

AMENDED IN ASSEMBLY JULY 9, 1997
AMENDED IN ASSEMBLY JUNE 30, 1997
AMENDED IN SENATE JUNE 3, 1997
AMENDED IN SENATE MAY 20, 1997
AMENDED IN SENATE MAY 12, 1997
AMENDED IN SENATE MAY 1, 1997

SENATE BILL

No. 779

Introduced by Senator Calderon

February 26, 1997

An act to amend Section 1218.5 of the Code of Civil Procedure, and to add *Sections 293 and 294 to, 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 amended, 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 enact the Custody and Visitation Enforcement Act, which would establish a pilot program in up to 5 counties in each of which an Office of the Friend of the Court would be created for the purpose of enforcement of

custody and visitation orders. The bill would require the Child Support Bureau of the State Department of Social Services and the Judicial Council to jointly administer this program and to maintain records of cases, as specified. The Office of the Friend of the Court in each pilot county would be required to perform specified duties in disputes concerning the denial of child custody or visitation rights or violations of custody or visitation orders, 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 bill would specify that funding for any duties imposed on governmental agencies by the bill shall be provided by federal funds received by the state under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The bill would provide that these provisions shall become operative only if federal funds are made available for their implementation and would prohibit the allocation of state funds for the purposes of the program.

The bill also would make organizational, clarifying changes.

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



1 which payment has not been made in full may be alleged
2 as a separate count of contempt and punishment imposed
3 for each count proven. If the contempt alleged is for a
4 violation of a custody or visitation order under Part 2.5
5 (commencing with Section 3300) of Division 8 of the
6 Family Code or any other provision of law, each violation
7 of the order may be alleged and punished as a separate
8 contempt.

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

20 SEC. 2. *Section 293 is added to the Family Code, to*
21 *read:*

22 *293. In any court action in which a party is found in*
23 *contempt of court for failure to comply with a court order*
24 *pursuant to this code, or Sections 11350 to 11476.1,*
25 *inclusive, of the Welfare and Institutions Code, the court*
26 *shall order the following:*

27 *(a) Upon a first finding of contempt, the court shall*
28 *order the contemner to perform community service of up*
29 *to 120 hours, or to be imprisoned up to 120 hours, for each*
30 *count of contempt.*

31 *(b) Upon the second finding of contempt, the court*
32 *shall order the contemner to perform community service*
33 *of up to 120 hours, in addition to ordering imprisonment*
34 *of the contemner up to 120 hours, for each count of*
35 *contempt.*

36 *(c) Upon the third or any subsequent finding of*
37 *contempt, the court shall order both of the following:*

38 *(1) The court shall order the contemner to serve a*
39 *term of imprisonment of up to 240 hours, and to perform*



1 community service of up to 240 hours, for each count of
2 contempt.

3 (2) The court shall order the contemner to pay an
4 administrative fee, not to exceed the actual cost of the
5 contemner's administration and supervision, while
6 assigned to a community service program pursuant to this
7 subdivision.

8 SEC. 3. Section 294 is added to the Family Code, to
9 read:

10 294. (a) If the contempt alleged is for failure to pay
11 child, family, or spousal support, each month for which
12 payment has not been made in full may be alleged as a
13 separate count of contempt and punishment imposed for
14 each count proven. If the contempt alleged is for a
15 violation of a custody or visitation order under Part 2.5
16 (commencing with Section 3300) of Division 8 or any
17 other provision of law, each violation of the order may be
18 alleged and punished as a separate contempt.

19 (b) If the contempt alleged is the failure to pay child,
20 family, or spousal support, or is a violation of access time
21 or a custody or visitation order under Part 2.5
22 (commencing with Section 3300) of Division 8, the period
23 of limitations for commencing a contempt action is three
24 years from the date that the payment was due or the
25 access time denied. If the action before the court is
26 enforcement of another order under this code, the period
27 of limitations for commencing a contempt action is two
28 years from the time that the alleged contempt occurred.

29 SEC. 4. Part 2.5 (commencing with Section 3300) is
30 added to Division 8 of the Family Code, to read:

31
32 PART 2.5. THE CUSTODY AND VISITATION
33 ENFORCEMENT ACT
34

35 3300. It is the intent of the Legislature in establishing
36 this part that all custody and visitation orders be enforced
37 with the same vigor, commitment, and ease of access as
38 support orders.

39 3301. This part shall be known and may be cited as the
40 Custody and Visitation Enforcement Act.



1 3302. (a) The Child Support Bureau of the State
2 Department of Social Services and the Judicial Council
3 shall jointly have the responsibility for the Friend of the
4 Court program, which is hereby established in the State
5 of California as a pilot program.

