

AMENDED IN ASSEMBLY APRIL 27, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1307**

**Introduced by Assembly Member Dymally**  
(Principal coauthor: Senator Ashburn)

February 22, 2005

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An act to amend Sections 3011, 3020, 3027.1, 3040, and 3118 of, and to repeal Sections 3080 and 3082 of, the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1307, as amended, Dymally. Child custody.

(1) Existing law requires the court to consider specified factors, including, but not limited to, any history of abuse, in making a determination of the best interest of a child for purposes of determining child custody.

This bill would additionally require the court to ~~order that parental responsibility for a minor child be shared equally by both parents~~ *provide both parents equal access to minor children*, and to award equal joint custody to both parents, except under specified conditions.

(2) Existing law finds and declares that it is the policy of this state to assure that the health, safety, and welfare of children are the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children.

This bill would state the further findings of the Legislature that in the absence of evidence to the contrary, the best interest of the child means *substantially* equal contact with both parents as provided in an

order for joint custody, unless a party or both parties request otherwise.

(3) Existing law authorizes the court to impose reasonable money sanctions, including reasonable attorney’s fees incurred in recovering the sanctions, against a person who knowingly makes a false accusation of child abuse or neglect during a child custody proceeding, under certain conditions.

This bill would require the court to impose these money sanctions, and to consider a finding of an intentional false accusation made by a party to be a change of circumstances of an existing custody order.

(4) Existing law requires the court to consider specified custody arrangements, in order of preference, according to the best interest of the child.

This bill would revise and recast this provision to specify that custody should be granted first to both parents jointly and equally and, second, to either parent.

(5) Existing law establishes a presumption that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a custody hearing, as specified. The court is required, when a request for joint custody is granted or denied, upon the request of any party, to state in its decision the reasons for granting or denying the request.

This bill would delete these provisions.

(6) This bill would make related, other conforming changes.

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. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The United States Supreme Court has continually
- 4 recognized that natural parents have a fundamental liberty
- 5 interest in the care, custody, and management of their children.
- 6 (b) Numerous public and private studies show that children
- 7 experience less social, educational, psychological, and legal
- 8 problems when they are raised with the equal involvement of
- 9 both parents despite separation or divorce.
- 10 (c) The current law causes unnecessary litigation, conflict
- 11 among parents, and the excessive use of limited court resources

1 by requiring courts to make a finding of the best interest of the  
2 child in every case where there are two loving, concerned parents  
3 interested in having an equal say in the raising of their child.

4 (d) Trial courts can best protect the fundamental liberty  
5 interest of parents in raising their children by awarding joint  
6 custody to both interested parents in the absence of clear and  
7 convincing evidence that such an award would not be in the best  
8 interest of the child.

9 SEC. 2. Section 3011 of the Family Code is amended to read:  
10 3011. (a) In any proceeding described in Section 3021, the  
11 court shall do both of the following:

12 ~~(1) Order that parental responsibility for a minor child be~~  
13 ~~shared equally by both parents.~~

14 ~~(2) Award equal joint custody to both parents unless both~~  
15 ~~parties jointly request otherwise or a party alleges and proves by~~  
16 ~~clear and convincing evidence that joint custody would not be in~~  
17 ~~the best interest of the child. A statement that joint physical~~  
18 ~~custody is not in the best interest of the child is not sufficient to~~  
19 ~~satisfy the requirements of this section. If the court does not~~  
20 ~~order an equal joint custody award consistent with both parties'~~  
21 ~~fundamental liberty interest in raising their children, it shall make~~  
22 ~~a finding that specifically identifies those facts it relied upon to~~  
23 ~~determine that an equal joint custody award would not be in the~~  
24 ~~best interest of the child.~~

25 *(1) To effectuate the state's policy of assuring that children*  
26 *have frequent and continuing contact with both parents as set*  
27 *forth in Section 3020, the court shall provide, to the greatest*  
28 *degree practical, both parents with substantially equal access to*  
29 *the minor children unless the court finds clear and convincing*  
30 *evidence that shared parenting would not be in the best interest*  
31 *of the child. The burden of proof that shared parenting would be*  
32 *detrimental to the child shall be upon the objecting parent.*

33 *(2) If the court does not order a joint custody award providing*  
34 *both parents with substantially equal access to the minor*  
35 *children, it shall include in the record the specific findings of the*  
36 *facts it relied upon in making its custody award.*

37 (b) In making a determination of the best interest of the child,  
38 the court shall, among any other factors it finds relevant, consider  
39 all of the following:

