

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Ruskin

February 21, 2007

An act to amend Sections 3110.5 and 3111 of, and to add Section 3110.6 to, the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as introduced, Ruskin. Child custody investigations.

Existing law authorizes the court, in a contested proceeding involving child custody or visitation rights, to appoint a child custody evaluator to conduct a child custody evaluation in cases in which the court determines it is in the best interests of the child. Existing law requires court-connected and private child custody evaluators to complete a described domestic violence and child abuse training program and to comply with other requirements. Existing law requires the Judicial Council to formulate a statewide rule of court by January 1, 2002, that establishes education, experience, and training requirements for all court-appointed child custody evaluators, and requires child custody evaluators to declare under penalty of perjury that they meet all of the education, experience, and training requirements of the rule and, if applicable, possess a license in good standing. For purposes of these provisions, a "child custody evaluator" is a "court-appointed investigator."

This bill would revise these provisions by replacing references to "child custody evaluators" and "evaluations" with conforming references to "child custody investigators" and "investigations." The bill would permit a court, as part of a child custody investigation pursuant to these provisions, to grant a motion for a mental or psychological examination

of a parent only for good cause shown, as specified, under exceptional circumstances when there is strong evidence that a parent's current mental or psychological status might seriously impair his or her parenting ability.

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 3110.5 of the Family Code is amended
2 to read:

3 3110.5. (a) ~~No~~A person ~~may~~ *shall not* be a court-connected,
4 *court-appointed*, or private child custody-~~evaluator~~ *investigator*
5 under this chapter unless the person has completed the domestic
6 violence and child abuse training program described in Section
7 1816 and has complied with Rules 5.220 and 5.230 of the
8 California Rules of Court.

9 (b) (1) On or before January 1, 2002, the Judicial Council shall
10 formulate a statewide rule of court that establishes education,
11 experience, and training requirements for all *court-connected*,
12 *court-appointed*, and private child custody-~~evaluators~~ *investigators*
13 appointed pursuant to this chapter, Section 730 of the Evidence
14 Code, or Chapter 15 (commencing with Section 2032.010) of Title
15 4 of Part 4 of the Code of Civil Procedure.

16 (A) The rule shall require a child custody-~~evaluator~~ *investigator*
17 to declare under penalty of perjury that he or she meets all of the
18 education, experience, and training requirements specified in the
19 rule and, if applicable, possesses a license in good standing. The
20 Judicial Council shall establish forms to implement this section.
21 The rule shall permit court-connected-~~evaluators~~, *court-appointed*,
22 *and private child custody investigators* to conduct-~~evaluations~~
23 *investigations* if they meet all of the qualifications established by
24 the Judicial Council. The education, experience, and training
25 requirements to be specified for court-connected-~~evaluators~~
26 *,court-appointed, and private child custody investigators* shall
27 include, but not be limited to, knowledge of the psychological and
28 developmental needs of children and parent-child relationships.

29 (B) The rule shall require all-~~evaluators~~ *investigators* to utilize
30 comparable interview, assessment, and testing procedures for all
31 parties that are consistent with generally accepted clinical, forensic,

1 scientific, diagnostic, or medical standards. The rule shall also
2 require ~~evaluators~~ *investigators* to inform each adult party of the
3 purpose, nature, and method of the ~~evaluation~~ *investigation*.

4 (C) The rule may allow courts to permit the parties to stipulate
5 to an ~~evaluator~~ *investigator* of their choosing with the approval of
6 the court under the circumstances set forth in subdivision (d). The
7 rule may require courts to provide general information about how
8 parties can contact qualified child custody ~~evaluators~~ *investigators*
9 in their county.

10 (2) On or before January 1, 2004, the Judicial Council shall
11 include in the statewide rule of court created pursuant to this
12 section a requirement that all court-connected, *court-appointed*,
13 and private child custody ~~evaluators~~ *investigators* receive training
14 in the nature of child sexual abuse. The Judicial Council shall
15 develop standards for this training that shall include, but not be
16 limited to, the following:

17 (A) Children’s patterns of hiding and disclosing sexual abuse
18 occurring in a family setting.

19 (B) The effects of sexual abuse on children.

20 (C) The nature and extent of child sexual abuse.

21 (D) The social and family dynamics of child sexual abuse.

22 (E) Techniques for identifying and assisting families affected
23 by child sexual abuse.

24 (F) Legal rights, protections, and remedies available to victims
25 of child sexual abuse.

26 (c) In addition to the education, experience, and training
27 requirements established by the Judicial Council pursuant to
28 subdivision (b), on or after January 1, 2005, ~~no~~ a person ~~may~~ *shall*
29 *not* be a child custody ~~evaluator~~ *investigator* under this chapter,
30 Section 730 of the Evidence Code, or Chapter 15 (commencing
31 with Section 2032.010) of Title 4 of Part 4 of the Code of Civil
32 Procedure unless the person meets *at least* one of the following
33 criteria:

34 (1) He or she is licensed as a physician under Chapter 5
35 (commencing with Section 2000) of Division 2 of the Business
36 and Professions Code and either is a board certified psychiatrist
37 or has completed a residency in psychiatry.

