

## Assembly Bill No. 200

### CHAPTER 849

An act to amend Sections 3004, 3011, 3020, 3040, 3161 and 3162 of the Family Code, relating to family law.

[Approved by Governor October 9, 1997. Filed  
with Secretary of State October 10, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 200, Kuehl. Child custody.

Existing law provides that it is the policy of this state to assure children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage those parents to share the rights and responsibilities of child rearing, except where contact would not be in the best interest of the child. Existing law also specifies factors that the court shall consider in determining the best interest of the child in proceedings relating to custody or visitation.

This bill would declare that it is also the policy of this state that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making orders regarding custody or visitation, that perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child, and that where this policy and the existing policy are in conflict an order for custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members. The bill would require that decisions by a court or mediator regarding custody, visitation or other continuing contact by the child with both parents shall be consistent with these policies and the best interest of the child. The bill would also require that, if custody is granted to a parent who is alleged to have a history of committing child or domestic abuse or habitually or continually using alcohol or illegal drugs, as specified, the court's order shall specify the court's reasons and any order regarding custody or visitation shall be specific as to the time, day, place, and manner of transfer of the child, as specified, except where the parties stipulate to custody or visitation.

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

SECTION 1. Section 3004 of the Family Code is amended to read:

3004. "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of

frequent and continuing contact with both parents, subject to Sections 3011 and 3020.

SEC. 2. Section 3011 of the Family Code is amended to read:

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

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

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

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

(2) The other parent.

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

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

(c) The nature and amount of contact with both parents.

(d) The habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, “controlled substances” has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

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



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

SEC. 3. Section 3020 of the Family Code is amended to read:

3020. (a) The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.

(b) The Legislature finds and declares that it is the public policy of this state to assure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child, as provided in Section 3011.

(c) Where the policies set forth in subdivisions (a) and (b) of this section are in conflict, any court's order regarding custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

SEC. 4. Section 3040 of the Family Code is amended to read:

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Section 3011 and 3020, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

SEC. 5. Section 3161 of the Family Code is amended to read:

3161. The purposes of a mediation proceeding are as follows:

(a) To reduce acrimony that may exist between the parties.



(b) To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child, consistent with Sections 3011 and 3020.

(c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

SEC. 6. Section 3162 of the Family Code is amended to read:

3162. (a) Mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.

(b) The standards of practice shall include, but not be limited to, all of the following:

(1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents, consistent with Sections 3011 and 3020.

(2) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.

(3) The conducting of negotiations in such a way as to equalize power relationships between the parties.

(c) In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage.

(d) The Judicial Council shall offer training with respect to the standards to mediators.

