

Introduced by Senator Harman

February 14, 2008

An act to amend Section 3041.5 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as amended, Harman. Child custody.

Existing law, until January 1, 2009, authorizes a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a custody, visitation, or guardianship proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under certain circumstances.

This bill would ~~delete the repeal~~ *extend the effective date* of these provisions *until January 1, 2013*.

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 3041.5 of the Family Code is amended
- 2 to read:
- 3 3041.5. (a) In any custody or visitation proceeding brought
- 4 under this part, as described in Section 3021, or any guardianship
- 5 proceeding brought under the Probate Code, the court may order
- 6 any person who is seeking custody of, or visitation with, a child
- 7 who is the subject of the proceeding to undergo testing for the
- 8 illegal use of controlled substances and the use of alcohol if there

1 is a judicial determination based upon a preponderance of evidence
2 that there is the habitual, frequent, or continual illegal use of
3 controlled substances or the habitual or continual abuse of alcohol
4 by the parent, legal custodian, person seeking guardianship, or
5 person seeking visitation in a guardianship. This evidence may
6 include, but may not be limited to, a conviction within the last five
7 years for the illegal use or possession of a controlled substance.
8 The court shall order the least intrusive method of testing for the
9 illegal use of controlled substances or the habitual or continual
10 abuse of alcohol by either or both parents, the legal custodian,
11 person seeking guardianship, or person seeking visitation in a
12 guardianship. If substance abuse testing is ordered by the court,
13 the testing shall be performed in conformance with procedures
14 and standards established by the United States Department of
15 Health and Human Services for drug testing of federal employees.
16 The parent, legal custodian, person seeking guardianship, or person
17 seeking visitation in a guardianship who has undergone drug testing
18 shall have the right to a hearing, if requested, to challenge a positive
19 test result. A positive test result, even if challenged and upheld,
20 shall not, by itself, constitute grounds for an adverse custody or
21 guardianship decision. Determining the best interests of the child
22 requires weighing all relevant factors. The court shall also consider
23 any reports provided to the court pursuant to the Probate Code.
24 The results of this testing shall be confidential, shall be maintained
25 as a sealed record in the court file, and may not be released to any
26 person except the court, the parties, their attorneys, the Judicial
27 Council (until completion of its authorized study of the testing
28 process) and any person to whom the court expressly grants access
29 by written order made with prior notice to all parties. Any person
30 who has access to the test results may not disseminate copies or
31 disclose information about the test results to any person other than
32 a person who is authorized to receive the test results pursuant to
33 this section. Any breach of the confidentiality of the test results
34 shall be punishable by civil sanctions not to exceed two thousand
35 five hundred dollars (\$2,500). The results of the testing may not
36 be used for any purpose, including any criminal, civil, or
37 administrative proceeding, except to assist the court in determining,
38 for purposes of the proceeding, the best interest of the child
39 pursuant to Section 3011, and the content of the order or judgment
40 determining custody or visitation. The court may order either party,

1 or both parties, to pay the costs of the drug or alcohol testing
2 ordered pursuant to this section. As used in this section, “controlled
3 substances” has the same meaning as defined in the California
4 Uniform Controlled Substances Act (Division 10 (commencing
5 with Section 11000) of the Health and Safety Code).

6 *(b) This section shall remain in effect only until January 1, 2013,*
7 *and as of that date is repealed, unless a later enacted statute, that*
8 *is enacted before January 1, 2013, deletes or extends that date.*

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