38 (2) He or she is licensed as a psychologist under Chapter 6.6
39 (commencing with Section 2900) of Division 2 of the Business
40 and Professions Code.

1 (3) He or she is licensed as a marriage and family therapist under
2 Chapter 13 (commencing with Section 4980) of Division 2 of the
3 Business and Professions Code.

4 (4) He or she is licensed as a clinical social worker under Article
5 4 (commencing with Section 4996) of Chapter 14 of Division 2
6 of the Business and Professions Code.

7 (5) He or she is a court-connected~~evaluator~~, *court-appointed*,
8 *or private investigator* who has been certified by the court as
9 meeting all of the qualifications for court-connected~~evaluators~~,
10 *court-appointed*, *or private investigators*, as specified by the
11 Judicial Council pursuant to subdivision (b).

12 (d) Subdivision (c) does not apply in ~~any~~ a case ~~where~~ in which
13 the court determines that there are no ~~evaluators~~ *investigators* who
14 meet the criteria of subdivision (c) who are willing and available,
15 within a reasonable period of time, to perform child custody
16 ~~evaluations~~ *investigations*. In those cases, the parties may stipulate
17 to an individual who does not meet the criteria of subdivision (c),
18 subject to approval by the court.

19 (e) A child custody~~evaluator~~ *investigator* who is licensed by
20 the Medical Board of California, the Board of Psychology, or the
21 Board of Behavioral Sciences, shall be subject to disciplinary
22 action by that board for unprofessional conduct, as defined in the
23 licensing law applicable to that licensee.

24 (f) On or after January 1, 2005, a court-connected,
25 *court-appointed*, or private child custody~~evaluator~~~~may~~
26 *investigator shall* not evaluate, investigate, or mediate an issue of
27 child custody in a proceeding pursuant to this division unless that
28 person has completed child sexual abuse training as required by
29 this section.

30 SEC. 2. Section 3110.6 is added to the Family Code, to read:

31 3110.6. (a) The court shall grant a motion for a mental or
32 psychological examination of a parent, as part of a child custody
33 investigation pursuant to this chapter, only for good cause shown,
34 pursuant to Section 2032.310 of the Code of Civil Procedure, under
35 exceptional circumstances when there is strong evidence that a
36 parent's current mental or psychological status might seriously
37 impair his or her parenting ability.

38 (b) A mental or psychological examination, including
39 standardized psychological testing, may be conducted only by
40 written court order, by a licensed physician or psychologist who

1 meets the requirements of subdivision (c) of Section 2032.020 of
2 the Code of Civil Procedure.

3 (c) The order for a mental or psychological examination shall
4 include a description of the legally admissible evidence that
5 demonstrates the need for the examination and a request for a
6 diagnosis. Controversial, nonscientific labels, such as parental
7 alienation syndrome, parental alienation, or alienated child, are
8 specifically excluded as allowable diagnoses and for court use.

9 (d) The report to the court resulting from the examination, any
10 underlying “raw” data from psychological testing, and notes from
11 the mental or psychological examination, shall be provided within
12 10 days from the date of the request of the parties and their
13 attorneys.

14 SEC. 3. Section 3111 of the Family Code is amended to read:

15 3111. (a) In ~~any~~ a contested proceeding involving child
16 custody or visitation rights, the court may appoint a child custody
17 ~~evaluator~~ *investigator* to conduct a child custody ~~evaluation~~
18 *investigation* in cases ~~where in which~~ the court determines it is in
19 the best interests of the child. The child custody ~~evaluation~~
20 *investigation* shall be conducted in accordance with the standards
21 adopted by the Judicial Council pursuant to Section 3117, and all
22 other standards adopted by the Judicial Council regarding child
23 custody ~~evaluations~~ *investigations*. If directed by the court, the
24 *court-connected*, court-appointed, or *private* child custody
25 ~~evaluator~~ *investigator* shall file a written confidential report on his
26 or her ~~evaluation~~ *investigation*. At least 10 days before any hearing
27 regarding custody of the child, the report shall be filed with the
28 clerk of the court in which the custody hearing will be conducted
29 and served on the parties or their attorneys, and any other counsel
30 appointed for the child pursuant to Section 3150. The report may
31 be considered by the court.

32 (b) The report shall not be made available other than as provided
33 in subdivision (a), or as described in Section 204 of the Welfare
34 and Institutions Code or Section 1514.5 of the Probate Code. Any
35 information obtained from access to a juvenile court case file, as
36 defined in subdivision (e) of Section 827 of the Welfare and
37 Institutions Code, is confidential and shall only be disseminated
38 as provided by paragraph (4) of subdivision (a) of Section 827 of
39 the Welfare and Institutions Code.

- 1 (c) The report may be received in evidence on stipulation of all
- 2 interested parties and is competent evidence as to all matters
- 3 contained in the report.

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