

AMENDED IN SENATE APRIL 27, 2015

AMENDED IN SENATE APRIL 13, 2015

**SENATE BILL**

**No. 594**

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**Introduced by Senator Wieckowski**

February 27, 2015

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An act to amend Sections 3111, 3118, 3170, and 3183 of, and to add Section 3117.5 to, *Section 3111* of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Wieckowski. Child custody.

*Existing law allows a court, in any contested hearing involving child custody or visitation rights, to appoint a child custody evaluator, as specified. Existing law requires the Judicial Council to adopt standards for the child custody evaluation.*

*This bill would specify that a child custody evaluation, investigation, or assessment, and any report conducted pursuant to that determination, may only be considered by the court if the evaluation, investigation, or assessment is conducted in accordance with the minimum requirements.*

*Existing law requires the court to require an evaluation, investigation, or assessment in any contested proceeding involving child custody or visitation rights when the court has appointed a child custody evaluator or has referred a case for a full or partial court-connected evaluation, investigation, or assessment, and the court determines that there is a serious allegation of child sexual abuse. Existing law establishes certain minimum requirements for the evaluation, investigation, or assessment. Existing law authorizes a mediator to submit a recommendation to the court as to the custody of, or visitation with, a child. A mediator acting in that capacity is called a child custody recommending counselor.*

~~This bill would require the Judicial Council to, not later than January 1, 2016, develop a form that every investigator, evaluator, or child custody recommending counselor conducting an investigation would be required to submit to the court. The bill would require the form to delineate each requirement and require that the person conducting an investigation provide documentation in, or attached to, the form, showing that each task has been completed as required. The bill would provide that on or after January 1, 2016, an investigation that is not documented on the Judicial Council form would not meet the minimum requirements for an investigation as required by the provisions described above. The bill would require, on or after January 1, 2016, that documentation showing compliance with those requirements and the results of the investigation be submitted to the court on the form developed by the Judicial Council.~~

~~Existing law also requires a court, if it appears on the face of a petition, application, or other pleading to modify or obtain a temporary or permanent custody or visitation order that custody, visitation, or both are contested, to set the contested issues for mediation. Existing law provides that domestic violence cases shall be handled in accordance with a separate written protocol approved by the Judicial Council.~~

~~This bill would require the Judicial Council to, not later than January 1, 2016, develop a form to be used to help implement the separate written protocol approved by the Judicial Council.~~

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

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

1     SECTION 1. Section 3111 of the Family Code is amended to  
 2     read:  
 3     3111. (a) In any contested proceeding involving child custody  
 4     or visitation rights, the court may appoint a child custody evaluator  
 5     to conduct a child custody evaluation in cases where the court  
 6     determines it is in the best interests of the child. The child custody  
 7     evaluation shall be conducted in accordance with the standards  
 8     adopted by the Judicial Council pursuant to Section 3117, and all  
 9     other standards adopted by the Judicial Council regarding child  
 10    custody evaluations. If directed by the court, the court-appointed  
 11    child custody evaluator shall file a written confidential report on  
 12    his or her evaluation. At least 10 days before any hearing regarding

1 custody of the child, the report shall be filed with the clerk of the  
2 court in which the custody hearing will be conducted and served  
3 on the parties or their attorneys, and any other counsel appointed  
4 for the child pursuant to Section 3150. ~~The report may be~~  
5 ~~considered by the court.~~ *A child custody evaluation, investigation,*  
6 *or assessment, and any report conducted pursuant to that*  
7 *determination shall be considered by the court only if the*  
8 *evaluation, investigation, or assessment is conducted in accordance*  
9 *with the minimum requirements set forth in this section in*  
10 *determining custody or visitation rights.*

11 (b) The report shall not be made available other than as provided  
12 in subdivision (a) or Section 3025.5, or as described in Section  
13 204 of the Welfare and Institutions Code or Section 1514.5 of the  
14 Probate Code. Any information obtained from access to a juvenile  
15 court case file, as defined in subdivision (e) of Section 827 of the  
16 Welfare and Institutions Code, is confidential and shall only be  
17 disseminated as provided by paragraph (4) of subdivision (a) of  
18 Section 827 of the Welfare and Institutions Code.