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

- 1 (2) (A) Any history of abuse by one parent or any other  
2 person seeking custody against any of the following:
- 3 (i) Any child to whom he or she is related by blood or affinity  
4 or with whom he or she has had a caretaking relationship, no  
5 matter how temporary.
- 6 (ii) The other parent.
- 7 (iii) A parent, current spouse, or cohabitant, of the parent or  
8 person seeking custody, or a person with whom the parent or  
9 person seeking custody has a dating or engagement relationship.
- 10 (B) As a prerequisite to the consideration of allegations of  
11 abuse, the court may require substantial independent  
12 corroboration, including, but not limited to, written reports by  
13 law enforcement agencies, child protective services or other  
14 social welfare agencies, courts, medical facilities, or other public  
15 agencies or private nonprofit organizations providing services to  
16 victims of sexual assault or domestic violence. As used in this  
17 subdivision, “abuse against a child” means “child abuse” as  
18 defined in Section 11165.6 of the Penal Code, and abuse against  
19 any of the other persons described in clause (ii) or (iii) of  
20 subparagraph (A) means “abuse” as defined in Section 6203.
- 21 (3) The nature and amount of contact with both parents, except  
22 as provided in Section 3046.
- 23 (4) The habitual or continual illegal use of controlled  
24 substances or habitual or continual abuse of alcohol by either  
25 parent. Before considering these allegations, the court may first  
26 require independent corroboration, including, but not limited to,  
27 written reports from law enforcement agencies, courts, probation  
28 departments, social welfare agencies, medical facilities,  
29 rehabilitation facilities, or other public agencies or nonprofit  
30 organizations providing drug and alcohol abuse services. As used  
31 in this paragraph, “controlled substances” has the same meaning  
32 as defined in the California Uniform Controlled Substances Act,  
33 Division 10 (commencing with Section 11000) of the Health and  
34 Safety Code.
- 35 (5) Any additional information or evidence the court finds  
36 relevant.
- 37 (c) (1) Where allegations about a parent pursuant to paragraph  
38 (2) or (4) of subdivision (b) have been brought to the attention of  
39 the court in the current proceeding, and the court makes an order  
40 for sole or joint custody to that parent, the court shall state its

1 reasons in writing or on the record. In these circumstances, the  
2 court shall ensure that any order regarding custody or visitation is  
3 specific as to time, day, place, and manner of transfer of the child  
4 as set forth in subdivision (b) of Section 6323.

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

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

9 3020. (a) The Legislature finds and declares that it is the  
10 public policy of this state to assure that the health, safety, and  
11 welfare of children shall be the court's primary concern in  
12 determining the best interest of children when making any orders  
13 regarding the physical or legal custody or visitation of children.  
14 The Legislature further finds that in the absence of evidence to  
15 the contrary, the best interest of the child means *substantially*  
16 equal contact with both parents as provided in an order for joint  
17 custody unless a party or both parties request otherwise. The  
18 Legislature further finds and declares that the perpetration of  
19 child abuse or domestic violence in a household where a child  
20 resides is detrimental to the child.

21 (b) The Legislature finds and declares that it is the public  
22 policy of this state to assure that children have frequent and  
23 continuing contact with both parents after the parents have  
24 separated or dissolved their marriage, or ended their relationship,  
25 and to encourage parents to share equally the rights and  
26 responsibilities of child rearing, except where the contact would  
27 not be in the best interest of the child, as provided in Section  
28 3011.

29 ~~(e) The Legislature finds and declares that in order to effect~~  
30 ~~the policies set forth in subdivisions (a) and (b) efficiently,~~  
31 ~~minimize unnecessary conflict between the parties, and reduce~~  
32 ~~any undue interference by government in the fundamental right~~  
33 ~~of parents to raise their children, courts shall order joint custody~~  
34 ~~equally to both parents as provided in Section 3011, unless the~~  
35 ~~court finds it would not be in the best interest of the child.~~  
36 ~~Consistent with this policy, any court order regarding visitation~~  
37 ~~shall be made in a manner that ensures the health, safety, and~~  
38 ~~welfare of all family members.~~

39 (c) *Where the policies set forth in subdivisions (a) and (b) of*  
40 *this section are in conflict, any court's order regarding physical*

1 *or legal custody or visitation shall be made in a manner that*  
2 *ensures the health, safety, and welfare of the child and the safety*  
3 *of all family members.*

4 SEC. 4. Section 3027.1 of the Family Code is amended to  
5 read:

6 3027.1. (a) If a court determines, based on the investigation  
7 described in Section 3027 or other evidence presented to it, that  
8 an accusation of child abuse or neglect made during a child  
9 custody proceeding is false and the person making the accusation  
10 knew it to be false at the time the accusation was made, the court  
11 shall impose reasonable money sanctions, not to exceed all costs  
12 incurred by the party accused as a direct result of defending the  
13 accusation, and reasonable attorney's fees incurred in recovering  
14 the sanctions, against the person making the accusation. The  
15 court also shall consider a finding of an intentional false  
16 accusation made by a party to be a change of circumstances of an  
17 existing custody order. For the purposes of this section, "person"  
18 includes a witness, a party, or a party's attorney.

