

Introduced by Senator Calderon

February 26, 1997

An act to amend Section 1218.5 of the Code of Civil Procedure, and to add Part 2.5 (commencing with Section 3300) to Division 8 of the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

SB 779, as introduced, Calderon. Custody and visitation enforcement.

Existing law requires a court to grant reasonable visitation rights to a parent in granting a child custody order unless the visitation would be detrimental to the best interest of the child. Existing law authorizes the granting of reasonable visitation rights to other persons, as specified.

This bill would create an office of the Friend of the Court in each county for the purpose of enforcement of custody and visitation orders, as specified. The bill would require the Child Support Bureau of the State Department of Social Services and the Statewide Office of Family Court Services to administer jointly the Friend of the Court program and to maintain records on the denial of access time, as specified. The friend of the court in each county would be required to perform specified duties in disputes concerning the denial of child custody or visitation rights, thereby imposing a state-mandated local program. The bill would require the Statewide Office of Family Court Services to formulate a makeup custody and visitation policy, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 1218.5 of the Code of Civil
2 Procedure is amended to read:

3 1218.5. (a) If the contempt alleged is for failure to
4 pay child, family, or spousal support, each month for
5 which payment has not been made in full may be alleged
6 as a separate count of contempt and punishment imposed
7 for each count proven. *If the contempt alleged is for a*
8 *violation of a custody or visitation order under Part 2.5*
9 *(commencing with Section 3300) of Division 8 of the*
10 *Family Code or any other provision of law, each day of*
11 *access time that is denied may be alleged and punished*
12 *as a separate contempt.*

13 (b) If the contempt alleged is the failure to pay child,
14 family, or spousal support, *or is a violation of access time*
15 *under Part 2.5 (commencing with Section 3300) of*
16 *Division 8 of the Family Code*, the period of limitations
17 for commencing a contempt action is three years from
18 the date that the payment was due *or the access time*
19 *denied*. If the action before the court is enforcement of
20 another order under the Family Code, the period of
21 limitations for commencing a contempt action is two
22 years from the time that the alleged contempt occurred.

23 SEC. 2. Part 2.5 (commencing with Section 3300) is
24 added to Division 8 of the Family Code, to read:

25



1 PART 2.5. THE CUSTODY AND VISITATION
2 ENFORCEMENT ACT
3

4 3300. (a) The Legislature finds and declares all of the
5 following:

6 (1) Children do best when their court-ordered
7 relationship with a parent or another loved one is
8 protected and permitted to continue unhindered by the
9 interference of the other parent or another loved one.

10 (2) The stress and friction created when a parent or
11 loved one interferes with or denies court-ordered
12 parenting time or visitation with a child is harmful to the
13 child.

14 (3) The failure to enforce custody or visitation orders
15 with equal vigor, commitment, and ease of access as
16 violations of other court orders such as child support
17 orders, engenders disrespect for court orders generally
18 and promotes a misconception that these orders are of
19 lesser value than support orders or other court orders.

20 (4) Other states have demonstrated that treating the
21 enforcement of custody and visitation orders with the
22 same vigor, commitment, and ease of access as used for
23 the enforcement of support orders actually increases the
24 enforcement of support orders as well.

25 (b) To accomplish the purposes of subdivision (a), it is
26 the intent of the Legislature in establishing this part that
27 all custody and visitation orders be enforced with the
28 same vigor, commitment, and ease of access as support
29 orders.

30 3300.5. This part shall be known and may be cited as
31 the Custody and Visitation Enforcement Act.

32 3301. (a) In each county, an office of the Friend of
33 the Court is hereby created. Personnel of the family
34 support bureau of the district attorney's office in each
35 county shall staff the office for purposes of enforcement
36 of custody and visitation orders. Personnel of the office of
37 family court services in each county shall staff the office
38 for the purposes of mediation, evaluation, and
39 recommendation as to the best interests of the child as
40 relates to violations of visitation and custody orders.

1 (b) The Child Support Bureau of the State
2 Department of Social Services, and the Statewide Office
3 of Family Court Services shall jointly have the
4 responsibility for the friend of the court program in
5 California. The department and the statewide office shall
6 do all of the following:

7 (1) Set up policies for the coordination of activities and
8 cooperation between the district attorney's family
9 support bureaus and family court services offices to
10 enable them to meet the goals of this part.