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

22 (d) If the court determines that an unwarranted disclosure of a  
23 written confidential report has been made, the court may impose  
24 a monetary sanction against the disclosing party. The sanction  
25 shall be in an amount sufficient to deter repetition of the conduct,  
26 and may include reasonable attorney's fees, costs incurred, or both,  
27 unless the court finds that the disclosing party acted with substantial  
28 justification or that other circumstances make the imposition of  
29 the sanction unjust. The court shall not impose a sanction pursuant  
30 to this subdivision that imposes an unreasonable financial burden  
31 on the party against whom the sanction is imposed. This  
32 subdivision shall become operative on January 1, 2010.

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

35 (1) Adopt a form to be served with every child custody  
36 evaluation report that informs the report recipient of the  
37 confidentiality of the report and the potential consequences for the  
38 unwarranted disclosure of the report.

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

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

7 SECTION 1. ~~Section 3111 of the Family Code is amended to~~  
8 ~~read:~~

9 ~~3111. (a) In any contested proceeding involving child custody~~  
10 ~~or visitation rights, the court may appoint a child custody evaluator~~  
11 ~~to conduct a child custody evaluation in cases when the court~~  
12 ~~determines it is in the best interests of the child. The child custody~~  
13 ~~evaluation shall be conducted in accordance with the standards~~  
14 ~~adopted by the Judicial Council pursuant to Section 3117, and all~~  
15 ~~other standards adopted by the Judicial Council regarding child~~  
16 ~~custody evaluations. If directed by the court, the court-appointed~~  
17 ~~child custody evaluator shall file a written confidential report on~~  
18 ~~his or her evaluation, which shall be submitted on, or attached to,~~  
19 ~~the completed form developed pursuant to Section 3117.5. At least~~  
20 ~~10 days before any hearing regarding custody of the child, the~~  
21 ~~report shall be filed with the clerk of the court in which the custody~~  
22 ~~hearing will be conducted and served on the parties or their~~  
23 ~~attorneys, and any other counsel appointed for the child pursuant~~  
24 ~~to Section 3150. The report may be considered by the court if, (1)~~  
25 ~~it is submitted on, or attached to, the completed Judicial Council~~  
26 ~~form, and, (2) it documents compliance with the minimum~~  
27 ~~state-mandated standards applicable to the scope of the evaluation.~~

28 ~~(b) The report shall not be made available other than as provided~~  
29 ~~in subdivision (a) or Section 3025.5, or as described in Section~~  
30 ~~204 of the Welfare and Institutions Code or Section 1514.5 of the~~  
31 ~~Probate Code. Any information obtained from access to a juvenile~~  
32 ~~court case file, as defined in subdivision (c) of Section 827 of the~~  
33 ~~Welfare and Institutions Code, is confidential and shall only be~~  
34 ~~disseminated as provided by paragraph (4) of subdivision (a) of~~  
35 ~~Section 827 of the Welfare and Institutions Code.~~

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

39 ~~(d) If the court determines that an unwarranted disclosure of a~~  
40 ~~written confidential report has been made, the court may impose~~

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

10 (e) The Judicial Council shall, by January 1, 2010, do both of  
11 the following:

