

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY APRIL 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2893**

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**Introduced by Assembly Member Mountjoy**  
**(Coauthors: Assembly Members Haynes, Huff, La Malfa, La**  
**Suer, and Maze)**

(Coauthors: Senators Dutton and Runner)

February 24, 2006

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An act to amend Section 3030 of the Family Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2893, as amended, Mountjoy. Sex offenders: child custody and visitation.

Existing law requires a person convicted of certain sex offenses to register with the local law enforcement officer of the city or county where he or she resides or is located, as specified.

Existing law prohibits a person from being granted physical or legal custody of, or unsupervised visitation with, a child if the person *is required to be registered as a sex offender if the victim was a minor or if anyone residing in the person's household* is required to register as a sex offender ~~and because of a felony conviction in which the victim was a minor or the person has committed another specified crime against a child~~, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

This bill would ~~prohibit a person from being granted physical or legal custody of, or unsupervised visitation with, his or her children or~~

~~grandchildren if the person is required to be registered as a sex offender and the victim was the person's child or grandchild, unless the court makes a specified finding on the record. The bill would provide that a failure to make this finding would void an order granting custody or supervision under these provisions~~ *provide that the child may not be placed with the person unless the court states, in writing or on the record, the reasons for its finding that there is no significant risk to 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 3030 of the Family Code is amended to  
2 read:

3 3030. (a) (1) No person shall be granted physical or legal  
4 custody of, or unsupervised visitation with, a child if the person  
5 is required to be registered as a sex offender under Section 290 of  
6 the Penal Code where the victim was a minor, or if the person  
7 has been convicted under Section 273a, 273d, or 647.6 of the  
8 Penal Code, unless the court finds that there is no significant risk  
9 to the child and states its reasons in writing or on the record. *The*  
10 *child may not be placed in a home in which that person resides,*  
11 *nor permitted to have unsupervised visitation with that person,*  
12 *unless the court states the reasons for its findings in writing or*  
13 *on the record.*

14 (2) No person shall be granted physical or legal custody of, or  
15 unsupervised visitation with, a child if anyone residing in the  
16 person's household is required, as a result of a felony conviction  
17 in which the victim was a minor, to register as a sex offender  
18 under Section 290 of the Penal Code, unless the court finds there  
19 is no significant risk to the child and states its reasons in writing  
20 or on the record. *The child may not be placed in a home in which*  
21 *that person resides, nor permitted to have unsupervised visitation*  
22 *with that person, unless the court states the reasons for its*  
23 *findings in writing or on the record.*

24 (3) ~~No person shall be granted physical or legal custody of, or~~  
25 ~~unsupervised visitation with, his or her children or grandchildren~~  
26 ~~if the person is required to be registered as a sex offender under~~  
27 ~~Section 290 of the Penal Code and the victim was the person's~~

1 ~~child or grandchild, unless the court finds that there is no risk to~~  
2 ~~the child's health, safety, and welfare, and states the reasons for~~  
3 ~~its findings in writing or on the record. The court's failure to state~~  
4 ~~the reasons for its findings in writing or on the record shall make~~  
5 ~~an order granting physical or legal custody, or unsupervised~~  
6 ~~visitation, pursuant to this paragraph, void and unenforceable.~~

7 (4) ~~The fact that a child is permitted unsupervised contact with~~  
8 ~~a person who is required, as a result of a felony conviction in~~  
9 ~~which the victim was a minor, to be registered as a sex offender~~  
10 ~~under Section 290 of the Penal Code, shall be prima facie~~  
11 ~~evidence that the child is at significant risk. When making a~~  
12 ~~determination regarding significant risk to the child, the prima~~  
13 ~~facie evidence shall constitute a presumption affecting the burden~~  
14 ~~of producing evidence. However, this presumption shall not~~  
15 ~~apply if there are factors mitigating against its application,~~  
16 ~~including whether the party seeking custody or visitation is also~~  
17 ~~required, as the result of a felony conviction in which the victim~~  
18 ~~was a minor, to register as a sex offender under Section 290 of~~  
19 ~~the Penal Code.~~

20 (b) No person shall be granted custody of, or visitation with, a  
21 child if the person has been convicted under Section 261 of the  
22 Penal Code and the child was conceived as a result of that  
23 violation.

24 (c) No person shall be granted custody of, or unsupervised  
25 visitation with, a child if the person has been convicted of murder  
26 in the first degree, as defined in Section 189 of the Penal Code,  
27 and the victim of the murder was the other parent of the child  
28 who is the subject of the order, unless the court finds that there is  
29 no risk to the child's health, safety, and welfare, and states the  
30 reasons for its finding in writing or on the record. In making its  
31 finding, the court may consider, among other things, the  
32 following:

33 (1) The wishes of the child, if the child is of sufficient age and  
34 capacity to reason so as to form an intelligent preference.

35 (2) Credible evidence that the convicted parent was a victim of  
36 abuse, as defined in Section 6203, committed by the deceased  
37 parent. That evidence may include, but is not limited to, written  
38 reports by law enforcement agencies, child protective services or  
39 other social welfare agencies, courts, medical facilities, or other

1 public agencies or private nonprofit organizations providing  
2 services to victims of domestic abuse.

3 (3) Testimony of an expert witness, qualified under Section  
4 1107 of the Evidence Code, that the convicted parent experiences  
5 intimate partner battering.

6 Unless and until a custody or visitation order is issued pursuant  
7 to this subdivision, no person shall permit or cause the child to  
8 visit or remain in the custody of the convicted parent without the  
9 consent of the child’s custodian or legal guardian.

10 (d) The court may order child support that is to be paid by a  
11 person subject to subdivision (a), (b), or (c) to be paid through  
12 the local child support agency, as authorized by Section 4573 of  
13 the Family Code and Division 17 (commencing with Section  
14 17000) of this code.

15 (e) The court shall not disclose, or cause to be disclosed, the  
16 custodial parent’s place of residence, place of employment, or the  
17 child’s school, unless the court finds that the disclosure would be  
18 in the best interest of the child.