19 (b) On motion by any person requesting sanctions under this  
20 section, the court shall issue its order to show cause why the  
21 requested sanctions should not be imposed. The order to show  
22 cause shall be served on the person against whom the sanctions  
23 are sought and a hearing thereon shall be scheduled by the court  
24 to be conducted at least 15 days after the order is served.

25 (c) The remedy provided by this section is in addition to any  
26 other remedy provided by law.

27 SEC. 5. Section 3040 of the Family Code is amended to read:

28 3040. (a) Custody should be granted in the following order  
29 of preference as provided in Sections 3011 and 3020:

30 (1) To both parents jointly and equally.

31 (2) To either parent. In making an order granting custody to  
32 either parent, the court shall consider, among other factors, which  
33 parent is more likely to allow the child frequent and continuing  
34 contact with the noncustodial parent, consistent with Section  
35 3011 and 3020, and shall not prefer a parent as custodian because  
36 of that parent's sex. The court, in its discretion, may require the  
37 parents to submit to the court a plan for the implementation of  
38 the custody order.

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

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

7 (b) Subject to the provisions for ~~equal~~ joint custody provided  
8 in Section 3011, this section allows the court and the family the  
9 widest discretion to choose a parenting plan that is in the best  
10 interest of the child.

11 SEC. 6. Section 3080 of the Family Code is repealed.

12 SEC. 7. Section 3082 of the Family Code is repealed.

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

14 3118. (a) In any contested proceeding involving child  
15 custody or visitation rights, where the court has appointed a child  
16 custody evaluator or has referred a case for a full or partial  
17 court-connected evaluation, investigation, or assessment, and the  
18 court determines that there is a serious allegation of child sexual  
19 abuse, the court shall require an evaluation, investigation, or  
20 assessment pursuant to this section. When the court has  
21 determined that there is a serious allegation of child sexual abuse,  
22 any child custody evaluation, investigation, or assessment  
23 conducted subsequent to that determination shall be considered  
24 by the court only if the evaluation, investigation, or assessment is  
25 conducted in accordance with the minimum requirements set  
26 forth in this section in determining custody or visitation rights,  
27 except as specified in paragraph (1). For purposes of this section,  
28 a serious allegation of child sexual abuse means an allegation of  
29 child sexual abuse, as defined in Section 11165.1 of the Penal  
30 Code, that is based in whole or in part on statements made by the  
31 child to law enforcement, a child welfare services agency  
32 investigator, any person required by statute to report suspected  
33 child abuse, or any other court-appointed personnel, or that is  
34 supported by substantial independent corroboration as provided  
35 for in subparagraph (B) of paragraph (2) of subdivision (b) of  
36 Section 3011. When an allegation of child abuse arises in any  
37 other circumstances in any proceeding involving child custody or  
38 visitation rights, the court may require an evaluator or  
39 investigator to conduct an evaluation, investigation, or  
40 assessment pursuant to this section. The order appointing a child

1 custody evaluator or investigator pursuant to this section shall  
2 provide that the evaluator or investigator have access to all  
3 juvenile court records pertaining to the child who is the subject of  
4 the evaluation, investigation, or assessment. The order shall also  
5 provide that any juvenile court records or information gained  
6 from those records remain confidential and shall only be released  
7 as specified in Section 3111.

8 (1) This section does not apply to any emergency  
9 court-ordered partial investigation that is conducted for the  
10 purpose of assisting the court in determining what immediate  
11 temporary orders may be necessary to protect and meet the  
12 immediate needs of a child. This section does apply when the  
13 emergency is resolved and the court is considering permanent  
14 child custody or visitation orders.

15 (2) This section does not prohibit a court from considering  
16 evidence relevant to determining the safety and protection needs  
17 of the child.

18 (3) Any evaluation, investigation, or assessment conducted  
19 pursuant to this section shall be conducted by an evaluator or  
20 investigator who meets the qualifications set forth in Section  
21 3110.5.

22 (b) The evaluator or investigator shall, at a minimum, do all of  
23 the following:

24 (1) Consult with the agency providing child welfare services  
25 and law enforcement regarding the allegations of child sexual  
26 abuse, and obtain recommendations from these professionals  
27 regarding the child's safety and the child's need for protection.

