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**AB-2044 Domestic violence: family court.** (2017-2018)

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Date Published: 10/01/2018 09:00 PM

**Assembly Bill No. 2044**

**CHAPTER 941**

An act to amend Sections 3011, 3020, 3044, and 3100 of the Family Code, and to amend Section 68555 of the Government Code, relating to domestic violence.

[ Approved by Governor September 30, 2018. Filed with Secretary of State September 30, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2044, Mark Stone. Domestic violence: family court.

Existing law requires a family court to determine the best interests of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including whether either of the child's parents habitually or continually uses alcohol or illegal drugs.

This bill would require the court to make the determination consistent with specified findings. The bill would include in those findings that children have the right to be safe and free from abuse and that domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child.

Existing law establishes a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years is detrimental to the best interests of the child. In overcoming that presumption, existing law requires the court to consider specified factors, including whether the perpetrator of domestic violence has committed any further acts of domestic violence.

This bill would extend this presumption to a person who has committed domestic violence against another person with whom that party has a specified relationship. The bill would require the court, in determining whether the presumption is overcome, to find that the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interests of the child and would specify additional factors that, on balance, are required to support the grant of custody. The bill would require the court to state its reasons for finding that the presumption has been overcome in writing or on the record.

Existing law requires a court to grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child.

This bill, instead, would require the court to grant reasonable visitation rights when it is shown that the visitation would be in the best interest of the child, as defined, and consistent with the above provisions for ordering custody.

Existing law requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including judges, referees, and mediators, among others, and requires that the training programs include

instruction in all aspects of domestic violence.

This bill would require the training to include the detriment to children of residing in a home with a person who perpetrates domestic violence and 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** Section 3011 of the Family Code is amended to read:

**3011.** In making a determination of the best interests of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, and consistent with Section 3020, consider all of the following:

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

(b) (1) Any history of abuse by one parent or any other person seeking custody against any of the following:

(A) A child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(B) The other parent.

(C) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

(2) As a prerequisite to considering allegations of abuse, the court may require independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section 6203.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) When allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Section 6323.

(2) This subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

### **SEC. 2.** Section 3020 of the Family Code is amended to read:

**3020.** (a) The Legislature finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be 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. The Legislature further finds and declares that 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.

(b) The Legislature finds and declares that it is the public policy of this state to ensure that 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 in subdivisions (a) and (c) of this section and Section 3011.

(c) When the policies set forth in subdivisions (a) and (b) of this section 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.

**SEC. 3.** Section 3044 of the Family Code is amended to read:

**3044.** (a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the child or the child's siblings, or against any person in subparagraph (C) of paragraph (1) of subdivision (b) of Section 3011 with whom the party has a relationship, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interests of the child, pursuant to Sections 3011 and 3020. This presumption may only be rebutted by a preponderance of the evidence.

(b) To overcome the presumption set forth in subdivision (a), the court shall find that paragraph (1) is satisfied and shall find that the factors in paragraph (2), on balance, support the legislative findings in Section 3020.

(1) The perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interests of the child pursuant to Sections 3011 and 3020. In determining the best interests of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Additional factors:

(A) The perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(B) The perpetrator has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.

(C) The perpetrator has successfully completed a parenting class, if the court determines the class to be appropriate.

(D) The perpetrator is on probation or parole, and he or she has or has not complied with the terms and conditions of probation or parole.

(E) The perpetrator is restrained by a protective order or restraining order, and he or she has or has not complied with its terms and conditions.

(F) The perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in behavior involving, but not limited to, threatening, striking, harassing, destroying personal property, or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of a crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if a court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) (1) It is the intent of the Legislature that this subdivision be interpreted consistently with the decision in *Jaime G. v. H.L.* (2018) \_\_\_\_ Cal.App.5th \_\_\_\_, which requires that the court, in determining that the presumption in subdivision (a) has been overcome, make specific findings on each of the factors in subdivision (b).

(2) If the court determines that the presumption in subdivision (a) has been overcome, the court shall state its reasons in writing or on the record as to why paragraph (1) of subdivision (b) is satisfied and why the factors in paragraph (2) of subdivision (b), on balance, support the legislative findings in Section 3020.

(g) In an evidentiary hearing or trial in which custody orders are sought and where there has been an allegation of domestic violence, the court shall make a determination as to whether this section applies prior to issuing a custody order, unless the court finds that a continuance is necessary to determine whether this section applies, in which case the court may issue a temporary custody order for a reasonable period of time, provided the order complies with Section 3011, including, but not limited to, subdivision (e), and Section 3020.

(h) In a custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.

**SEC. 4.** Section 3100 of the Family Code is amended to read:

**3100.** (a) In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights to a parent when it is shown that the visitation would be in the best interest of the child, as defined in Section 3011, and consistent with Section 3020. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) If a protective order, as defined in Section 6218, has been directed to a parent, the court shall consider whether the best interest of the child requires that any visitation by that parent be limited to situations in which a third person, specified by the court, is present, or whether visitation shall be suspended, limited, or denied. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit to the court the name of a person that the parent deems suitable to be present during visitation.

(c) If visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of 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. If a criminal protective order has been issued pursuant to Section 136.2 of the Penal Code, the visitation order shall make reference to, and, unless there is an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c) of Section 136.2 of the Penal Code or a no-contact order, as described in Section 6320, acknowledge the precedence of enforcement of, an appropriate criminal protective order.

(d) If the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

**SEC. 5.** Section 68555 of the Government Code is amended to read:

**68555.** The Judicial Council shall 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. The training programs shall include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. The training programs shall include instruction in all aspects of domestic violence, including, but not limited to, the detriment to children of residing with a person who perpetrates domestic violence and 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.