6 (b) The pilot program shall be designed in
7 consultation with representatives of the California Judges
8 Association, the California State Bar, Family Law Section,
9 legislative staff, and representatives of advocacy groups
10 for fathers, mothers, and victims of domestic violence.
11 The pilot program shall be designed to include counties
12 from different parts of the state, with at least one rural
13 and one suburban county and with at least one county
14 which currently has a family law facilitator program in
15 operation, but shall consist of no more than five pilot
16 counties.

17 (c) Funding for any additional duties imposed by this
18 part shall be provided by federal funds received pursuant
19 to the Federal Personal Responsibility and Work
20 Opportunity Reconciliation Act of 1996.

21 (d) The pilot program shall go into effect within six
22 months of the date of approval of the program by the
23 federal government and shall continue so long as federal
24 funding is available for the program.

25 (e) The department and the Judicial Council shall
26 evaluate and annually report to the Legislature on the
27 Friend of the Court program.

28 3303. (a) In each pilot county, an Office of the Friend
29 of the Court is hereby created. Personnel of the office of
30 family court services in each county shall staff the office
31 for the purposes of mediation, evaluation, and
32 recommendation as to the best interests of the child as
33 relates to violations of visitation and custody orders. A
34 county that currently does not provide recommendations
35 following mediation to do evaluations and make
36 recommendations regarding custody or visitation is not
37 required to do so by this part.

38 (b) The department and the Judicial Council shall do
39 all of the following:

1 (1) Set up policies for the coordination of activities and
2 cooperation between the units of the Friend of the Court
3 pilot program and existing court structures to enable
4 them to meet the goals of this part.

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

7 (3) Establish a method for maintaining and evaluating
8 the information obtained under Section 3312.

9 (4) Establish any rules, regulations, or forms,
10 consistent with the provisions of this part, which are
11 deemed necessary to implement the pilot program.

12 3304. “Access time” means any time, whether custody
13 or visitation, *including supervised visitation*, in which a
14 person has a right to a specified period of time in which
15 a child or children is in his or her care, custody, and
16 control, whether obtained by a stipulation or by a finding
17 of the court. “Order” means any aspect of a custody or
18 visitation order including, but not limited to, denials of
19 access time, the failure to take access time, or the failure
20 to abide by specific terms and conditions of the order.

21 3305. All provisions of this code and of all other codes
22 shall apply to this part, except as modified by this part.

23 3306. (a) The Statewide Office of Family Court
24 Services shall promulgate guidelines for a makeup
25 custody and visitation policy which is to be implemented
26 unless the parties stipulate to a different arrangement for
27 making up denied access time, or for clarifying or
28 modifying any other terms or conditions of a custody or
29 visitation order.

30 (b) The makeup custody and visitation policy shall
31 provide for all of the following consistent with the best
32 interests of the child:

33 (1) That the makeup custody or visitation time shall be
34 of substantially the same type and duration as the time
35 that was denied, to the extent practical, and that
36 preference for the makeup time shall be given to the
37 person who is denied access time.

38 (2) Education of parents so they may better
39 understand the orders, the need to comply with the
40 orders, the effects of noncompliance on the child, and



1 how to effectively communicate with each other when
2 questions or disputes as to the order arise.

3 (3) Referrals to parenting classes or counseling where
4 it is deemed necessary to help the parents learn to
5 communicate with each other as regards the child and
6 how to coparent in a healthy manner.

7 (c) Notwithstanding subdivision (b), if changed
8 circumstances and the best interest of the child require
9 that a custody or visitation arrangement different than
10 that provided for in the current court order be
11 implemented, then either of the following shall apply:

12 (1) The parties may stipulate to the changed schedule,
13 terms, or conditions which shall then be drafted into a
14 new order which shall be filed with, and signed by, the
15 court.

16 (2) The matter shall be referred to the enforcement
17 unit of the friend of the court who shall file and request
18 the court to set the matter for hearing either on a motion
19 to enforce or for contempt.

20 3307. (a) A person denied access time with a child, or
21 who alleges a violation of an order, *may use the services*
22 *of the Office of the Friend of the Court. The person shall*
23 *give written notice to the Office of the Friend of the*
24 *Court in the county in which the court has jurisdiction*
25 *over the custody issue within 14 days of the alleged denial*
26 *or violation, and the Office of the Friend of the Court shall*
27 *keep an accurate record of all alleged custody and*
28 *visitation arrears and violations reported to it.*

29 (b) When a denied access time or violation of an order
30 is alleged, the friend of the court shall give to the parent
31 or person alleged to have denied the time with the child,
32 within 10 days after receipt of the notice of denied access
33 time required by subdivision (a), a notice that shall
34 contain the following statement in boldface type of not
35 less than 12 points:

36
37 **“FAILURE TO RESPOND IN 14 DAYS TO THE**
38 **OFFICE OF THE FRIEND OF THE COURT LISTED**
39 **BELOW SHALL BE CONSIDERED AS AN**
40 **AGREEMENT THAT CUSTODY OR VISITATION**



