not, or if the
35 evaluator or investigator believes the MDIT interview is inadequate
36 for purposes of the evaluation, investigation, or assessment,
37 interview the child or request an MDIT interview, and shall
38 wherever possible avoid repeated interviews of the child.

39 (5) Request a forensic medical examination of the child from
40 the appropriate agency, or include in the report required by

1 paragraph (6) a written statement explaining why the examination
2 is not needed.

3 (6) File a confidential written report with the clerk of the court
4 in which the custody hearing will be conducted and which shall
5 be served on the parties or their attorneys at least 10 days prior to
6 the hearing. This report may not be made available other than as
7 provided in this subdivision. This report shall include, but is not
8 limited to, the following:

9 (A) Documentation of material interviews, including any MDIT
10 interview of the child or the evaluator or investigator, written
11 documentation of interviews with both parents by the evaluator or
12 investigator, and interviews with other witnesses who provided
13 relevant information.

14 (B) A summary of any law enforcement investigator's
15 investigation, including information obtained from the criminal
16 background check of the parents and any suspected perpetrator
17 that is not a parent, including information regarding child abuse,
18 domestic violence, or substance abuse.

19 (C) Relevant background material, including, but not limited
20 to, a summary of a written report from any therapist treating the
21 child for suspected child sexual abuse, excluding any
22 communication subject to Section 1014 of the Evidence Code,
23 reports from other professionals, and the results of any forensic
24 medical examination and any other medical examination or
25 treatment that could help establish or disprove whether the child
26 has been the victim of sexual abuse.

27 (D) The written recommendations of the evaluator or
28 investigator regarding the therapeutic needs of the child and how
29 to ensure the safety of the child.

30 (E) A summary of the following information: whether the child
31 and his or her parents are or have been the subject of a child abuse
32 investigation and the disposition of that investigation; the name,
33 location, and telephone number of the children's services worker;
34 the status of the investigation and the recommendations made or
35 anticipated to be made regarding the child's safety; and any
36 dependency court orders or findings that might have a bearing on
37 the custody dispute.

38 (F) Any information regarding the presence of domestic violence
39 or substance abuse in the family that has been obtained from a
40 child protective agency in accordance with paragraphs (1) and (2),

1 a law enforcement agency, medical personnel or records, prior or
2 currently treating therapists, excluding any communication subject
3 to Section 1014 of the Evidence Code, or from interviews
4 conducted or reviewed for this evaluation, investigation, or
5 assessment.

6 (G) Which, if any, family members are known to have been
7 deemed eligible for assistance from the Victims of Crime Program
8 due to child abuse or domestic violence.

9 (H) Any other information the evaluator or investigator believes
10 would be helpful to the court in determining what is in the best
11 interests of the child.

12 *(I) On and after January 1, 2016, documentation showing*
13 *compliance with all requirements of this section and the results*
14 *of the investigation shall be submitted to the court on the form*
15 *developed pursuant to Section 3117.5 by the Judicial Council.*

16 (c) If the evaluator or investigator obtains information as part
17 of a family court mediation, that information shall be maintained
18 in the family court file, which is not subject to subpoena by either
19 party. If, however, the members of the family are the subject of
20 an ongoing child welfare services investigation, or the evaluator
21 or investigator has made a child welfare services referral, the
22 evaluator or investigator shall so inform the family law judicial
23 officer in writing and this information shall become part of the
24 family law file. This subdivision may not be construed to authorize
25 or require a mediator to disclose any information not otherwise
26 authorized or required by law to be disclosed.

27 (d) In accordance with subdivision (d) of Section 11167 of the
28 Penal Code, the evaluator or investigator may not disclose any
29 information regarding the identity of any person making a report
30 of suspected child abuse. Nothing in this section is intended to
31 limit any disclosure of information by any agency that is otherwise
32 required by law or court order.

33 (e) The evaluation, investigation, or assessment standards set
34 forth in this section represent minimum requirements of evaluation
35 and the court shall order further evaluation beyond these minimum
36 requirements when necessary to determine the safety needs of the
37 child.

38 (f) If the court orders an evaluation, investigation, or assessment
39 pursuant to this section, the court shall consider whether the best
40 interests of the child require that a temporary order be issued that

1 limits visitation with the parent against whom the allegations have
2 been made to situations in which a third person specified by the
3 court is present or whether visitation will be suspended or denied
4 in accordance with Section 3011.

5 (g) An evaluation, investigation, or assessment pursuant to this
6 section shall be suspended if a petition is filed to declare the child
7 a dependent child of the juvenile court pursuant to Section 300 of
8 the Welfare and Institutions Code, and all information gathered
9 by the evaluator or investigator shall be made available to the
10 juvenile court.

11 (h) This section may not be construed to authorize a court to
12 issue any orders in a proceeding pursuant to this division regarding
13 custody or visitation with respect to a minor child who is the
14 subject of a dependency hearing in juvenile court or to otherwise
15 supersede Section 302 of the Welfare and Institutions Code.

16 SEC. 4. Section 3170 of the Family Code is amended to read:

17 3170. (a) If it appears on the face of a petition, application, or
18 other pleading to obtain or modify a temporary or permanent
19 custody or visitation order that custody, visitation, or both are
20 contested, the court shall set the contested issues for mediation.

21 (b) (1) Domestic violence cases shall be handled by Family
22 Court Services in accordance with a separate written protocol
23 approved by the Judicial Council. The Judicial Council shall adopt
24 guidelines for services, other than services provided under this
25 chapter, that courts or counties may offer to parents who have been
26 unable to resolve their disputes. These services may include, but
27 are not limited to, parent education programs, booklets, video
28 recordings, or referrals to additional community resources.

29 (2) *The Judicial Council shall, no later than January 1, 2016,*
30 *develop a form to be used to help implement the written protocol*
31 *for handling domestic violence cases.*