

Introduced by Senator Haynes

February 14, 1995

An act to amend Sections 3011 and 3030 of the Family Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 384, as introduced, Haynes. Children: custody.

Existing law requires the court to consider certain specified factors in determining the best interests of a child in specified family law proceedings. Existing law provides that among those factors, the court shall consider a history of abuse by one parent against the other or against the child. Existing law provides that as a prerequisite to this consideration, the court may require specified independent corroboration.

This bill would provide that as a prerequisite to this consideration, the court shall first require specified independent corroboration. The bill would also provide that the court shall consider the illegal use of controlled substances, as specified, or a history of alcohol abuse by either parent. This bill would also provide that a finding that a parent was the primary caregiver during the marriage shall not, by itself, be sufficient to establish a preference between the parents as primary custodian. The bill would further provide that the court shall not consider the gender of either parent as relevant to the child's best interest in determining a custody award. The bill would also make technical, nonsubstantive changes to this provision.

Existing law provides that no parent shall be granted custody of a child if that parent has been convicted of willfully



harming a child, inflicting cruel or inhuman corporal punishment or injury to a child, or annoying or molesting a minor, as specified, unless the court finds that there is no significant risk to the child.

This bill would add to those crimes specified acts of child abuse or neglect and disorderly conduct by reason of intoxication, as specified.

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 3011 of the Family Code is
2 amended to read:

3 3011. (a) In making a determination of the best
4 interest of the child in a proceeding described in Section
5 3021, the court shall, among any other factors it finds
6 relevant, consider all of the following:

7 ~~(a)~~

8 (1) The health, safety, and welfare of the child.

9 ~~(b)~~

10 (2) Any history of abuse by one parent against the
11 child or against the other parent. As a prerequisite to the
12 consideration of allegations of abuse, the court ~~may~~ *shall*
13 *first* require substantial independent corroboration,
14 including, but not limited to, written reports by law
15 enforcement agencies, child protective services or other
16 social welfare agencies, courts, medical facilities, or other
17 public agencies or private nonprofit organizations
18 providing services to victims of sexual assault or domestic
19 violence. As used in this ~~subdivision~~ *paragraph*, “abuse
20 against the child” means “child abuse” as defined in
21 Section 11165.6 of the Penal Code and “abuse against the
22 other parent” means “abuse” as defined in Section 6203
23 of this code.

24 (3) The nature and amount of contact with both
25 parents. *A finding that one parent was the primary*
26 *caregiver during the marriage shall not, by itself, be*
27 *sufficient to establish a preference for primary custodian*



1 *between the parents. Primary caregiver status is only one*
2 *factor in determining the best interest of the child.*

3 *(4) The illegal use of controlled substances or a history*
4 *of abuse of alcohol by either parent. Before considering*
5 *these allegations, the court shall first require*
6 *independent corroboration, including, but not limited to,*
7 *written reports from law enforcement agencies, courts,*
8 *probation departments, social welfare agencies, medical*
9 *facilities, rehabilitation facilities, or other public agencies*
10 *or nonprofit organizations providing drug and alcohol*
11 *abuse services. As used in this paragraph, “controlled*
12 *substances” has the same meaning as defined in the*
13 *California Uniform Controlled Substances Act, Division*
14 *10 (commencing with Section 11000) of the Health and*
15 *Safety Code.*

16 *(b) The court shall not consider the gender of a parent*
17 *as relevant to the child’s best interest when determining*
18 *an appropriate award of custody. The court shall consider*
19 *both mothers and fathers equally capable of providing for*
20 *the emotional and physical needs of a minor child when*
21 *making a determination under this section.*

22 SEC. 2. Section 3030 of the Family Code is amended
23 to read:

24 3030. No person shall be granted custody of, or
25 unsupervised visitation with, a child if the person is
26 required to be registered as a sex offender under Section
27 290 of the Penal Code where the victim was a minor, or
28 if the person has been convicted under Section 273a, 273d,
29 ~~or~~ 647.6, or subdivision (f) of Section 647, or of any of the
30 acts specified in Section 11165.6, of the Penal Code, unless
31 the court finds that there is no significant risk to the child.

