

AMENDED IN ASSEMBLY APRIL 22, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 612

Introduced by Assembly Member Beall

February 25, 2009

~~An act to amend Section 3111 of, and to add Sections 3005, 3045, 3100.5, and 3110.6 to,~~ *An act to add Section 3005 to the Family Code, relating to custody and visitation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Beall. Custody and visitation: nonscientific theories.

Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. Existing law requires the Judicial Council to adopt standards for court-connected evaluations, investigations, and assessments related to child custody.

This bill would prohibit a court from ~~considering~~ *relying upon* a nonscientific theory, as defined, *submitted to the court by a court-appointed or court-connected professional mediator, evaluator, or other person* in making a determination regarding *the best interest of*, child custody *of* or visitation with a child. *The bill would provide*

that a report that relies on a nonscientific theory would not be admissible into evidence in any proceeding to determine custody or visitation and would make a related change. The bill would also prohibit a court from considering or receiving into evidence a report, assessment, evaluation, or investigation prepared pursuant to the provisions described above if it includes a nonscientific theory. By revising the standards for court-connected evaluations, investigations, and assessments related to child custody, the bill would require the Judicial Council to adopt rules and forms implementing those revised standards relying upon any conclusion by an investigator or evaluator that is not supported by observed actions, behaviors, or conduct of a parent that may affect or may impact the child's best interest. The bill would prohibit those providing training approved by the Judicial Council, including the Judicial Council, from training professionals to rely on unscientific theories.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 *SECTION 1. (a) The Legislature finds and declares that it is*
- 2 *the policy of the State of California to ensure that all children are*
- 3 *safe from physical and sexual harm.*
- 4 *(b) It is also the intent of the Legislature to ease the burden on*
- 5 *family court resources caused by reliance on nonscientific theories*
- 6 *in family court proceedings, resulting in unnecessary prolongation*
- 7 *of cases by discouraging proper investigation of crimes and shifting*
- 8 *the fact finding process away from determining whether children*
- 9 *are safe from physical and sexual abuse.*
- 10 *SEC. 2. Section 3005 is added to the Family Code, to read:*
- 11 *3005. (a) As used in this chapter.*
- 12 *(1) A "nonscientific theory" is one that is not consistent with*
- 13 *generally accepted clinical, forensic, scientific, diagnostic, or*
- 14 *medical standards, and does not meet the Kelly-Frye standards of*
- 15 *evidence.*
- 16 *(2) An "alienation theory" is a nonscientific theory which is*
- 17 *based on the assumption that a child's refusal to visit with,*
- 18 *expression of hostility toward, or report of physical or sexual abuse*
- 19 *by a parent is caused or maliciously fabricated by the other parent.*

1 (b) A court may not rely upon a nonscientific theory, including,
2 but not limited to, an alienation theory, submitted to the court by
3 a court-appointed or court-connected professional mediator,
4 evaluator, or other person in determining the best interest of, or
5 custody or visitation arrangements for, children.

6 (c) (1) A report that relies upon a nonscientific theory, including
7 an alienation theory, shall not be admissible into evidence in any
8 proceeding to determine custody or visitation.

9 (2) Any report by an evaluator, investigator, or recommending
10 mediator to the court regarding the best interests of a child for
11 purposes of determining child custody or visitation shall not be
12 read or considered by the court until the parties stipulate to its
13 admissibility into evidence, or until a properly noticed evidentiary
14 hearing is held at which the admissibility of the report is
15 established.

16 (d) (1) A court may not rely upon any conclusion by an
17 investigator or evaluator that is not supported by observed actions,
18 behaviors, or conduct of a parent that may affect or may impact
19 the child's best interest.

20 (2) Nothing in this section precludes a child custody investigator
21 or evaluator from interviewing parents and children, observing
22 parent-child interaction, speaking to collateral sources, consulting
23 with other professionals regarding psychological data, or using
24 his or her professional expertise to integrate data, assess and
25 evaluate psychological issues, or communicate the results of those
26 analyses to the court consistent with ethical and professional
27 standards.

