

AMENDED IN SENATE AUGUST 17, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 840**

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**Introduced by Assembly Member Kuehl**  
(Principal coauthor: Senator Rainey)  
**(Coauthors: Assembly Members Havice, Keeley, Mazzoni,  
McClintock, Thomson, and Washington)**  
(Coauthors: Senators Alpert, *Chesbro*, Karnette, *Morrow*,  
Perata, and Solis)

February 24, 1999

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An act to add Section 3044 to the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, as amended, Kuehl. Child custody.

Existing law provides that custody should be granted according to the best interest of the child in a specified order of preference in which preference is first given to granting custody to both parents jointly or to either parent.

This bill would provide that there is a presumption, rebuttable as specified, that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence, as defined, ~~within the previous 10 years, against the other party seeking custody of the child or against the child or the child's siblings within the previous 5 years~~ is detrimental to the best interest of the child. The bill would ~~require the court,~~ *provide that the presumption does not apply* in cases in which both parents are perpetrators of

domestic violence, to consider which of the parents has been the primary aggressor, and would authorize the court to award custody to the other parent in accordance with specified requirements of existing law, consistent with the best interest of the child.

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

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

1 SECTION 1. Section 3044 is added to the Family  
2 Code, to read:

3 3044. (a) ~~There~~ *Upon a finding by the court that a*  
4 *party seeking custody of a child has perpetrated domestic*  
5 *violence against the other party seeking custody of the*  
6 *child or against the child or the child’s siblings within the*  
7 *previous five years, there is a rebuttable presumption*  
8 *that an award of sole or joint physical or legal custody of*  
9 *a child to a person who has perpetrated domestic*  
10 *violence, as defined in Section 6211, within the previous*  
11 ~~10 years~~, *is detrimental to the best interest of the child,*  
12 *pursuant to Section 3011. This presumption may only be*  
13 *rebutted by a preponderance of the evidence.*

14 (b) In determining whether the presumption set forth  
15 in subdivision (a) has been overcome, the court shall  
16 consider all of the following factors:

17 (1) Whether the perpetrator of domestic violence has  
18 demonstrated that giving sole or joint physical or legal  
19 custody of a child to the perpetrator is in the best interest  
20 of the child.

21 (2) Whether the perpetrator has successfully  
22 completed a batterer’s treatment program that meets the  
23 criteria outlined in subdivision (c) of Section 1203.097 of  
24 the Penal Code.

25 (3) Whether the perpetrator has successfully  
26 completed a program of alcohol or drug abuse counseling  
27 if the court determines that counseling is appropriate.

28 (4) Whether the perpetrator has successfully  
29 completed a parenting class if the court determines the  
30 class to be appropriate.



1 (5) If the perpetrator is on probation or parole,  
2 whether he or she is restrained by a protective order  
3 granted after a hearing, and whether he or she has  
4 complied with its terms and conditions.

5 (6) Whether the perpetrator of domestic violence has  
6 committed any further acts of domestic violence.

7 (c) In cases in which both parents are perpetrators of  
8 domestic violence, ~~the court shall consider which of the~~  
9 ~~parents has been the primary aggressor and may award~~  
10 ~~custody to the other parent in accordance with~~  
11 ~~subdivision (a), consistent with the best interest of the~~  
12 ~~child. “Primary aggressor,” for purposes of this~~  
13 ~~subdivision, has the meaning provided in paragraph (3)~~  
14 ~~of subdivision (e) of Section 836 of the Penal Code. For~~  
15 ~~purposes of this section, a person has “perpetrated~~  
16 ~~domestic violence” when he or she has been found by a~~  
17 ~~court to have committed an act of domestic violence as~~  
18 ~~defined in Section 6211. *this presumption shall not be*~~  
19 ~~*applicable.*~~

20 (d) *For purposes of this section, a person has*  
21 *“perpetrated domestic violence” when he or she is found*  
22 *by the court to have intentionally or recklessly caused or*  
23 *attempted to cause bodily injury, or sexual assault, or to*  
24 *have placed a person in reasonable apprehension of*  
25 *imminent serious bodily injury to that person or to*  
26 *another, or to have engaged in any behavior involving,*  
27 *but not limited to, threatening, striking, harassing,*  
28 *destroying personal property or disturbing the peace of*  
29 *another, for which a court may issue an ex parte order*  
30 *pursuant to Section 6320 to protect the other party*  
31 *seeking custody of the child or to protect the child and the*  
32 *child’s siblings.*

