

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 225

Introduced by Assembly Member Nielsen

February 2, 2011

An act to amend Section 3064 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 225, as amended, Nielsen. Child custody: ex parte orders.

Existing law prohibits a court from making an order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the state.

This bill would ~~instead authorize the court to make an order granting or modifying a custody order on an ex parte basis only if there has been a showing of immediate risk that the child will be removed from the state~~ *require that a party seeking an ex parte child custody order on those grounds notify all parties or their attorneys of the proceedings at least one court day prior to the matter being heard by the court, unless the party requests shorter notice of a waiver or notice, as specified. The bill would also require the Judicial Council, on or before January 1, 2012, to adopt a rule of court to implement these provisions.*

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

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

1 SECTION 1. Section 3064 of the Family Code is amended to
2 read:

3 3064. (a) The court may make an order granting or modifying
4 a custody order on an ex parte basis only if there has been a
5 showing of *immediate harm to the child* or immediate risk that the
6 child will be removed from the State of California.

7 (b) *“Immediate harm to the child”* includes, but is not limited
8 to, the following:

9 (1) *Having a parent who has committed acts of domestic*
10 *violence, if the court determines that the acts of domestic violence*
11 *are of recent origin or are a part of a demonstrated and continuing*
12 *pattern of acts of domestic violence.*

13 (2) *Sexual abuse of the child, if the court determines that the*
14 *acts of sexual abuse are of recent origin or are a part of a*
15 *demonstrated and continuing pattern of acts of sexual abuse.*

16 (c) *A party seeking an ex parte order pursuant to this section*
17 *shall notify all parties or, if represented by counsel, their attorneys*
18 *of the proceedings at least one court day before the matter is to*
19 *be heard by the court, unless either of the following occurs:*

20 (1) *The party requests shorter notice and there are exceptional*
21 *circumstances that justify shorter notice. The requesting party*
22 *shall provide facts in a declaration that show exceptional*
23 *circumstances that justify the shorter notice.*

24 (2) *The party requests a waiver of the notice because giving*
25 *notice would result in immediate and irreparable harm to the party*
26 *or the child. The requesting party shall provide facts in a*
27 *declaration that show the immediate and irreparable harm to the*
28 *party or the child that justifies the waiver of notice.*

29 (d) *The Judicial Council shall, on or before January 1, 2012,*
30 *adopt a rule of court to implement subdivision (c).*