

AMENDED IN SENATE MAY 10, 2005
AMENDED IN SENATE APRIL 21, 2005
AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 594

Introduced by Senator Torlakson

February 18, 2005

An act to amend Section 3030 of, and to add Section 3030.5 to, the Family Code, relating to support obligations.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Torlakson. Custody and visitation: sex offenders.

Existing law prohibits a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

This bill would expand that provision to prohibit a court from granting custody of, or unsupervised visitation with, a child to a person if that person resides with ~~either~~ a registered sex offender whose victim was a child. The bill would also provide that an existing custody or visitation order shall be modified or terminated consistent with that provision, as specified. The bill would also include related findings and declarations of the Legislature.

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. The Legislature finds and declares all of the
2 following:

3 (a) The children of the State of California are placed at risk
4 when permitted to remain in contact with a parent or caretaker
5 who has committed a sex crime.

6 (b) It is the policy of the State of California that the health,
7 safety, and welfare of children shall be the court's primary
8 concern in determining the best interest of children when making
9 orders regarding custody or visitation.

10 (c) The perpetration of child abuse or domestic violence in a
11 household in which a child resides is detrimental to the child.

12 (d) Custody and visitation orders shall be made in a manner
13 that ensures the health, safety, and welfare of the child and the
14 safety of all family members.

15 (e) The purpose of this legislation is to ensure that information
16 regarding sex crimes is appropriately considered by the court in
17 child custody matters and children are protected from an at-risk
18 environment.

19 (f) With regard to juvenile court proceedings in which child
20 protective services seeks to remove the child from the home and
21 declare the child a dependant of the State of California, Section
22 355.1 of the Welfare and Institutions Code establishes a
23 presumption that a child is placed at "substantial risk of abuse or
24 neglect" if a "parent guardian, or any other person who resides
25 with, or has the custody of, a minor who is currently the subject
26 of the petition ... is required, as the result of a felony conviction,
27 to register as a sex offender pursuant to Section 290 of the Penal
28 Code."

29 (g) In the appellate case of *In re John S.* (2001) 88
30 Cal.App.4th 1140, the court held that a stepfather's status as a
31 registered sex offender constituted a presumption under
32 subdivision (d) of Section 355.1 of the Welfare and Institutions
33 Code that his stepchild was at a substantial risk of abuse or
34 neglect, within the meaning of Section 300 of the Welfare and
35 Institutions Code. The court further held that the intent of the
36 Legislature in enacting Section 355.1 of the Welfare and
37 Institutions Code was to focus on the heightened risk facing
38 minors who come into contact with sex offenders and to ensure

1 the juvenile court has information about those persons when
2 assessing jurisdictional facts. The court found that, “[b]ecause of
3 the overriding need to protect the child, the legislative
4 considerations regarding allocation of burden of proof should
5 apply to noncustodial parents and guardians.” However, the
6 presumption was not conclusive and affected only the burden of
7 producing evidence. Thus, parties may still present evidence that
8 one’s status as a registered sex offender does not place a minor at
9 substantial risk of abuse or neglect.

10 (h) Chapter 131 of the Statutes of 1998 amended Section 3030
11 of the Family Code. Prior existing law prohibited registered sex
12 offenders and persons convicted of certain other offenses against
13 minors, as specified, from being granted custody of, or
14 unsupervised visitation with, a child, unless the court found that
15 there was no significant risk to the child. Chapter 131 *of the*
16 *Statutes of 1998* amended the law to require the court to state its
17 reasons in writing or on the record when granting physical or
18 legal custody or unsupervised visitation.

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

20 3030. (a) (1) No person shall be granted physical or legal
21 custody of, or unsupervised visitation with, a child if the person
22 ~~or any person residing in his or her household~~ is required to be
23 registered as a sex offender under Section 290 of the Penal Code
24 where the victim was a minor, or if the person has been convicted
25 under Section 273a, 273d, or 647.6 of the Penal Code, unless the
26 court finds that there is no significant risk to the child and states
27 its reasons in writing or on the record.

28 (2) *No person shall be granted physical or legal custody of, or*
29 *unsupervised visitation with, a child if anyone residing in the*
30 *person’s household is required, as a result of a felony conviction*
31 *in which the victim was a minor, to register as a sex offender*
32 *under Section 290 of the Penal Code, unless the court finds there*
33 *is no significant risk to the child and states its reasons in writing*
34 *or on the record.*

35 (3) The fact that a child is permitted unsupervised contact with
36 a person who is required, *as a result of a felony conviction in*
37 *which the victim was a minor*, to be registered as a sex offender
38 under Section 290 of the Penal Code, ~~where the victim was a~~
39 ~~minor~~, or shall be prima facie evidence that the child is at
40 significant risk. When making a determination regarding

1 significant risk to the child, the prima facie evidence shall
2 constitute a presumption affecting the burden of producing
3 evidence. *However, this presumption shall not apply if there are*
4 *factors mitigating against its application, including whether the*
5 *party seeking custody is also required, as the result of a felony*
6 *conviction in which the victim was a minor, to register as a sex*
7 *offender under Section 290 of the Penal Code.*

8 (b) No person shall be granted custody of, or visitation with, a
9 child if the person has been convicted under Section 261 of the
10 Penal Code and the child was conceived as a result of that
11 violation.

