


MEMORANDUM

DATE	April 24, 2018
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #21(b)(1)(C): AB 2044 (Stone) – Child Custody: Safety of the Child

Background:

AB 2044 would require, when considering the factors for a child custody determination, or in overcoming the presumption against the award of sole or joint legal or physical custody to a person who has perpetrated domestic violence, that the safety of the child have priority over all other considerations.

Current law establishes a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years is detrimental to the best interests of the child. AB 2044 would extend this presumption to a person who has committed domestic violence against another person with whom that party has a specified relationship in the previous five years and would make the presumption and the provisions for overcoming the presumption applicable to parties seeking visitation. The bill would require the court, in determining whether the presumption is overcome, to find that the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody, or unsupervised visitation, of a child to the perpetrator is in the best interests of the child and would specify additional factors that, on balance, are required to support the granting of custody or visitation. The bill would require the court to state its reasons for finding that the presumption has been overcome in writing or on the record.

At the April 19, 2018 Policy and Advocacy Committee Meeting, the Committee voted to watch AB 2044 and delegate to staff and a Committee Member to contact Assembly Member Stone for additional information on possible unintended consequences on the provisions relating to the rebuttable presumptions for custody and visitation. Staff will work with Ms. Jones to schedule a call with the author's office and report back to the Board at its next meeting.

Location: Senate Committee on Judiciary

Status: 4/19/18 – Referred to Senate Committee on Judiciary.

Votes: 4/5/2018 Assembly Floor (51-0-26)
4/3/2018 Assembly Committee on Judiciary (8-1-1)

Action Requested:

The Policy and Advocacy Committee recommends a watch status to the Board on AB 2044 until further fact finding regarding specified provisions of the bill can be reported back to the Board. Staff hopes to be able to report back before the next Policy & Advocacy Committee Meeting and potential Teleconference Board Meeting in July.

Attachment A: Analysis of AB 2044 (Stone)

Attachment B: AB 2044 (Stone) Bill Text

Attachment C: Assembly Committee on Judiciary Bill Analysis

2018 Bill Analysis

Author: Mark Stone	Bill Number: AB 2044	Related Bills:
Sponsor:	Version: Amended 3/22/2018	
Subject: Child custody: safety of the child		

SUMMARY

This bill would require, when considering the factors for a child custody determination, or in overcoming the presumption against the award of sole or joint legal or physical custody to a person who has perpetrated domestic violence, that the safety of the child have priority over all other considerations.

RECOMMENDATION

WATCH – Staff recommends the Board keep the bill in a watch status until the author’s office holds its primary stakeholders meeting in May and any amendments or further clarifications relating to the rebuttable presumption provisions of the bill can be reported back to the Board and a reconsideration of a position to be recommended by staff. The Board has heard considerable testimony at its meetings regarding the harm that children are or have been exposed to due to being placed in the custody of a parent that has perpetrated child abuse or domestic violence. While it is outside the Board’s purview to comment on court processes that do not directly affect the work of Board licensees, the Board may wish to play a role in advocating for the protection of children from the severe and long lasting psychological damage that can be caused by exposure to abuse and domestic violence and the importance of incorporating into Judicial Council’s training on domestic violence information about the harm children experience from repeated exposure to domestic violence during childhood.

Other Boards/Departments that may be affected:	
<input type="checkbox"/> Change in Fee(s)	<input type="checkbox"/> Affects Licensing Processes
<input type="checkbox"/> Urgency Clause	<input type="checkbox"/> Affects Enforcement Processes
<input type="checkbox"/> Regulations Required	<input type="checkbox"/> Legislative Reporting
<input type="checkbox"/> New Appointment Required	
Policy & Advocacy Committee Position:	Full Board Position:
<input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input checked="" type="checkbox"/> Watch	<input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch
Date: <u>4/19/2018</u>	Date: _____
Vote: <u>3-0-0</u>	Vote: _____

REASON FOR THE BILL

According to the author, all too often, children involved in contested custody and visitation matters are subject to abuse, including child abuse and domestic violence. Recent research by the Centers for Disease Control on adverse childhood experiences confirms that even without being the direct targets of abusive behavior, children who are exposed to violence in their homes can suffer severe and lasting harm. Those studies find that adverse childhood experiences, including exposure to domestic violence, can increase risk of alcoholism, heart disease, depression, illicit drug use, poor academic achievement and work performance, risk of domestic violence and suicide, and early death. Given this new research, California must be more vigilant and better protect children from child abuse and exposure to domestic violence.

