

AMENDED IN ASSEMBLY MARCH 26, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Ruskin

February 21, 2007

An act to amend Sections ~~3110.5~~ 3110, 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 amended, 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, *court rules provide that* 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.”~~ *codify those court rules to provide that a “child custody evaluator” is a “court-appointed*

investigator.” The bill would permit a court, as part of a child custody investigation evaluation 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.~~ The bill also would require the child custody evaluator that conducts the mental or psychological examination to summarize the data-gathering procedures, information sources, and the amount of time spent conducting the examination, and to present all relevant information, including information that does not support the conclusions reached.

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 of the Family Code is amended to
 2 read:

3 3110. As used in this chapter, ~~“court-appointed:~~
 4 (a) “*Court-appointed investigator*” means a probation officer,
 5 domestic relations investigator, or court-appointed evaluator
 6 directed by the court to conduct an investigation pursuant to this
 7 chapter.
 8 (b) “*Child custody evaluator*” means a court-appointed
 9 investigator.

10 SECTION 1.

11 SEC. 2. Section 3110.5 of the Family Code is amended to read:

12 3110.5. (a) A person shall not be a court-connected,
 13 court-appointed, or private child custody ~~investigator~~ *evaluator*
 14 under this chapter unless the person has completed the domestic
 15 violence and child abuse training program described in Section
 16 1816 and has complied with Rules 5.220 and 5.230 of the
 17 California Rules of Court.

18 (b) (1) On or before January 1, 2002, the Judicial Council shall
 19 formulate a statewide rule of court that establishes education,
 20 experience, and training requirements for all court-connected,
 21 court-appointed, and private child custody ~~investigators~~ *evaluators*
 22 appointed pursuant to this chapter, Section 730 of the Evidence
 23 Code, or Chapter 15 (commencing with Section 2032.010) of Title
 24 4 of Part 4 of the Code of Civil Procedure.

1 (A) The rule shall require a child custody ~~investigator~~ *evaluator*
2 to declare under penalty of perjury that he or she meets all of the
3 education, experience, and training requirements specified in the
4 rule and, if applicable, possesses a license in good standing. The
5 Judicial Council shall establish forms to implement this section.
6 The rule shall permit court-connected, court-appointed, and private
7 child custody ~~investigators~~ *evaluators* to conduct ~~investigations~~
8 *evaluations* if they meet all of the qualifications established by the
9 Judicial Council. The education, experience, and training
10 requirements to be specified for ~~court-connected, court-appointed~~
11 *court-connected, court-appointed*, and private child custody
12 ~~investigators~~ *evaluators* shall include, but not be limited to,
13 knowledge of the psychological and developmental needs of
14 children and parent-child relationships.

15 (B) The rule shall require all ~~investigators~~ *evaluators* to utilize
16 comparable interview, assessment, and testing procedures for all
17 parties that are consistent with generally accepted clinical, forensic,
18 scientific, diagnostic, or medical standards. The rule shall also
19 require ~~investigators~~ *evaluators* to inform each adult party of the
20 purpose, nature, and method of the ~~investigation~~ *evaluation*.

21 (C) The rule may allow courts to permit the parties to stipulate
22 to an ~~investigator~~ *evaluator* of their choosing with the approval of
23 the court under the circumstances set forth in subdivision (d). The
24 rule may require courts to provide general information about how
25 parties can contact qualified child custody ~~investigators~~ *evaluators*
26 in their county.

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

34 (A) Children's patterns of hiding and disclosing sexual abuse
35 occurring in a family setting.

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

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

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

39 (E) Techniques for identifying and assisting families affected
40 by child sexual abuse.

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

3 (c) In addition to the education, experience, and training
4 requirements established by the Judicial Council pursuant to
5 subdivision (b), on or after January 1, 2005, a person shall not be
6 a child custody ~~investigator~~ *evaluator* under this chapter, Section
7 730 of the Evidence Code, or Chapter 15 (commencing with
8 Section 2032.010) of Title 4 of Part 4 of the Code of Civil
9 Procedure unless the person meets at least one of the following
10 criteria:

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

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

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

21 (4) He or she is licensed as a clinical social worker under Article
22 4 (commencing with Section 4996) of Chapter 14 of Division 2
23 of the Business and Professions Code.

