

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 594**

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**Introduced by Senator Torlakson**

February 18, 2005

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An act to amend Section 3030 of, and to add Section 3030.5 to, the Family Code, relating to support obligations.

LEGISLATIVE COUNSEL'S DIGEST

SB 594, as amended, Torlakson. Custody and visitation: sex offenders.

Existing law prohibits a court from granting custody of, or unsupervised visitation with, a child to a registered sex offender if the victim was a minor, 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 expand that provision to prohibit a court from granting custody of, or unsupervised visitation with, a child to a person if that person resides with either a registered sex offender whose victim was a child ~~or another person who has been convicted of one of specified crimes against a child~~. The bill would also provide that an existing custody or visitation order shall be modified or terminated consistent with that provision, as specified. *The bill would also include related findings and declarations of the Legislature.*

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:*

1     (a) *The children of the State of California are placed at risk*  
2 *when permitted to remain in contact with a parent or caretaker*  
3 *who has committed a sex crime.*

4     (b) *It is the policy of the State of California that the health,*  
5 *safety, and welfare of children shall be the court's primary*  
6 *concern in determining the best interest of children when making*  
7 *orders regarding custody or visitation.*

8     (c) *The perpetration of child abuse or domestic violence in a*  
9 *household in which a child resides is detrimental to the child.*

10    (d) *Custody and visitation orders shall be made in a manner*  
11 *that ensures the health, safety, and welfare of the child and the*  
12 *safety of all family members.*

13    (e) *The purpose of this legislation is to ensure that information*  
14 *regarding sex crimes is appropriately considered by the court in*  
15 *child custody matters and children are protected from an at-risk*  
16 *environment.*

17    (f) *With regard to juvenile court proceedings in which child*  
18 *protective services seeks to remove the child from the home and*  
19 *declare the child a dependant of the State of California, Section*  
20 *355.1 of the Welfare and Institutions Code establishes a*  
21 *presumption that a child is placed at "substantial risk of abuse*  
22 *or neglect" if a "parent guardian, or any other person who*  
23 *resides with, or has the custody of, a minor who is currently the*  
24 *subject of the petition ... is required, as the result of a felony*  
25 *conviction, to register as a sex offender pursuant to Section 290*  
26 *of the Penal Code."*

27    (g) *In the appellate case of In re John S. (2001) 88*  
28 *Cal.App.4th 1140, the court held that a stepfather's status as a*  
29 *registered sex offender constituted a presumption under*  
30 *subdivision (d) of Section 355.1 of the Welfare and Institutions*  
31 *Code that his stepchild was at a substantial risk of abuse or*  
32 *neglect, within the meaning of Section 300 of the Welfare and*  
33 *Institutions Code. The court further held that the intent of the*  
34 *Legislature in enacting Section 355.1 of the Welfare and*  
35 *Institutions Code was to focus on the heightened risk facing*  
36 *minors who come into contact with sex offenders and to ensure*  
37 *the juvenile court has information about those persons when*  
38 *assessing jurisdictional facts. The court found that, "[b]ecause*  
39 *of the overriding need to protect the child, the legislative*  
40 *considerations regarding allocation of burden of proof should*

1 *apply to noncustodial parents and guardians.” However, the*  
2 *presumption was not conclusive and affected only the burden of*  
3 *producing evidence. Thus, parties may still present evidence that*  
4 *one’s status as a registered sex offender does not place a minor*  
5 *at substantial risk of abuse or neglect.*

6 *(h) Chapter 131 of the Statutes of 1998 amended Section 3030*  
7 *of the Family Code. Prior existing law prohibited registered sex*  
8 *offenders and persons convicted of certain other offenses against*  
9 *minors, as specified, from being granted custody of, or*  
10 *unsupervised visitation with, a child, unless the court found that*  
11 *there was no significant risk to the child. Chapter 131 amended*  
12 *the law to require the court to state its reasons in writing or on*  
13 *the record when granting physical or legal custody or*  
14 *unsupervised visitation.*

15 **SECTION 1.**

16 *SEC. 2.* Section 3030 of the Family Code is amended to read:

17 3030. (a) (1) No person shall be granted physical or legal  
18 custody of, or unsupervised visitation with, a child if the person  
19 or any person residing in his or her household is required to be  
20 registered as a sex offender under Section 290 of the Penal Code  
21 where the victim was a minor, or if the person has been convicted  
22 under Section 273a, 273d, or 647.6 of the Penal Code, unless the  
23 court finds that there is no significant risk to the child and states  
24 its reasons in writing or on the record.

