

ASSEMBLY BILL

No. 958

Introduced by Assembly Member Jones

February 22, 2013

An act to amend Sections 3025.5 and 3111 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Jones. Child custody: evaluations and reports.

Existing law permits a court to appoint a child custody evaluator, who, except as specified, must be licensed as a physician, as a psychologist, as a marriage and family therapist, or as a clinical social worker, to conduct a child custody evaluation and file a written confidential report on his or her evaluation in any contested child custody or visitation rights proceeding. Existing law places limitations on the disclosure of the evaluator's written confidential report, specifying in what circumstances the written confidential report may be disclosed.

This bill would expand the circumstances in which the written confidential report may be disclosed by requiring a court to disclose the report to the licensing board governing the child custody evaluator upon receiving a written request from the board, and by allowing a person who is permitted to possess the written confidential report to provide a copy of the report to the child custody evaluator's licensing board in, order to assist the board in investigating allegations that the child custody evaluator engaged in unprofessional conduct. This bill would also specify in what circumstances the board may utilize the report, the procedures the board must follow when utilizing the report, and to whom the board may disclose the report.

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. Section 3025.5 of the Family Code is amended
2 to read:
3 3025.5. (a) In any proceeding involving child custody or
4 visitation rights, if a report containing psychological evaluations
5 of a child or recommendations regarding custody of, or visitation
6 with, a child is submitted to the court, including, but not limited
7 to, a report created pursuant to Chapter 6 (commencing with
8 Section 3110) of this part, a recommendation made to the court
9 pursuant to Section 3183, and a written statement of issues and
10 contentions pursuant to subdivision (b) of Section 3151, that
11 information shall be contained in a document that shall be placed
12 in the confidential portion of the court file of the proceeding, and
13 may not be disclosed, except to the following persons:
14 ~~(a)~~
15 (1) A party to the proceeding and his or her attorney.
16 ~~(b)~~
17 (2) A federal or state law enforcement officer, judicial officer,
18 court employee, or family court facilitator of the superior court of
19 the county in which the action was filed, or an employee or agent
20 of that facilitator, acting within the scope of his or her duties.
21 ~~(c)~~
22 (3) Counsel appointed for the child pursuant to Section 3150.
23 ~~(d)~~
24 (4) Any other person upon order of the court for good cause.
25 (b) *Notwithstanding subdivision (a), upon receiving a written*
26 *request from an authorized representative of the licensing board*
27 *governing a child custody evaluator who prepared a report*
28 *pursuant to Section 3111, the court shall disclose a copy of the*
29 *report in order to assist the board in investigating allegations that*
30 *the child custody evaluator engaged in unprofessional conduct*
31 *related to the creation of the report. The confidential information*
32 *contained in the report shall remain confidential except for*
33 *purposes of investigating the alleged unprofessional conduct of*
34 *the child custody evaluator, or a criminal, civil, or administrative*
35 *proceeding in relation thereto. The confidential information may*

1 *be used by the licensing board in a criminal, civil, or administrative*
2 *proceeding. The confidential information shall be available only*
3 *to the judge or hearing officer and to the parties to the case. Names*
4 *that are confidential shall be listed in attachments separate from*
5 *the general pleadings. The confidential information shall be sealed*
6 *after the conclusion of the criminal, civil, or administrative*
7 *hearing, and may not subsequently be released. If the confidential*
8 *information does not result in a criminal, civil, or administrative*
9 *proceeding, it shall be sealed after the licensing board decides*
10 *that no further action will be taken in the matter of suspected*
11 *licensing violations. Except as otherwise provided in this*
12 *subdivision, confidential information in the possession of the*
13 *licensing board may not contain the name of the minor.*

14 SEC. 2. Section 3111 of the Family Code is amended to read:

15 3111. (a) In any contested proceeding involving child custody
16 or visitation rights, the court may appoint a child custody evaluator
17 to conduct a child custody evaluation in cases where the court
18 determines it is in the best interests of the child. The child custody
19 evaluation shall be conducted in accordance with the standards
20 adopted by the Judicial Council pursuant to Section 3117, and all
21 other standards adopted by the Judicial Council regarding child
22 custody evaluations. If directed by the court, the court-appointed
23 child custody evaluator shall file a written confidential report on
24 his or her evaluation. At least 10 days before any hearing regarding
25 custody of the child, the report shall be filed with the clerk of the
26 court in which the custody hearing will be conducted and served
27 on the parties or their attorneys, and any other counsel appointed
28 for the child pursuant to Section 3150. The report may be
29 considered by the court.

30 (b) The report shall not be made available other than as provided
31 in subdivision (a) *or (g)*, or as described in Section 204 of the
32 Welfare and Institutions Code or Section 1514.5 of the Probate
33 Code. Any information obtained from access to a juvenile court
34 case file, as defined in subdivision (e) of Section 827 of the Welfare
35 and Institutions Code, is confidential and shall only be disseminated
36 as provided by paragraph (4) of subdivision (a) of Section 827 of
37 the Welfare and Institutions Code.

38 (c) The report may be received in evidence on stipulation of all
39 interested parties and is competent evidence as to all matters
40 contained in the report.

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

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

14 (1) Adopt a form to be served with every child custody
15 evaluation report that informs the report recipient of the
16 confidentiality of the report and the potential consequences for the
17 unwarranted disclosure of the report.

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

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

24 (g) *(1) A party permitted to possess the report may provide a*
25 *copy of the report to an authorized representative of the licensing*
26 *board governing the child custody evaluator who prepared the*
27 *report in order to assist the board in investigating allegations that*
28 *the child custody evaluator engaged in unprofessional conduct*
29 *related to the creation of the report. The confidential information*
30 *contained in the report shall remain confidential except for*
31 *purposes of investigating the alleged unprofessional conduct of*
32 *the child custody evaluator, or a criminal, civil, or administrative*
33 *proceeding in relation thereto. The confidential information may*
34 *be used by the licensing board in a criminal, civil, or administrative*
35 *proceeding. The confidential information shall be available only*
36 *to the judge or hearing officer and to the parties to the case. Names*
37 *that are confidential shall be listed in attachments separate from*
38 *the general pleadings. The confidential information shall be sealed*
39 *after the conclusion of the criminal, civil, or administrative*
40 *hearing, and may not subsequently be released. If the confidential*

1 *information does not result in a criminal, civil, or administrative*
2 *proceeding, it shall be sealed after the licensing board decides*
3 *that no further action will be taken in the matter of suspected*
4 *licensing violations. Except as otherwise provided in this*
5 *subdivision, confidential information in the possession of the*
6 *licensing board may not contain the name of the minor.*

7 (2) *For purposes of this section, a disclosure of the confidential*
8 *written report pursuant to this subdivision shall not be considered*
9 *unwarranted.*

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