28 (2) Review and summarize the child welfare services agency  
29 file. No document contained in the child welfare services agency  
30 file may be photocopied, but a summary of the information in the  
31 file, including statements made by the children and the parents,  
32 and the recommendations made or anticipated to be made by the  
33 child welfare services agency to the juvenile court, may be  
34 recorded by the evaluator or investigator, except for the identity  
35 of the reporting party. The evaluator's or investigator's notes  
36 summarizing the child welfare services agency information shall  
37 be stored in a file separate from the evaluator's or investigator's  
38 file and may only be released to either party under order of the  
39 court.

1 (3) Obtain from a law enforcement investigator all available  
2 information obtained from criminal background checks of the  
3 parents and any suspected perpetrator that is not a parent,  
4 including information regarding child abuse, domestic violence,  
5 or substance abuse.

6 (4) Review the results of a multidisciplinary child interview  
7 team (hereafter MDIT) interview if available, or if not, or if the  
8 evaluator or investigator believes the MDIT interview is  
9 inadequate for purposes of the evaluation, investigation, or  
10 assessment, interview the child or request an MDIT interview,  
11 and shall wherever possible avoid repeated interviews of the  
12 child.

13 (5) Request a forensic medical examination of the child from  
14 the appropriate agency, or include in the report required by  
15 paragraph (6) a written statement explaining why the  
16 examination is not needed.

17 (6) File a confidential written report with the clerk of the court  
18 in which the custody hearing will be conducted and which shall  
19 be served on the parties or their attorneys at least 10 days prior to  
20 the hearing. This report may not be made available other than as  
21 provided in this subdivision. This report shall include, but is not  
22 limited to, the following:

23 (A) Documentation of material interviews, including any  
24 MDIT interview of the child or the evaluator or investigator,  
25 written documentation of interviews with both parents by the  
26 evaluator or investigator, and interviews with other witnesses  
27 who provided relevant information.

28 (B) A summary of any law enforcement investigator's  
29 investigation, including information obtained from the criminal  
30 background check of the parents and any suspected perpetrator  
31 that is not a parent, including information regarding child abuse,  
32 domestic violence, or substance abuse.

33 (C) Relevant background material, including, but not limited  
34 to, a summary of a written report from any therapist treating the  
35 child for suspected child sexual abuse, excluding any  
36 communication subject to Section 1014 of the Evidence Code,  
37 reports from other professionals, and the results of any forensic  
38 medical examination and any other medical examination or  
39 treatment that could help establish or disprove whether the child  
40 has been the victim of sexual abuse.

1 (D) The written recommendations of the evaluator or  
2 investigator regarding the therapeutic needs of the child and how  
3 to ensure the safety of the child.

4 (E) A summary of the following information: whether the  
5 child and his or her parents are or have been the subject of a child  
6 abuse investigation and the disposition of that investigation; the  
7 name, location, and telephone number of the children's services  
8 worker; the status of the investigation and the recommendations  
9 made or anticipated to be made regarding the child's safety; and  
10 any dependency court orders or findings that might have a  
11 bearing on the custody dispute.

12 (F) Any information regarding the presence of domestic  
13 violence or substance abuse in the family that has been obtained  
14 from a child protective agency in accordance with paragraphs (1)  
15 and (2), a law enforcement agency, medical personnel or records,  
16 prior or currently treating therapists, excluding any  
17 communication subject to Section 1014 of the Evidence Code, or  
18 from interviews conducted or reviewed for this evaluation,  
19 investigation, or assessment.

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

23 (H) Any other information the evaluator or investigator  
24 believes would be helpful to the court in determining what is in  
25 the best interests of the child.

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

37 (d) In accordance with subdivision (d) of Section 11167 of the  
38 Penal Code, the evaluator or investigator may not disclose any  
39 information regarding the identity of any person making a report  
40 of suspected child abuse. Nothing in this section is intended to

1 limit any disclosure of information by any agency that is  
2 otherwise required by law or court order.

3 (e) The evaluation, investigation, or assessment standards set  
4 forth in this section represent minimum requirements of  
5 evaluation and the court shall order further evaluation beyond  
6 these minimum requirements when necessary to determine the  
7 safety needs of the child.

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

15 (g) An evaluation, investigation, or assessment pursuant to this  
16 section shall be suspended if a petition is filed to declare the  
17 child a dependent child of the juvenile court pursuant to Section  
18 300 of the Welfare and Institutions Code, and all information  
19 gathered by the evaluator or investigator shall be made available  
20 to the juvenile court.

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