25 (2) The fact that a child is permitted unsupervised contact with  
26 a person who is required to be registered as a sex offender under  
27 Section 290 of the Penal Code, where the victim was a minor, ~~or~~  
28 ~~with a person who has been convicted under Section 273a, 273d,~~  
29 ~~or 647.6 of the Penal Code,~~ shall be prima facie evidence that the  
30 child is at significant risk. When making a determination  
31 regarding significant risk to the child, the prima facie evidence  
32 shall constitute a presumption affecting the burden of producing  
33 evidence.

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

38 (c) No person shall be granted custody of, or unsupervised  
39 visitation with, a child if the person has been convicted of murder  
40 in the first degree, as defined in Section 189 of the Penal Code,

1 and the victim of the murder was the other parent of the child  
2 who is the subject of the order, unless the court finds that there is  
3 no risk to the child's health, safety, and welfare, and states the  
4 reasons for its finding in writing or on the record. In making its  
5 finding, the court may consider, among other things, the  
6 following:

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

9 (2) Credible evidence that the convicted parent was a victim of  
10 abuse, as defined in Section 6203, committed by the deceased  
11 parent. That evidence may include, but is not limited to, written  
12 reports by law enforcement agencies, child protective services or  
13 other social welfare agencies, courts, medical facilities, or other  
14 public agencies or private nonprofit organizations providing  
15 services to victims of domestic abuse.

16 (3) Testimony of an expert witness, qualified under Section  
17 1107 of the Evidence Code, that the convicted parent suffers  
18 from the effects of battered women's syndrome.

19 Unless and until a custody or visitation order is issued pursuant  
20 to this subdivision, no person shall permit or cause the child to  
21 visit or remain in the custody of the convicted parent without the  
22 consent of the child's custodian or legal guardian.

23 (d) The court may order child support that is to be paid by a  
24 person subject to subdivision (a), (b), or (c) to be paid through  
25 the local child support agency, as authorized by Section 4573 of  
26 the Family Code and Division 17 (commencing with Section  
27 17000) of this code.

28 (e) The court shall not disclose, or cause to be disclosed, the  
29 custodial parent's place of residence, place of employment, or the  
30 child's school, unless the court finds that the disclosure would be  
31 in the best interest of the child.

32 ~~SEC. 2.~~

33 *SEC. 3.* Section 3030.5 is added to the Family Code, to read:

34 3030.5. (a) An order granting physical or legal custody of, or  
35 unsupervised visitation with, a child shall be modified or  
36 terminated upon the petition of one or both parents, *or the legal*  
37 *guardian or custodian*, or on the court's own motion under either  
38 of the following circumstances, unless the court finds that there is  
39 no significant risk to the child and states its reasons in writing or  
40 on the record:

1 (1) The person who has been granted physical or legal custody  
2 of, or unsupervised visitation with the child is required to be  
3 registered as a sex offender under Section 290 of the Penal Code  
4 where the victim was a minor, ~~or has been convicted under~~  
5 ~~Section 273a, 273d, or 647.6 of the Penal Code.~~

6 (2) The person who has been granted physical or legal custody  
7 of, or unsupervised visitation with, the child resides with another  
8 person who is required to be registered as a sex offender under  
9 Section 290 of the Penal Code where the victim was a minor, ~~or~~  
10 ~~has been convicted under Section 273a, 273d, or 647.6 of the~~  
11 ~~Penal Code.~~

12 (b) The fact that a child is permitted unsupervised contact with  
13 a person who is required to be registered as a sex offender under  
14 Section 290 of the Penal Code, where the victim was a minor, ~~or~~  
15 ~~with a person who has been convicted under Section 273a, 273d,~~  
16 ~~or 647.6 of the Penal Code,~~ shall be prima facie evidence that the  
17 child is at significant risk. When making a determination  
18 regarding significant risk to the child, the prima facie evidence  
19 shall constitute a presumption affecting the burden of producing  
20 evidence.