1 TIME (ACCESS TIME) WITH THE NAMED CHILD
2 OR CHILDREN HAS BEEN DENIED, OR THAT SOME
3 PROVISION OF THE CUSTODY OR VISITATION
4 ORDER WAS VIOLATED. IN SUCH AN INSTANCE,
5 MAKEUP TIME WILL BE REQUIRED. THE FAILURE
6 TO PROVIDE MAKEUP TIME, THE CONTINUED
7 DENIAL OF COURT-ORDERED ACCESS TIME, OR
8 THE VIOLATION OF THE ORDER WILL RESULT IN
9 THE FILING OF EITHER AN ACTION FOR
10 CONTEMPT OR A MOTION TO ENFORCE THE
11 ORDER AND MAY RESULT IN A MODIFICATION OF
12 THE CUSTODY OR VISITATION ORDER.

13
14 IF YOU DISAGREE THAT THE STATED ACCESS
15 TIME WAS DENIED OR THAT THE ORDER WAS
16 VIOLATED, OR YOU BELIEVE THAT THE DENIAL
17 OF ACCESS TIME OR VIOLATION OF THE ORDER
18 WAS NECESSARY FOR THE BEST INTEREST OF
19 THE CHILD OR CHILDREN, YOU MUST NOTIFY
20 THE OFFICE OF THE FRIEND OF THE COURT IN
21 WRITING WITHIN 14 DAYS OF THE DATE LISTED
22 ON THIS NOTICE. UPON RECEIPT OF THE
23 WRITTEN OBJECTION, AN APPOINTMENT FOR
24 MEDIATION WILL BE SET BY THE FRIEND OF THE
25 ~~COURT TO DETERMINE WHETHER ACCESS TIME~~
26 ~~WAS DENIED OR THE ORDER VIOLATED, UNLESS~~
27 *COURT TO ATTEMPT TO MEDIATE THE ISSUE,*
28 *UNLESS YOU AND THE OTHER PARENT OR*
29 *PERSON RESOLVE THIS DISPUTE THROUGH*
30 *INFORMAL MEETINGS OR MEDIATION OTHER*
31 *THAN WITH THE FRIEND OF THE COURT.*

32
33 THE FAILURE TO COME TO AN AGREEMENT
34 EITHER INFORMALLY OR THROUGH MEDIATION
35 WITH THE FRIEND OF THE COURT WILL RESULT
36 IN THE *ENFORCEMENT UNIT OF THE* FILING BY
37 THE FRIEND OF THE COURT OF A MOTION TO
38 ENFORCE OR AN ACTION FOR CONTEMPT.”

39



1 (c) If the friend of the court first notifies the parent or
2 person alleged to have denied access time or violated an
3 order by telephone, the required written notice may be
4 sent by regular mail. If no telephone notification is given,
5 then the notice shall be sent by first-class mail
6 return-receipt requested.

7 (d) If the parent or person who is alleged to have
8 denied access time or violated an order makes a timely
9 reply contesting the alleged denial or violation, an
10 appointment for mediation of the issue shall be set with
11 the family court services friend of the court. The
12 mediation shall be conducted as provided for in Chapter
13 11 (commencing with Section 3160) of Part 2, and any
14 other applicable provisions of this code.

15 (e) If the parties do not resolve the issue at mediation,
16 the family court services friend of the court shall notify
17 the enforcement unit of the friend of the court, who shall
18 request the court to set the matter for hearing, either on
19 a motion to enforce or a contempt action, and shall give
20 notice to both parties and the family court services friend
21 of the court of the date, time, and place of the hearing.
22 The enforcement unit of the friend of the court shall not
23 represent any party.

24 (f) Notwithstanding subdivision (e), the enforcement
25 unit of the friend of the court shall have the same
26 discretion not to pursue an action to enforce an alleged
27 violation of an order or denial of access time as a district
28 attorney has not to pursue an enforcement action for an
29 alleged violation of a child support order.

30 (g) The provisions of law generally applicable to
31 motions and contempt actions in family law matters shall
32 be applicable to the motion to enforce or a contempt
33 action filed by the enforcement unit of the friend of the
34 court pursuant to this part, including the requirement of
35 personal service of the contempt citation, except as
36 specifically modified by this part.

37 3308. If a motion to enforce is filed under this part and
38 the court finds that there has been a denial of access time
39 or other violation of the order, the court may do one or
40 more of the following:



1 (a) Require additional terms and conditions consistent
2 with the court's custody or visitation order, order the
3 parties to attend parenting classes or counseling, or make
4 other orders as the court deems necessary in the best
5 interests of the child.

6 (b) Modify the order to meet the best interests of the
7 child.