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

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

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

22 SEC. 2. Section 3117.5 is added to the Family Code, to read:

23 3117.5. (a) The Judicial Council shall, no later than January  
24 1, 2016, develop a form to be used by every investigator or  
25 evaluator conducting a child custody evaluation. The form shall  
26 delineate each requirement of, and incorporate any standards  
27 established by, Sections 3117 and 3118. The form shall also  
28 incorporate all other standards adopted under this code regarding  
29 child custody evaluations, and require that the investigator or  
30 evaluator provide documentation in, or attached to, the form  
31 showing that each task has been completed as required. For  
32 purposes of this section, a child custody evaluation means an  
33 investigation and analysis of the health, safety, welfare, and best  
34 interest of a child with regard to disputed custody and visitation  
35 issues conducted pursuant to Section 3111, 3118, or 3183 of this  
36 code, Section 730 of the Evidence Code, or Article 1 (commencing  
37 with Section 2032.010) of Chapter 15 of Title 4 of Part 4 of the  
38 Code of Civil Procedure. The child custody evaluation form shall  
39 be consistent with Sections 3011, 3020, and 3044.

1 ~~(b) Child custody evaluations filed with the court on and after~~  
2 ~~January 1, 2016, shall be submitted on, or attached to, the report~~  
3 ~~form developed pursuant to subdivision (a). The evaluation report~~  
4 ~~may be considered by the court if, (1) it is submitted on, or attached~~  
5 ~~to, the completed Judicial Council form, and, (2) it documents~~  
6 ~~compliance with the minimum state-mandated standards applicable~~  
7 ~~to the scope of the evaluation.~~

8 SEC. 3.— Section 3118 of the Family Code is amended to read:

9 3118. (a) ~~In any contested proceeding involving child custody~~  
10 ~~or visitation rights, where the court has appointed a child custody~~  
11 ~~evaluator or has referred a case for a full or partial court-connected~~  
12 ~~evaluation, investigation, or assessment, and the court determines~~  
13 ~~that there is a serious allegation of child sexual abuse, the court~~  
14 ~~shall require an evaluation, investigation, or assessment pursuant~~  
15 ~~to this section. When the court has determined that there is a serious~~  
16 ~~allegation of child sexual abuse, any child custody evaluation,~~  
17 ~~investigation, or assessment conducted subsequent to that~~  
18 ~~determination shall be considered by the court only if the~~  
19 ~~evaluation, investigation, or assessment is conducted in accordance~~  
20 ~~with the minimum requirements set forth in this section in~~  
21 ~~determining custody or visitation rights, except as specified in~~  
22 ~~paragraph (1). For purposes of this section, a serious allegation of~~  
23 ~~child sexual abuse means an allegation of child sexual abuse, as~~  
24 ~~defined in Section 11165.1 of the Penal Code, that is based in~~  
25 ~~whole or in part on statements made by the child to law~~  
26 ~~enforcement, a child welfare services agency investigator, any~~  
27 ~~person required by statute to report suspected child abuse, or any~~  
28 ~~other court-appointed personnel, or that is supported by substantial~~  
29 ~~independent corroboration as provided for in subdivision (b) of~~  
30 ~~Section 3011. When an allegation of child abuse arises in any other~~  
31 ~~circumstances in any proceeding involving child custody or~~  
32 ~~visitation rights, the court may require an evaluator or investigator~~  
33 ~~to conduct an evaluation, investigation, or assessment pursuant to~~  
34 ~~this section. The order appointing a child custody evaluator or~~  
35 ~~investigator pursuant to this section shall provide that the evaluator~~  
36 ~~or investigator have access to all juvenile court records pertaining~~  
37 ~~to the child who is the subject of the evaluation, investigation, or~~  
38 ~~assessment. The order shall also provide that any juvenile court~~  
39 ~~records or information gained from those records remain~~  
40 ~~confidential and shall only be released as specified in Section 3111.~~