28 (e) Those providing Judicial Council-approved training to
29 mediators, evaluators, investigators, judges, and other
30 court-related or court-connected professionals, including the
31 Judicial Council, may not train professionals to rely upon
32 unscientific theories, including, but not limited to, alienation
33 theories.

34 ~~SECTION 1. Section 3005 is added to the Family Code, to~~
35 ~~read:~~

36 ~~3005. "Nonscientific theory" means a theory regarding human~~
37 ~~behavior and interactions that is not consistent with generally~~
38 ~~accepted clinical, forensic, scientific, diagnostic, or medical~~
39 ~~standards as promulgated by a majority of licensed professionals~~

1 in the medical, psychiatric, and psychological communities,
2 including, but not limited to, an alienation theory.

3 SEC. 2. Section 3045 is added to the Family Code, to read:

4 3045. In a proceeding to determine child custody, a court shall
5 not consider a nonscientific theory in making that determination.

6 SEC. 3. Section 3100.5 is added to the Family Code, to read:

7 3100.5. In a proceeding to determine visitation with a child, a
8 court shall not consider a nonscientific theory in making that
9 determination.

10 SEC. 4. Section 3110.6 is added to the Family Code, to read:

11 3110.6. Notwithstanding any other provision of law, in any
12 contested proceeding involving child custody or visitation rights,
13 a court may not consider and may not receive into evidence a
14 report, assessment, evaluation, or investigation prepared pursuant
15 to this chapter if that report, assessment, evaluation, or investigation
16 includes a nonscientific theory.

17 SEC. 5. Section 3111 of the Family Code is amended to read:

18 3111. (a) In any contested proceeding involving child custody
19 or visitation rights, the court may appoint a child custody evaluator
20 to conduct a child custody evaluation in cases in which the court
21 determines it is in the best interest of the child. The child custody
22 evaluation shall be conducted in accordance with the standards
23 adopted by the Judicial Council pursuant to Section 3117, and all
24 other standards adopted by the Judicial Council regarding child
25 custody evaluations. If directed by the court, the court-appointed
26 child custody evaluator shall file a written confidential report on
27 his or her evaluation. At least 10 days before any hearing regarding
28 custody of the child, the report shall be filed with the clerk of the
29 court in which the custody hearing will be conducted and served
30 on the parties or their attorneys, and any other counsel appointed
31 for the child pursuant to Section 3150. Except as otherwise
32 provided in Section 3110.6, the report may be considered by the
33 court.

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

1 as provided by paragraph (4) of subdivision (a) of Section 827 of
2 the Welfare and Institutions Code.

3 (e) Except as otherwise provided in Section 3110.6, the report
4 may be received in evidence on stipulation of all interested parties
5 and is competent evidence as to all matters contained in the report.

6 (d) If the court determines that an unwarranted disclosure of a
7 written confidential report has been made, the court may impose
8 a monetary sanction against the disclosing party. The sanction
9 shall be in an amount sufficient to deter repetition of the conduct,
10 and may include reasonable attorney's fees, costs incurred, or both,
11 unless the court finds that the disclosing party acted with substantial
12 justification or that other circumstances make the imposition of
13 the sanction unjust. The court shall not impose a sanction pursuant
14 to this subdivision that imposes an unreasonable financial burden
15 on the party against whom the sanction is imposed. This
16 subdivision shall become operative on January 1, 2010.

17 (e) The Judicial Council shall, by January 1, 2010, do the
18 following:

19 (1) Adopt a form to be served with every child custody
20 evaluation report that informs the report recipient of the
21 confidentiality of the report and the potential consequences for the
22 unwarranted disclosure of the report.

23 (2) Adopt a rule of court to require that, when a court-ordered
24 child custody evaluation report is served on the parties, the form
25 specified in paragraph (1) shall be included with the report.

26 (f) For purposes of this section, a disclosure is unwarranted if
27 it is done either recklessly or maliciously, and is not in the best
28 interests of the child.