8 (c) Order that makeup access time be provided to
9 take the place of the wrongfully denied visitation.

10 ~~(d) Set the matter for a hearing on contempt.~~

11 *(d) Set the matter for a de novo hearing on contempt.*

12 *(e) Make any other orders the court deems*
13 *appropriate.*

14 3309. (a) If a contempt action is filed,
15 notwithstanding Section 1218 of the Code of Civil
16 Procedure, if the court finds that a parent or other person
17 is in contempt of the custody or visitation order, the court
18 may do one or more of the following:

19 (1) Require additional terms and conditions consistent
20 with the court's custody or visitation order, order the
21 parties to attend parenting classes or counseling, or make
22 other orders as the court deems necessary in the best
23 interests of the child.

24 (2) Modify the order to meet the best interests of the
25 child.

26 (3) Order that makeup access time be provided to
27 take the place of the wrongfully denied visitation.

28 (4) Commit the parent or person who wrongfully
29 denied access time to community service or county jail as
30 provided by subdivision (c) of Section 1218 of the Code
31 of Civil Procedure.

32 (b) Notwithstanding subdivision (a), where a person
33 has been found in contempt of a custody or visitation
34 order on a second or subsequent occasion, the court shall,
35 in addition to providing makeup time, or any other relief
36 provided, commit the offending person to community
37 service or county jail as provided by subdivision (c) of
38 Section 1218 of the Code of Civil Procedure.

39 3310. It is a defense to a denial of access time or
40 violation of an order if the court finds that the denial or



1 violation was necessary in the best interests of the child
2 or children and the person or persons denying the access
3 time or violating the order had no other reasonable
4 recourse. If the court finds that the defense under this
5 section applies, the court shall state the specific factors on
6 which it has based its findings *in writing or* on the record.

7 3311. Where a party has made ~~more than three~~
8 *repeated* allegations of denials of access time or violations
9 of court orders within a 6-month period, the court shall
10 determine whether the allegations are frivolous or made
11 for the purpose of harassment or whether the allegations
12 are founded and indicate an unwillingness by one party
13 to abide by the court's orders. The court shall then
14 consider what action, including, but not limited to, a
15 modification of the current orders, is necessary to provide
16 relief to the party who has been the subject of the
17 frivolous or harassing allegations or the continued
18 disobedience of the court's orders.

19 3312. (a) The agencies administering the Friend of
20 the Court program under subdivision (a) of Section 3302
21 shall maintain records of cases handled by the friend of
22 the court for the purpose of evaluating the effectiveness
23 of the program. Information that shall be obtained and
24 maintained shall include, but need not be limited to, the
25 following:

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

28 (2) The number of cases in which access time is denied
29 by the same party on more than one occasion and the
30 number of cases in which the issue of denial of access time
31 is brought before the court on more than one occasion.

32 (3) The number of cases in which an order is violated
33 other than by a denial of access time in each county and
34 the total number for the state.

35 (4) The number of cases in which an order is violated
36 in the same or similar manner by the same party on more
37 than one occasion and the number of cases in which the
38 issue of a violation of the order is brought before the court
39 on more than one occasion.



1 (5) The general reasons stated for the denial of access
2 time or violation of the order.

3 (6) The number of cases in which the parties reached
4 a stipulated agreement through mediation, the number
5 in which motions to enforce were filed, and the number
6 in which actions for contempt were filed, broken down by
7 county and the total number for the state.

8 (7) The number of cases in which a motion to enforce
9 or an action for contempt were filed in which the court
10 modified the order, the number in which the court found
11 an affirmative defense, the number in which the court
12 referred the parties out for parenting or counseling
13 services, and the number in which a court found a party
14 in contempt and required community service or jail time
15 for the contempt.

16 (b) The statistics and information required by this
17 section shall be made available annually, upon request, to
18 the Legislature or other interested persons.

19 3313. Funding for any additional duties imposed on
20 governmental agencies by this part shall be provided by
21 federal funds received by the state pursuant to the federal
22 Personal Responsibility and Work Opportunity
23 Reconciliation Act of 1996 (P.L. 104-193).

24 3314. This part shall become operative only if federal
25 funds are made available for its implementation. No state
26 funds shall be allocated for the purposes of this part.

27 ~~SEC. 3.—~~

28 *SEC. 5.* Notwithstanding Section 17610 of the
29 Government Code, if the Commission on State Mandates
30 determines that this act contains costs mandated by the
31 state, reimbursement to local agencies and school
32 districts for those costs shall be made pursuant to Part 7
33 (commencing with Section 17500) of Division 4 of Title
34 2 of the Government Code. If the statewide cost of the
35 claim for reimbursement does not exceed one million
36 dollars (\$1,000,000), reimbursement shall be made from
37 the State Mandates Claims Fund.

38 Notwithstanding Section 17580 of the Government
39 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

O