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

29 (d) Subdivision (c) does not apply in a case in which the court
30 determines that there are no ~~investigators~~ *evaluators* who meet the
31 criteria of subdivision (c) who are willing and available, within a
32 reasonable period of time, to perform child custody ~~investigations~~
33 *evaluations*. In those cases, the parties may stipulate to an
34 individual who does not meet the criteria of subdivision (c), subject
35 to approval by the court.

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

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

6 ~~SEC. 2.~~

7 *SEC. 3.* Section 3110.6 is added to the Family Code, to read:

8 3110.6. (a) The court shall grant a motion for a mental or
9 psychological examination of a parent, as part of a child custody
10 ~~investigation~~ *evaluation* pursuant to this chapter, only for good
11 cause shown, pursuant to Section 2032.310 of the Code of Civil
12 Procedure, ~~under exceptional circumstances when there is strong~~
13 ~~evidence that a parent's current mental or psychological status~~
14 ~~might seriously impair his or her parenting ability.~~

15 (b) A mental or psychological examination, including
16 standardized psychological testing, may be conducted only by
17 written court order, by a licensed physician or psychologist who
18 meets the requirements of subdivision (c) of Section 2032.020 of
19 the Code of Civil Procedure.

20 (c) The order for a mental or psychological examination shall
21 include a description of the legally admissible evidence that
22 demonstrates the need for the examination and a request for a
23 diagnosis. ~~Controversial, nonscientific labels, such as parental~~
24 ~~alienation syndrome, parental alienation, or alienated child, are~~
25 ~~specifically excluded as allowable diagnoses and for court use.~~

26 (d) ~~The report to the court resulting from the examination, any~~
27 ~~underlying "raw" data from psychological testing, and notes from~~
28 ~~the mental or psychological examination, shall be provided within~~
29 ~~10 days from the date of the request of the parties and their~~
30 ~~attorneys.~~

31 (d) *The child custody evaluator that conducts the mental or*
32 *psychological examination shall summarize the data-gathering*
33 *procedures, information sources, and the amount of time spent*
34 *conducting the examination, and shall present all relevant*
35 *information, including information that does not support the*
36 *conclusions reached. Nonscientific labels and assessments that*
37 *are not consistent with diagnostic or medical standards generally*
38 *accepted by the medical, psychiatric, and psychological*
39 *communities shall be specifically excluded as allowable diagnoses*
40 *for court use.*

1 ~~SEC. 3.~~

2 SEC. 4. Section 3111 of the Family Code is amended to read:

3 3111. (a) In a contested proceeding involving child custody
4 or visitation rights, the court may appoint a child custody
5 ~~investigator~~ *evaluator* to conduct a child custody ~~investigation~~
6 *evaluation* in cases in which the court determines it is in the best
7 interests of the child. The child custody ~~investigation~~ *evaluation*
8 shall be conducted in accordance with the standards adopted by
9 the Judicial Council pursuant to Section 3117, and all other
10 standards adopted by the Judicial Council regarding child custody
11 ~~investigations~~ *evaluations*. If directed by the court, the
12 court-connected, court-appointed, or private child custody
13 ~~investigator~~ *evaluator* shall file a written confidential report on
14 his or her ~~investigation~~ *evaluation*. At least 10 days before any
15 hearing regarding custody of the child, the report shall be filed
16 with the clerk of the court in which the custody hearing will be
17 conducted and served on the parties or their attorneys, and any
18 other counsel appointed for the child pursuant to Section 3150.
19 The report may be considered by the court.

20 (b) The report shall not be made available other than as provided
21 in subdivision (a), or as described in Section 204 of the Welfare
22 and Institutions Code or Section 1514.5 of the Probate Code. Any
23 information obtained from access to a juvenile court case file, as
24 defined in subdivision (e) of Section 827 of the Welfare and
25 Institutions Code, is confidential and shall only be disseminated
26 as provided by paragraph (4) of subdivision (a) of Section 827 of
27 the Welfare and Institutions Code.

28 (c) The report may be received in evidence on stipulation of all
29 interested parties and is competent evidence as to all matters
30 contained in the report.

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