

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2365

Introduced by Assembly Member Nestande

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2365, as amended, 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~~ *uses* alcohol or illegal drugs. *The court may require independent corroboration of an allegation that a parent is habitually or continually using controlled substances 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~~ *habitual or continual abuse* 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:

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

6 (a) The health, safety, and welfare of the child.

7 (b) Any history of abuse by one parent or any other person
8 seeking custody against any of the following:

9 (1) Any child to whom he or she is related by blood or affinity
10 or with whom he or she has had a caretaking relationship, no matter
11 how temporary.

12 (2) The other parent.

13 (3) A parent, current spouse, or cohabitant, of the parent or
14 person seeking custody, or a person with whom the parent or person
15 seeking custody has a dating or engagement relationship.

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

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

29 (d) The habitual or continual illegal use of controlled substances
30 ~~or, the habitual or continual abuse of alcohol, or the habitual or~~
31 ~~continual abuse of prescribed controlled substances~~ by either
32 parent, ~~and either parent’s current use of prescribed controlled~~
33 ~~substances, including medical marijuana and narcotic maintenance~~
34 ~~medications for heroin and opioid addictions.~~ Before considering
35 these allegations, the court may first require independent
36 corroboration, including, but not limited to, written reports from
37 law enforcement agencies, courts, probation departments, social
38 welfare agencies, medical facilities, rehabilitation facilities, or

1 other public agencies or nonprofit organizations providing drug
2 and alcohol abuse services. As used in this subdivision, “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 (e) (1) Where allegations about a parent pursuant to subdivision
7 (b) or (d) have been brought to the attention of the court in the
8 current proceeding, and the court makes an order for sole or joint
9 custody to that parent, the court shall state its reasons in writing
10 or on the record. In these circumstances, the court shall ensure that
11 any order regarding custody or visitation is specific as to time,
12 day, place, and manner of transfer of the child as set forth in
13 subdivision (b) of Section 6323.

14 (2) The provisions of this subdivision shall not apply if the
15 parties stipulate in writing or on the record regarding custody or
16 visitation.