

AMENDED IN SENATE APRIL 25, 2012  
AMENDED IN ASSEMBLY MARCH 29, 2012  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2365**

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**Introduced by Assembly Member Nestande**  
*(Coauthors: Assembly Members Buchanan, Jeffries, and Olsen)*

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 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 habitually or continually 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 habitual or continual abuse of prescribed controlled substances.

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~~ *considering* allegations  
17 of abuse, the court may require substantial independent  
18 corroboration, including, but not limited to, written reports by law  
19 enforcement agencies, child protective services or other social  
20 welfare agencies, courts, medical facilities, or other public agencies  
21 or private nonprofit organizations providing services to victims of  
22 sexual assault or domestic violence. As used in this subdivision,  
23 “abuse against a child” means “child abuse” as defined in Section  
24 11165.6 of the Penal Code and abuse against any of the other  
25 persons described in paragraph (2) or (3) means “abuse” as defined  
26 in 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 the habitual or continual abuse of alcohol, or the habitual or  
31 continual abuse of prescribed controlled substances by either  
32 parent. Before considering these allegations, the court may first  
33 require independent corroboration, including, but not limited to,  
34 written reports from law enforcement agencies, courts, probation  
35 departments, social welfare agencies, medical facilities,  
36 rehabilitation facilities, or other public agencies or nonprofit  
37 organizations providing drug and alcohol abuse services. As used  
38 in this subdivision, “controlled substances” has the same meaning

1 as defined in the California Uniform Controlled Substances Act,  
2 Division 10 (commencing with Section 11000) of the Health and  
3 Safety Code.

4 (e) (1) Where allegations about a parent pursuant to subdivision  
5 (b) or (d) have been brought to the attention of the court in the  
6 current proceeding, and the court makes an order for sole or joint  
7 custody to that parent, the court shall state its reasons in writing  
8 or on the record. In these circumstances, the court shall ensure that  
9 any order regarding custody or visitation is specific as to time,  
10 day, place, and manner of transfer of the child as set forth in  
11 subdivision (b) of Section 6323.

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

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