11 (2) Establish a makeup custody and visitation policy to
12 be used in each county.

13 (3) Establish a method for evaluating the information
14 obtained under Section 3307.

15 3302. "Custody" means any parenting time provided
16 to a parent or legal guardian in a court order, whether
17 obtained by a stipulation or by a finding of the court.
18 "Visitation" means any time in which a person who is
19 neither a parent or a legal guardian obtains court-ordered
20 time in which the child is temporarily in the care, custody,
21 and control of that person. "Access time" means any time,
22 whether custody or visitation, in which a person has a
23 court-ordered right to a specified period of time in which
24 a child or children is in his or her care, custody, and
25 control, whether obtained by a stipulation or by a finding
26 of the court.

27 3303. (a) Except as provided in subdivision (b), the
28 friend of the court in each county shall, upon receiving a
29 notice from a party that alleges the party has been denied
30 access time, do one or more of the following in a dispute
31 concerning the denial of custody or visitation of a minor
32 child:

33 (1) Apply the makeup custody and visitation policy
34 established under Section 3304.

35 (2) Commence civil contempt proceedings pursuant
36 to Section 3305.

37 (3) Petition the court for a modification of the existing
38 custody or visitation provisions to ensure custody and
39 visitation, unless contrary to the best interests of the child.



1 A written report and recommendation shall
2 accompany the petition.

3 (b) The friend of the court shall not invoke any option
4 under subdivision (a) if the parties resolve their dispute
5 through an informal joint meeting or through mediation
6 as provided under Chapter 11 (commencing with Section
7 3160) of Part 2.

8 3304. (a) Not later than July 1, 1998, the Statewide
9 Office of Family Court Services, after consultation with
10 the State Department of Social Services, shall formulate
11 a makeup custody and visitation policy under which a
12 person who is denied access time is able to make up the
13 time at a later date.

14 (b) Before the makeup custody and visitation policy is
15 applied in a particular case, the friend of the court in the
16 county shall send to both parties a notice, by ordinary mail
17 to the person's last known address, that the policy will be
18 applied in their case.

19 (c) The makeup custody and visitation policy shall at
20 a minimum contain the following:

21 (1) The makeup custody or visitation time shall be of
22 the same type and duration as the time that was denied,
23 including, but not limited to, weekday for weekday,
24 weekend for weekend, holiday for holiday, and summer
25 day for summer day.

26 (2) The time for the makeup access time shall be
27 chosen by the person who was denied his or her time with
28 the child.

29 (3) The person denied access time shall give to the
30 friend of the court in the county and to the other parent
31 or person who denied the access time, a written notice of
32 makeup access time at least one week before a makeup
33 weekday or weekend access time and at least 30 days
34 before a makeup holiday or summer day.

35 (d) The person denied access time with a child shall
36 give written notice to the friend of the court in the county
37 in which the court has jurisdiction over the custody issue
38 within 14 days of the alleged denial, and the friend of the
39 court shall keep an accurate record of all alleged custody
40 and visitation arrears reported to it.



1 (e) When a denied access time is alleged, the friend of
 2 the court shall give to the parent or person alleged to have
 3 denied the time with the child, within 10 days after
 4 receipt of the notice of denied access time required by
 5 subdivision (d), a notice, that shall contain the following
 6 statement in boldface type of not less than 12-point type:

7
 8 FAILURE TO RESPOND IN 14 DAYS TO THE OFFICE
 9 OF THE FRIEND OF THE COURT LISTED BELOW
 10 SHALL BE CONSIDERED AS AN AGREEMENT THAT
 11 CUSTODY OR VISITATION TIME (ACCESS TIME)
 12 WITH THE NAMED CHILD OR CHILDREN HAS
 13 BEEN DENIED. IN SUCH AN INSTANCE MAKEUP
 14 TIME WILL BE REQUIRED. THE FAILURE TO
 15 PROVIDE MAKEUP TIME, OR THE CONTINUED
 16 DENIAL OF COURT-ORDERED ACCESS TIME WILL
 17 RESULT IN THE FILING OF AN ACTION FOR CIVIL
 18 CONTEMPT OR A MODIFICATION OF THE
 19 CUSTODY OR VISITATION ORDER.