- 1 ~~(1) This section does not apply to any emergency court-ordered~~  
2 ~~partial investigation that is conducted for the purpose of assisting~~  
3 ~~the court in determining what immediate temporary orders may~~  
4 ~~be necessary to protect and meet the immediate needs of a child.~~  
5 ~~This section does apply when the emergency is resolved and the~~  
6 ~~court is considering permanent child custody or visitation orders.~~  
7 ~~(2) This section does not prohibit a court from considering~~  
8 ~~evidence relevant to determining the safety and protection needs~~  
9 ~~of the child.~~  
10 ~~(3) Any evaluation, investigation, or assessment conducted~~  
11 ~~pursuant to this section shall be conducted by an evaluator or~~  
12 ~~investigator who meets the qualifications set forth in Section~~  
13 ~~3110.5.~~  
14 ~~(b) The evaluator or investigator shall, at a minimum, do all of~~  
15 ~~the following:~~  
16 ~~(1) Consult with the agency providing child welfare services~~  
17 ~~and law enforcement regarding the allegations of child sexual~~  
18 ~~abuse, and obtain recommendations from these professionals~~  
19 ~~regarding the child's safety and the child's need for protection.~~  
20 ~~(2) Review and summarize the child welfare services agency~~  
21 ~~file. No document contained in the child welfare services agency~~  
22 ~~file may be photocopied, but a summary of the information in the~~  
23 ~~file, including statements made by the children and the parents,~~  
24 ~~and the recommendations made or anticipated to be made by the~~  
25 ~~child welfare services agency to the juvenile court, may be recorded~~  
26 ~~by the evaluator or investigator, except for the identity of the~~  
27 ~~reporting party. The evaluator's or investigator's notes~~  
28 ~~summarizing the child welfare services agency information shall~~  
29 ~~be stored in a file separate from the evaluator's or investigator's~~  
30 ~~file and may only be released to either party under order of the~~  
31 ~~court.~~  
32 ~~(3) Obtain from a law enforcement investigator all available~~  
33 ~~information obtained from criminal background checks of the~~  
34 ~~parents and any suspected perpetrator that is not a parent, including~~  
35 ~~information regarding child abuse, domestic violence, or substance~~  
36 ~~abuse.~~  
37 ~~(4) Review the results of a multidisciplinary child interview~~  
38 ~~team (hereafter MDIT) interview if available, or if not, or if the~~  
39 ~~evaluator or investigator believes the MDIT interview is inadequate~~  
40 ~~for purposes of the evaluation, investigation, or assessment,~~

1 interview the child or request an MDIT interview, and shall  
 2 wherever possible avoid repeated interviews of the child.  
 3 (5) Request a forensic medical examination of the child from  
 4 the appropriate agency, or include in the report required by  
 5 paragraph (6) a written statement explaining why the examination  
 6 is not needed.  
 7 (6) File a confidential written report with the clerk of the court  
 8 in which the custody hearing will be conducted and which shall  
 9 be served on the parties or their attorneys at least 10 days prior to  
 10 the hearing. This report may not be made available other than as  
 11 provided in this subdivision. This report shall include, but is not  
 12 limited to, the following:  
 13 (A) Documentation of material interviews, including any MDIT  
 14 interview of the child or the evaluator or investigator, written  
 15 documentation of interviews with both parents by the evaluator or  
 16 investigator, and interviews with other witnesses who provided  
 17 relevant information.  
 18 (B) A summary of any law enforcement investigator's  
 19 investigation, including information obtained from the criminal  
 20 background check of the parents and any suspected perpetrator  
 21 that is not a parent, including information regarding child abuse,  
 22 domestic violence, or substance abuse.  
 23 (C) Relevant background material, including, but not limited  
 24 to, a summary of a written report from any therapist treating the  
 25 child for suspected child sexual abuse, excluding any  
 26 communication subject to Section 1014 of the Evidence Code,  
 27 reports from other professionals, and the results of any forensic  
 28 medical examination and any other medical examination or  
 29 treatment that could help establish or disprove whether the child  
 30 has been the victim of sexual abuse.  
 31 (D) The written recommendations of the evaluator or  
 32 investigator regarding the therapeutic needs of the child and how  
 33 to ensure the safety of the child.  
 34 (E) A summary of the following information: whether the child  
 35 and his or her parents are or have been the subject of a child abuse  
 36 investigation and the disposition of that investigation; the name,  
 37 location, and telephone number of the children's services worker;  
 38 the status of the investigation and the recommendations made or  
 39 anticipated to be made regarding the child's safety; and any

1 dependency court orders or findings that might have a bearing on  
2 the custody dispute.

