

RESOLUTION 03-01-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3030, to read as follows:

1 § 3030

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

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

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

25 (b)(1) No person shall be granted custody of, or visitation with, a child if the person has
26 been convicted under Section 261 of the Penal Code and the child was conceived as a result of
27 that violation

28 (2) Absent a conviction, a petition to terminate custody and visitation rights of a
29 biological or alleged parent may be brought under this section, at any time, to establish the child
30 was conceived due to an act made unlawful under Section 261 of the Penal Code or a similar
31 statute in another jurisdiction where the offense occurred, and if so proven, it shall be
32 conclusively presumed that custody and visitation are not in the best interests of the child.

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

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

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

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

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

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

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

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law provides for termination of parental rights when the child is a result of a rape for which the parent was convicted. That is good, but could be better. Many rapes go unprosecuted, let alone not convicted. The safety and best interests of the child here should not solely depend on the criminal justice system, nor whether the rape can be shown beyond a reasonable doubt.

The Solution: This proposal provides a solution for a parent to terminate the rights of a biological or alleged parent by showing the child is the result of a rape, by clear and convincing evidence

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Ben Rudin

RESOLUTION 03-02-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 3030, to read as follows:

1 § 3030

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

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

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

26 (b) No person shall be granted custody of, or visitation with, a child if the person has
27 been convicted under Section 261 of the Penal Code, or a similar statute in another jurisdiction,
28 and the child was conceived as a result of that violation.

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

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

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

40 agencies, courts, medical facilities, or other public agencies or private nonprofit organizations
41 providing services to victims of domestic abuse.

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

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

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

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

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Current law provides for termination or conditions for parental rights when a parent is convicted under Penal Code section 261, but not under any similar laws in other jurisdictions. In other words, if the child is a product of a rape and the rapist was convicted in California, the rapist has no custodial rights. However, if the rapist was convicted in another state, parental rights are not terminated in California.

Where the crime and conviction occurred makes no difference for the child's safety or best interests of the child and should not be legally distinguished.

The Solution: This proposal treats those convicted of the specific crimes in California equally to those convicted in other states when it comes to custodial rights over a child who is the product of a rape.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Ben Rudin

RESOLUTION 03-03-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code § 3111, to read as follows:

1 § 3111.

2

3 (a) In a contested proceeding involving child custody or visitation rights, the court may
4 appoint a child custody evaluator to conduct a child custody evaluation in cases where the court
5 determines it is in the best interest of the child. The child custody evaluation shall be conducted
6 in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and
7 all other standards adopted by the Judicial Council regarding child custody evaluations. If
8 directed by the court, the court-appointed child custody evaluator shall file a written confidential
9 report on the evaluation. ~~At least 10 days before a hearing regarding custody of the child,~~ the
10 report shall be filed with the clerk of the court in which the custody hearing will be conducted
11 and served on the parties or their attorneys, and any other counsel appointed for the child
12 pursuant to Section 3150 within sufficient time before the date of hearing to allow the parties to
13 review the report, determine whether they will stipulate to its admissibility as provided in
14 subsection (c) and/or to call the evaluator to testify on cross-examination as provided in §3117.

15 A child custody evaluation, investigation, or assessment, and a resulting report, may be
16 considered by the court only if it is conducted in accordance with the requirements set forth in
17 the standards adopted by the Judicial Council pursuant to Section 3117 and the Code of Civil
18 Procedure for timely discovery; ~~however, this does not preclude the consideration of a child~~
19 ~~custody evaluation report that contains nonsubstantive or inconsequential errors or both.~~

20 (b) The report shall not be made available other than as provided in subdivision (a) or Section
21 3025.5, or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of
22 the Probate Code. Any information obtained from access to a juvenile court case file, as defined
23 in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall
24 only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the
25 Welfare and Institutions Code.

26 (c) The report may only be received in evidence on stipulation of all interested parties and is
27 competent evidence as to all matters contained in the report.

28 (d) If the court determines that an unwarranted disclosure of a written confidential report has
29 been made, the court may impose a monetary sanction against the disclosing party. The sanction
30 shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable
31 attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with
32 substantial justification or that other circumstances make the imposition of the sanction unjust.
33 The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable
34 financial burden on the party against whom the sanction is imposed.

35 (e) The Judicial Council shall, by January 1, 2010, do the following:

36 (1) Adopt a form to be served with every child custody evaluation report that informs the
37 report recipient of the confidentiality of the report and the potential consequences for the
38 unwarranted disclosure of the report.

39 (2) Adopt a rule of court to require that, when a court-ordered child custody evaluation
40 report is served on the parties, the form specified in paragraph (1) shall be included with the
41 report.

42 (f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or
43 maliciously, and is not in the best interest of the child.

(Proposed new language underlined; language to be deleted stricken)

PROPNENT: Vicki J. Greene, Rozanna Velens, Kia Kamran, Michael Rexford, Emi Ouchi,
Joseph Carlone, Scott McDowell, Pierre Pine, Giulia Jannelli and Charles Hamilton

STATEMENT OF REASONS

The Problem: Child custody proceedings involve the fundamental rights of parents and minor children. Decisions should not be made without due process of law, including the right to cross-examine an evaluator as referenced in Fam. Code, §3117.

10-days is insufficient time to conduct discovery, designate experts and prepare for cross-examination and some interpret hearing to mean trial. They are not the same.

CCP §2024.020 provides for discovery up to and including the 30th day before trial and for discovery motions to be heard up to and including the 15th day before trial. Post-dissolution the right to conduct discovery also is reopened. Also, a hearing may be designated as a long-cause matter or trial, and there too parties need more than 10 days to prepare between the date a report is issued and the time of hearing or trial.

While Subsection (c) of §3111 provides “[t]he report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report,” the reverse is not as clear. The report should not be received into evidence or relied upon by the Court without a stipulation

The Solution: It is clearly unfair for judges to consider child custody evaluations for the purpose of making decisions of and concerning the lives of parents and their children without honoring a party litigants due process rights. The legislature has adopted statutes to protect litigants rights including the Discovery Act and the Evidence Code. Moreover, the California Supreme Court in *People v. Sanchez* reminds us that experts may not rely on case specific facts for their conclusions, it is hearsay. Child custody evaluations are filled with hearsay, case specific data accumulated from parties and third party witnesses, such as teachers, psychologists, educational therapists, relatives and minor children. Yet, when it comes to the most fundamental rights of parents and children, parent are often denied the right to prepare for a hearing, to conduct discovery, and to cross-examine these professionals because they are either not informed of these rights or because there is ambiguity in the law, in particular Family Code §3111. Parent should not lose their custodial rights and minor children should not lose the ability to spend time with one or both of their parents without the full protections provided to other litigants involved in matters involving the breach of a contract, a personal injury or a collection matter. When the

issues involve legal and physical custody of minor children that is not the time to ignore or undercut a parties right to due process of law

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None that proponent is aware of.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

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