

**ASSEMBLY BILL**

**No. 2365**

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**Introduced by Assembly Member Nestande**

February 24, 2012

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An act to amend Section 3011 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2365, as introduced, Nestande. Family law: child custody.

Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including whether either of the child's parents has a documented history of habitually or continually using alcohol or illegal drugs.

This bill would require a family court to consider, in determining the best interest of the child in custody proceedings, either parent's documented use of prescribed controlled substances, including medical marijuana and narcotic maintenance medications for heroin and opioid addictions.

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 3011 of the Family Code is amended to  
2 read:

1 3011. In making a determination of the best interest of the child  
 2 in a proceeding described in Section 3021, the court shall, among  
 3 any other factors it finds relevant, consider all of the following:

- 4 (a) The health, safety, and welfare of the child.
- 5 (b) Any history of abuse by one parent or any other person  
 6 seeking custody against any of the following:
  - 7 (1) Any child to whom he or she is related by blood or affinity  
 8 or with whom he or she has had a caretaking relationship, no matter  
 9 how temporary.
  - 10 (2) The other parent.
  - 11 (3) A parent, current spouse, or cohabitant, of the parent or  
 12 person seeking custody, or a person with whom the parent or person  
 13 seeking custody has a dating or engagement relationship.

14 As a prerequisite to the consideration of allegations of abuse,  
 15 the court may require substantial independent corroboration,  
 16 including, but not limited to, written reports by law enforcement  
 17 agencies, child protective services or other social welfare agencies,  
 18 courts, medical facilities, or other public agencies or private  
 19 nonprofit organizations providing services to victims of sexual  
 20 assault or domestic violence. As used in this subdivision, “abuse  
 21 against a child” means “child abuse” as defined in Section 11165.6  
 22 of the Penal Code and abuse against any of the other persons  
 23 described in paragraph (2) or (3) means “abuse” as defined in  
 24 Section 6203 of this code.

25 (c) The nature and amount of contact with both parents, except  
 26 as provided in Section 3046.

27 (d) The habitual or continual illegal use of controlled substances  
 28 or habitual or continual abuse of alcohol by either parent, *and*  
 29 *either parent’s current use of prescribed controlled substances,*  
 30 *including medical marijuana and narcotic maintenance*  
 31 *medications for heroin and opioid addictions.* Before considering  
 32 these allegations, the court may first require independent  
 33 corroboration, including, but not limited to, written reports from  
 34 law enforcement agencies, courts, probation departments, social  
 35 welfare agencies, medical facilities, rehabilitation facilities, or  
 36 other public agencies or nonprofit organizations providing drug  
 37 and alcohol abuse services. As used in this subdivision, “controlled  
 38 substances” has the same meaning as defined in the California  
 39 Uniform Controlled Substances Act, Division 10 (commencing  
 40 with Section 11000) of the Health and Safety Code.

1 (e) (1) Where allegations about a parent pursuant to subdivision  
2 (b) or (d) have been brought to the attention of the court in the  
3 current proceeding, and the court makes an order for sole or joint  
4 custody to that parent, the court shall state its reasons in writing  
5 or on the record. In these circumstances, the court shall ensure that  
6 any order regarding custody or visitation is specific as to time,  
7 day, place, and manner of transfer of the child as set forth in  
8 subdivision (b) of Section 6323.  
9 (2) The provisions of this subdivision shall not apply if the  
10 parties stipulate in writing or on the record regarding custody or  
11 visitation.

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