3 ~~(F) Any information regarding the presence of domestic violence  
4 or substance abuse in the family that has been obtained from a  
5 child protective agency in accordance with paragraphs (1) and (2),  
6 a law enforcement agency, medical personnel or records, prior or  
7 currently treating therapists, excluding any communication subject  
8 to Section 1014 of the Evidence Code, or from interviews  
9 conducted or reviewed for this evaluation, investigation, or  
10 assessment.~~

11 ~~(G) Which, if any, family members are known to have been  
12 deemed eligible for assistance from the Victims of Crime Program  
13 due to child abuse or domestic violence.~~

14 ~~(H) Any other information the evaluator or investigator believes  
15 would be helpful to the court in determining what is in the best  
16 interests of the child.~~

17 ~~(I) On and after January 1, 2016, documentation showing  
18 compliance with all requirements of this section and the results of  
19 the investigation shall be submitted to the court on, or attached to,  
20 the completed form developed pursuant to Section 3117.5 by the  
21 Judicial Council.~~

22 ~~(e) If the evaluator or investigator obtains information as part  
23 of a family court mediation, that information shall be maintained  
24 in the family court file, which is not subject to subpoena by either  
25 party. If, however, the members of the family are the subject of  
26 an ongoing child welfare services investigation, or the evaluator  
27 or investigator has made a child welfare services referral, the  
28 evaluator or investigator shall so inform the family law judicial  
29 officer in writing and this information shall become part of the  
30 family law file. This subdivision may not be construed to authorize  
31 or require a mediator to disclose any information not otherwise  
32 authorized or required by law to be disclosed.~~

33 ~~(d) In accordance with subdivision (d) of Section 11167 of the  
34 Penal Code, the evaluator or investigator may not disclose any  
35 information regarding the identity of any person making a report  
36 of suspected child abuse. Nothing in this section is intended to  
37 limit any disclosure of information by any agency that is otherwise  
38 required by law or court order.~~

39 ~~(e) The evaluation, investigation, or assessment standards set  
40 forth in this section represent minimum requirements of evaluation~~

1 and the court shall order further evaluation beyond these minimum  
2 requirements when necessary to determine the safety needs of the  
3 child.

4 (f) If the court orders an evaluation, investigation, or assessment  
5 pursuant to this section, the court shall consider whether the best  
6 interests of the child require that a temporary order be issued that  
7 limits visitation with the parent against whom the allegations have  
8 been made to situations in which a third person specified by the  
9 court is present or whether visitation will be suspended or denied  
10 in accordance with Section 3011.

11 (g) An evaluation, investigation, or assessment pursuant to this  
12 section shall be suspended if a petition is filed to declare the child  
13 a dependent child of the juvenile court pursuant to Section 300 of  
14 the Welfare and Institutions Code, and all information gathered  
15 by the evaluator or investigator shall be made available to the  
16 juvenile court.

17 (h) This section may not be construed to authorize a court to  
18 issue any orders in a proceeding pursuant to this division regarding  
19 custody or visitation with respect to a minor child who is the  
20 subject of a dependency hearing in juvenile court or to otherwise  
21 supersede Section 302 of the Welfare and Institutions Code.

22 (i) On and after January 1, 2016, documentation showing  
23 compliance with all requirements of this section and the results of  
24 the investigation shall be submitted to the court on, or attached to,  
25 the completed form developed pursuant to Section 3117.5 by the  
26 Judicial Council.

27 SEC. 4. Section 3170 of the Family Code is amended to read:

28 3170. (a) If it appears on the face of a petition, application, or  
29 other pleading to obtain or modify a temporary or permanent  
30 custody or visitation order that custody, visitation, or both are  
31 contested, the court shall set the contested issues for mediation.

