

## Assembly Bill No. 1108

### CHAPTER 19

An act to add and repeal Section 3041.5 of the Family Code, relating to family law, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor February 20, 2004. Filed with Secretary of State February 23, 2004.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1108, Bermudez. Child custody: drug testing.

Existing law requires a court to consider the habitual or continual illegal use of controlled substances, as defined, or continual use of alcohol by either parent in making a determination of the best interest of a child in child custody proceedings.

This bill would, until January 1, 2008, authorize a court to require any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances. The bill would require the court to order the least intrusive method of testing. The bill would require that testing be in conformity with certain federal procedures, would provide that the results of this testing shall be confidential and maintained as a sealed record, and would permit a parent or guardian who is tested to contest the test results at a hearing. The bill would provide for civil sanctions not to exceed \$2,500 for any breach of the confidentiality of the test results. The bill would prohibit the release of the test results to any person except as specified, or for any purpose, except to assist the court in determining the best interest of the child and the content of the order or judgment determining custody or visitation. The bill would authorize the court to order either or both parties to pay the costs of the testing.

The bill would require the Judicial Council to study and evaluate the implementation of the act and to report to the Legislature on or before specified dates.

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 3041.5 is added to the Family Code, to read:

3041.5. (a) In any custody or visitation proceeding brought under this part, as described in Section 3021, the court may order any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based upon a preponderance of evidence that there is the habitual, frequent, or continual illegal use of controlled substances or the habitual or continual abuse of alcohol by the parent or legal custodian. This evidence may include, but may not be limited to, a conviction within the last five years for the illegal use or possession of a controlled substance. The court shall order the least intrusive method of testing for the illegal use of controlled substances or the habitual or continual abuse of alcohol by either or both parents or the legal custodian. If substance abuse testing is ordered by the court, the testing shall be performed in conformance with procedures and standards established by the United States Department of Health and Human Services for drug testing of federal employees. The parent or legal custodian who has undergone drug testing shall have the right to a hearing, if requested, to challenge a positive test result. A positive test result, even if challenged and upheld, shall not, by itself, constitute grounds for an adverse custody decision. Determining the best interests of the child requires weighing all relevant factors. The results of this testing shall be confidential, shall be maintained as a sealed record in the court file, and may not be released to any person except the court, the parties, their attorneys, the Judicial Council (until completion of its authorized study of the testing process) and any person to whom the court expressly grants access by written order made with prior notice to all parties. Any person who has access to the test results may not disseminate copies or disclose information about the test results to any person other than a person who is authorized to receive the test results pursuant to this section. Any breach of the confidentiality of the test results shall be punishable by civil sanctions not to exceed two thousand five hundred dollars (\$2,500). The results of the testing may not be used for any purpose, including any criminal, civil, or administrative proceeding, except to assist the court in determining, for purposes of the proceeding, the best interest of the child pursuant to Section 3011, and the content of the order or judgment determining custody or visitation. The court may order either party, or both parties, to pay the costs of the drug or alcohol testing ordered pursuant to this section. As used in this section, “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.



(b) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. (a) The Judicial Council shall study the implementation of this act and shall report to the Legislature regarding that implementation. The study shall evaluate all of the following:

(1) The number and percentage of custody cases in which drug or alcohol testing is ordered.

(2) The rate of compliance with those orders and the procedures that are followed if a parent fails to comply with the order.

(3) The percentage of cases in which testing is ordered and the parent tests positive for the illegal use of drugs or the use of alcohol.

(4) The impacts of those positive test results on the court's decision to grant or deny custody or visitation.

(b) The Judicial Council shall submit an interim report to the Legislature no later than July 1, 2005, and shall submit a final report to the Legislature no later than July 1, 2007.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure the safety of children who are the subject of custody and visitation proceedings as soon as possible, it is necessary that this act take effect immediately.