12 (c) No person shall be granted custody of, or unsupervised
13 visitation with, a child if the person has been convicted of murder
14 in the first degree, as defined in Section 189 of the Penal Code,
15 and the victim of the murder was the other parent of the child
16 who is the subject of the order, unless the court finds that there is
17 no risk to the child's health, safety, and welfare, and states the
18 reasons for its finding in writing or on the record. In making its
19 finding, the court may consider, among other things, the
20 following:

21 (1) The wishes of the child, if the child is of sufficient age and
22 capacity to reason so as to form an intelligent preference.

23 (2) Credible evidence that the convicted parent was a victim of
24 abuse, as defined in Section 6203, committed by the deceased
25 parent. That evidence may include, but is not limited to, written
26 reports by law enforcement agencies, child protective services or
27 other social welfare agencies, courts, medical facilities, or other
28 public agencies or private nonprofit organizations providing
29 services to victims of domestic abuse.

30 (3) Testimony of an expert witness, qualified under Section
31 1107 of the Evidence Code, that the convicted parent suffers
32 from the effects of battered women's syndrome.

33 Unless and until a custody or visitation order is issued pursuant
34 to this subdivision, no person shall permit or cause the child to
35 visit or remain in the custody of the convicted parent without the
36 consent of the child's custodian or legal guardian.

37 (d) The court may order child support that is to be paid by a
38 person subject to subdivision (a), (b), or (c) to be paid through
39 the local child support agency, as authorized by Section 4573 of

1 the Family Code and Division 17 (commencing with Section
2 17000) of this code.

3 (e) The court shall not disclose, or cause to be disclosed, the
4 custodial parent’s place of residence, place of employment, or the
5 child’s school, unless the court finds that the disclosure would be
6 in the best interest of the child.

7 SEC. 3. Section 3030.5 is added to the Family Code, to read:

8 ~~3030.5. (a) An order granting physical or legal custody of, or~~
9 ~~unsupervised visitation with, a child shall be modified or~~
10 ~~terminated upon the petition of one or both parents, or the legal~~
11 ~~guardian or custodian, or on the court’s own motion under either~~
12 ~~of the following circumstances, unless the court finds that there is~~

13 *3030.5. (a) Upon the motion of one or both parents, or the*
14 *legal guardian or custodian, or upon the court’s own motion, an*
15 *order granting physical or legal custody of, or unsupervised*
16 *visitation with, a child may be modified or terminated if either of*
17 *the following circumstances has occurred since the order was*
18 *entered, unless the court finds that there is no significant risk to*
19 *the child and states its reasons in writing or on the record:*

20 (1) The person who has been granted physical or legal custody
21 of, or unsupervised visitation with the child is required, *as a*
22 *result of a felony conviction in which the victim was a minor*, to
23 be registered as a sex offender under Section 290 of the Penal
24 Code ~~where the victim was a minor~~.

25 (2) The person who has been granted physical or legal custody
26 of, or unsupervised visitation with, the child resides with another
27 person who is required, *as a result of a felony conviction in*
28 *which the victim was a minor*, to be registered as a sex offender
29 under Section 290 of the Penal Code ~~where the victim was a~~
30 ~~minor~~.

31 (b) The fact that a child is permitted unsupervised contact with
32 a person who is required, *as a result of a felony conviction in*
33 *which the victim was a minor*, to be registered as a sex offender
34 under Section 290 of the Penal Code, ~~where the victim was a~~
35 ~~minor~~, shall be prima facie evidence that the child is at
36 significant risk. When making a determination regarding
37 significant risk to the child, the prima facie evidence shall
38 constitute a presumption affecting the burden of producing
39 evidence. *However, this presumption shall not apply if there are*
40 *factors mitigating against its application, including whether the*

1 *party seeking custody is also required, as the result of a felony*
2 *conviction in which the victim was a minor, to register as a sex*
3 *offender under Section 290 of the Penal Code.*

4 *(c) The court shall not modify an existing custody order upon*
5 *the ex parte petition of one party pursuant to this section without*
6 *providing notice to the other party. This notice provision applies*
7 *only when the motion for custody change is based solely on the*
8 *fact that the child is allowed unsupervised contact with a person*
9 *required, as a result of a felony conviction in which the victim*
10 *was a minor, to register as sex offender under Section 290 of the*
11 *Penal Code and does not affect the court's ability to remove a*
12 *child upon an ex parte motion when there is a showing of*
13 *immediate harm to the child.*