32 (b) (1) Domestic violence cases shall be handled by Family  
33 Court Services in accordance with a separate written protocol  
34 approved by the Judicial Council. The Judicial Council shall adopt  
35 guidelines for services, other than services provided under this  
36 chapter, that courts or counties may offer to parents who have been  
37 unable to resolve their disputes. These services may include, but  
38 are not limited to, parent education programs, booklets, video  
39 recordings, or referrals to additional community resources.

1     ~~(2) The Judicial Council shall, no later than January 1, 2016,~~  
2     ~~develop a form to be used to help implement the written protocol~~  
3     ~~for handling domestic violence cases.~~

4     ~~SEC. 5. Section 3183 of the Family Code is amended to read:~~

5     ~~3183. (a) Except as provided in Section 3188, the mediator~~  
6     ~~may, consistent with local court rules, submit a recommendation~~  
7     ~~to the court as to the custody of or visitation with the child, if the~~  
8     ~~mediator has first provided the parties and their attorneys, including~~  
9     ~~counsel for any minor children, with the recommendations in~~  
10    ~~writing in advance of the hearing. The court shall make an inquiry~~  
11    ~~at the hearing as to whether the parties and their attorneys have~~  
12    ~~received the recommendations in writing. If the mediator is~~  
13    ~~authorized to submit a recommendation to the court pursuant to~~  
14    ~~this subdivision, the mediation and recommendation process shall~~  
15    ~~be referred to as “child custody recommending counseling” and~~  
16    ~~the mediator shall be referred to as a “child custody recommending~~  
17    ~~counselor.” Mediators who make those recommendations are~~  
18    ~~considered mediators for purposes of Chapter 11 (commencing~~  
19    ~~with Section 3160), and shall be subject to all requirements for~~  
20    ~~mediators for all purposes under this code and the California Rules~~  
21    ~~of Court. On and after January 1, 2012, all court communications~~  
22    ~~and information regarding the child custody recommending~~  
23    ~~counseling process shall reflect the change in the name of the~~  
24    ~~process and the name of the providers.~~

25    ~~(b) A child custody recommending counselor who makes child~~  
26    ~~custody and visitation recommendations to the court is considered~~  
27    ~~a child custody evaluator for purposes of Chapter 11 (commencing~~  
28    ~~with Section 3160) and is considered a child custody evaluator for~~  
29    ~~purposes of Chapter 6 (commencing with Section 3110). A child~~  
30    ~~custody recommending counselor shall be subject to all~~  
31    ~~requirements for mediators and custody evaluators for all purposes~~  
32    ~~under this code and the California Rules of Court. Commencing~~  
33    ~~January 1, 2016, a child custody recommending counselor’s report~~  
34    ~~shall be submitted on, or attached to, the completed form developed~~  
35    ~~pursuant to Section 3117.5. The recommendation report may be~~  
36    ~~considered by the court if, (1) it is submitted on, or attached to,~~  
37    ~~the completed Judicial Council form, and, (2) it documents~~  
38    ~~compliance with the minimum state-mandated child custody~~  
39    ~~evaluation standards applicable to the scope of the evaluation.~~

1     ~~(e) If the parties have not reached agreement as a result of the~~  
2     ~~mediation proceedings, the mediator may recommend to the court~~  
3     ~~that an investigation be conducted pursuant to Chapter 6~~  
4     ~~(commencing with Section 3110) or that other services be offered~~  
5     ~~to assist the parties to effect a resolution of the controversy before~~  
6     ~~a hearing on the issues.~~  
7     ~~(d) In appropriate cases, the mediator may recommend that~~  
8     ~~restraining orders be issued, pending determination of the~~  
9     ~~controversy, to protect the well-being of the child involved in the~~  
10    ~~controversy.~~