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**AB-3072 Child custody: ex parte orders.** (2023-2024)

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**Assembly Bill No. 3072**

**CHAPTER 317**

An act to amend Sections 3064 and 3100 of the Family Code, relating to child custody.

[ Approved by Governor September 20, 2024. Filed with Secretary of State September 20, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 3072, Petrie-Norris. Child custody: ex parte orders.

Existing law requires the court to refrain from making an order granting or modifying a child custody order on an ex parte basis unless there has been a showing of immediate harm to the child, as defined, or immediate risk that the child will be removed from the State of California.

This bill would require a court to consider a parent's illegal access to firearms and ammunition when determining whether there is a showing of immediate harm to the child, as specified.

Existing law governs the determination of child custody and visitation in contested proceedings. Existing law requires the court, for purposes of deciding custody or visitation, to determine the best interests of the child based on certain factors, including the health, safety, and welfare of the child, and the nature and amount of contact with both parents, except as specified. If a protective order has been issued restraining a parent, existing law requires the court to determine whether to require that visitation to be supervised, suspended, limited, or denied.

This bill would also require the court to determine whether to require that visitation be supervised, suspended, limited, or denied if it has found that circumstances warrant making an order granting or modifying a custody order on an ex parte basis because 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.

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

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

**SECTION 1.** Section 3064 of the Family Code is amended to read:

**3064.** (a) The court shall 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.

(b) (1) "Immediate harm to the child" includes, but is not limited to, either of the following:

(A) Having a parent who has committed acts of domestic violence, if the court determines that the acts of domestic violence are of recent origin or are part of a demonstrated and continuing pattern of acts of domestic violence.

(B) Sexual abuse of the child, if the court determines that the acts of sexual abuse are of recent origin or are part of a demonstrated and continuing pattern of acts of sexual abuse.

(2) (A) In determining whether there is a showing of immediate harm to the child, the court shall consider a parent's illegal access to firearms and ammunition, including, but not limited to, whether a parent is prohibited from having firearms and ammunition.

(B) "Illegal access to firearms and ammunition" includes the possession, purchase, or receipt of a firearm or ammunition in violation of state or federal law, a restraining order, a protective order, or an injunction, or a condition of probation or parole.

**SEC. 2.** 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) (1) (A) If a protective order, as defined in Section 6218 of this code or Section 136.2 of the Penal Code, has been issued restraining a parent, the court shall consider whether the best interest of the child requires that visitation by that parent be suspended, denied, or limited to situations in which a third person, specified by the court, is present, including virtual visitation.

(B) A parent may submit to the court the name of a person who the parent deems suitable to be present during visitation.

(C) The court may order supervised visitation with the person whose name was submitted, but the submission of a name does not require the court to order supervised visitation if it is not in the best interest of the child, nor does a parent's submission of a name constitute agreement or stipulation to supervised visitation.

(2) In determining the type of visitation with the restrained party, if any, is in the best interest of the child pursuant to paragraph (1), the court shall consider the nature of the acts that led to the protective order, the period of time that has elapsed since that order, and whether the restrained party has committed further acts of abuse.

(c) (1) (A) If the court has found that circumstances warrant making an order granting or modifying a custody order on an ex parte basis under Section 3064, the court shall consider whether the best interest of the child requires that visitation by the party whose conduct presents a risk of immediate harm to the child or immediate risk that the child will be removed from the State of California should be suspended, denied, or limited to situations in which a third person, specified by the court, is present, including virtual visitation.

(B) A parent may submit to the court the name of a person who the parent deems suitable to be present during visitation, which may be accepted or rejected by the court as set forth in subparagraph (C) of paragraph (1) of subdivision (b).

(2) In determining the type of visitation with the party whose conduct presents a risk of immediate harm to the child or immediate risk that the child will be removed from the State of California, if any, is in the best interest of the child pursuant to paragraph (1), the court shall consider the nature of the acts that led to the finding of the risk of immediate harm or immediate risk of removal.

(d) 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 the visitation, including virtual visitation, or any transfer of the child, so as to limit the child's exposure to potential domestic conflict or abuse, to ensure the safety of all family members, and to minimize any opportunity for the use of abuse, including coercive control. 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.

(e) (1) 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 shall be designed to prevent disclosure of the location of the shelter or other confidential location and to protect all adults and children living in that location.

(2) If a court finds that a parent is residing in a confidential shelter due to domestic violence or fear of domestic violence from the other parent, the court shall order in-person visitation with the other parent only if the court finds that in-person visitation is in the best interest of the child, taking into account all of the following:

(A) The other parent's access to firearms and ammunition, including, but not limited to, whether the other parent is prohibited from having firearms and ammunition.

(B) If a parent is the subject of an emergency protective order, protective order, or other restraining order, whether that parent has violated that order, and the nature of any violation.

(C) Information obtained pursuant to Section 6306, the requirements of this section, and the information obtained pursuant to Section 3011.

(D) The potential for disclosure of the confidential location.

(3) A court shall make its findings pursuant to paragraphs (1) and (2) in writing or on the record.

(f) For purposes of this section, "virtual visitation" means use of audiovisual electronic communication tools to provide contact between a parent and their children as part of a parenting plan or custody order. Virtual visitation may be supervised or unsupervised, based on the court's determination of what is in the best interest of the child.