20
 21 IF YOU DISAGREE THAT THE STATED ACCESS
 22 TIME WAS DENIED, OR YOU BELIEVE THAT THE
 23 DENIAL OF ACCESS TIME WAS NECESSARY FOR
 24 THE BEST INTEREST OF THE CHILD OR
 25 CHILDREN, YOU MUST NOTIFY THE OFFICE OF
 26 THE FRIEND OF THE COURT IN WRITING WITHIN
 27 14 DAYS OF THE DATE LISTED ON THIS NOTICE.
 28 UPON RECEIPT OF THE WRITTEN OBJECTION, A
 29 HEARING WILL BE SET BY THE FRIEND OF THE
 30 COURT TO DETERMINE WHETHER ACCESS TIME
 31 WAS DENIED, AND WHAT THE CONSEQUENCES
 32 OF THAT DENIAL SHALL BE, UNLESS YOU AND
 33 THE OTHER PARENT OR PERSON RESOLVE THIS
 34 DISPUTE THROUGH INFORMAL MEETINGS OR
 35 MEDIATION.

36
 37 (f) If the parent or person who is alleged to have
 38 denied access time makes a timely reply contesting the
 39 alleged denial, a hearing shall be held by the court after
 40 notice of the date, time, and place of the hearing is given



1 to all interested parties. The court shall determine
2 whether the access time was denied and what the
3 appropriate consequences shall be as provided in Section
4 3305.

5 3305. (a) If the court finds that a parent or other
6 person has violated a custody or visitation order and does
7 not have a defense under Section 3306, the court shall find
8 that parent in contempt and may take one or more of the
9 following actions:

10 (1) Require additional terms and conditions consistent
11 with the court's custody or visitation order.

12 (2) After notice to both parties and a hearing, if
13 requested by a party, on any proposed modification of
14 custody or visitation, modify the order to meet the best
15 interests of the child.

16 (3) Order makeup access time be provided to take the
17 place of wrongfully denied access time.

18 (4) Commit the parent or person who wrongfully
19 denied access time to community service or county jail
20 pursuant to subdivision (c) of Section 1218 of the Code of
21 Civil Procedure.

22 (b) Notwithstanding paragraph (1) of subdivision (a)
23 of Section 3303 and paragraphs (1) and (3) of subdivision
24 (a), where the court finds that a person or persons have
25 denied access time for one or more persons on more than
26 one occasion, the court shall, in addition to providing
27 makeup time, or any other relief provided, commit the
28 offending person or persons to community service or
29 county jail pursuant to subdivision (c) of Section 1218 of
30 the Code of Civil Procedure.

31 3306. It is a defense to a denial of access time if the
32 denial was necessary in the best interests of the child or
33 children and the person or persons denying the access
34 time had no other reasonable recourse, such as seeking a
35 modification or clarification of the court order. If the
36 court finds that the defense under this section applies, the
37 court shall state the specific factors on which it has based
38 its findings on the record.

39 3307. (a) The agencies administering the friend of
40 the court program under subdivision (b) of Section 3301



1 shall maintain records of the denial of access time for
2 purpose of evaluating the effectiveness of the program.
3 Information that shall be obtained and maintained shall
4 include, but need not be limited to, the following:

5 (1) The number of cases in which access is denied in
6 each county and the total number of cases for the state.

7 (2) The number of cases in which access is denied on
8 more than one occasion and the number of cases in which
9 the issue of denial of access is brought before the court on
10 more than one occasion.

11 (3) The reasons stated for the denial of access.

12 (4) The number of cases in which the court finds a
13 defense to the denial of access and the reasons the court
14 finds for the defense.

15 (5) The number of cases in which the court has
16 modified the custody or visitation order, and the number
17 of cases in which the court has committed a person or
18 persons to jail or required performance of community
19 service as the result of the denial of access time.

20 (b) The statistics and information obtained under this
21 section shall be made available annually, upon request, to
22 the Legislature or other interested persons.

23 SEC. 3. Notwithstanding Section 17610 of the
24 Government Code, if the Commission on State Mandates
25 determines that this act contains costs mandated by the
26 state, reimbursement to local agencies and school
27 districts for those costs shall be made pursuant to Part 7
28 (commencing with Section 17500) of Division 4 of Title
29 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million
31 dollars (\$1,000,000), reimbursement shall be made from
32 the State Mandates Claims Fund.

33 Notwithstanding Section 17580 of the Government
34 Code, unless otherwise specified, the provisions of this act
35 shall become operative on the same date that the act
36 takes effect pursuant to the California Constitution.

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