This bill would protect children in contested custody and visitation cases by (1) better tying together two existing sections governing child custody and visitation determinations to focus on child safety; (2) clarifying that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child and that children have the right to be safe and free from abuse; (3) providing that the existing judicial training on domestic violence also include training on the detriment to children who are residing in a home where domestic violence occurs; and (4) strengthening the existing presumption against custody to a perpetrator of domestic violence, to among other things, apply to unsupervised visitation; extend to a parent who has committed domestic violence against any person with whom he or she has an intimate relationship; require the court, if it finds that the presumption against custody to a batterer has been overcome, to state its reasons in writing or on the record; and if an allegation of domestic violence is made, require the court to determine if the presumption applies before issuing a custody or visitation order.

ANALYSIS

Current law requires a family court to determine the best interests of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including whether either of the child's parents habitually or continually uses alcohol or illegal drugs. AB 2044 would require the court to make the determination consistent with specified findings, including that children have the right to be safe and free from abuse and that domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child.

The [Center for Disease Control and Prevention \(CDC\) – Kaiser Permanente study of Adverse Childhood Experiences \(ACE\)](#) found that children with higher exposure to negative and harmful experiences such as abuse, domestic violence, and substance abuse creates increased risk of chronic health conditions, depression, substance and alcohol abuse, suicide attempts, and other detrimental health and life outcomes. Additionally, research on children who witness domestic violence has found that these

children are at an increased risk for “mental health issues related to juvenile delinquency, antisocial behavior, and escalated rates of depression, anxiety, and PTSD” (National Association of Social Workers, [The Adverse Childhood Experiences \(ACE\) Study: Implications for Mothers’ & Children’s Exposure to Domestic Violence](#), Spring Practice Perspectives, May 2013). To the extent that the Board advocates for consumer protections and its licensees may be providing psychological services to victims of child abuse and those exposed to domestic violence during childhood, the Board may wish to support statutory provisions that promote a child’s right “to be safe and free from abuse” and efforts to minimize children’s exposure to domestic violence in the home.

Existing law requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including judges, referees, and mediators, and requires that the training programs include instruction in all aspects of domestic violence. AB 2044 would require this training to also cover the detriment to children who are residing in a home where domestic violence occurs.

With the inclusion of the right of a child to be safe and free from abuse, training on the significant immediate and long-term physical and mental health effects of exposure to domestic violence found in recent research may be necessary to aid those in the court system to effectively evaluate cases and appropriately prioritize that right above other factors to better protect the children in these cases. The incorporation of this information into the training of those acting on behalf of the courts during child custody and visitation disputes would hopefully lead to better outcomes for the children involved in these cases.

The other provisions in AB 2044 are outside of the Board’s purview and Board Staff have no comment on these provisions.

Existing law establishes a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child’s siblings within the previous five years is detrimental to the best interests of the child. In overcoming that presumption, existing law requires the court to consider specified factors, including whether the perpetrator of domestic violence has committed any further acts of domestic violence.

This bill would extend this presumption to a person who has committed domestic violence against another person with whom that party has a specified relationship in the previous five years and would make the presumption and the provisions for overcoming the presumption applicable to parties seeking visitation. The bill would require the court, in determining whether the presumption is overcome, to find that the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody, or unsupervised visitation, of a child to the perpetrator is in the best interests of the child and would specify additional factors that, on balance, are required to support the granting of custody or visitation. The bill would require the court to state its reasons for finding that the presumption has been overcome in writing or on the record.

LEGISLATIVE HISTORY

AB 265 (Chapter 243, Statutes of 2003) provides that, for purposes of determining the best interest of the child, the preference for frequent and continuing contact with both parents may not be used to rebut the presumption against the award of custody to a perpetrator of domestic violence. The bill additionally requires the court to consider, in determining whether the presumption has been overcome, whether the perpetrator is on probation or parole and whether he or she has complied with the terms and conditions of probation or parole. The bill also requires the court to consider whether the perpetrator is restrained by a protective order or restraining order, without regard to whether the perpetrator is on probation or parole, and whether the perpetrator has complied with the terms and conditions of the protective order or restraining order. The bill expanded the scope of these provisions to apply when there is evidence that a party has been convicted of any crime against the other party that comes within the definition of domestic violence. The bill requires the court to provide each of the parties with a written copy of these provisions and to inform them of these provisions in any custody or restraining order proceeding in which a party alleges that the other party has perpetrated domestic violence.

AB 840 (Chapter 445, Statutes of 1999) provides 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 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 provided that the presumption does not apply in cases in which both parents are perpetrators of domestic violence.

OTHER STATES' INFORMATION

Not Applicable

PROGRAM BACKGROUND

The Board advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the practice. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

This bill would not impact the operations or workload of the Board.

FISCAL IMPACT

Not Applicable

ECONOMIC IMPACT

Not Applicable

LEGAL IMPACT

Not Applicable

APPOINTMENTS

Not Applicable.

SUPPORT/OPPOSITION

Support: California Protective Parents Association; Center for Judicial Excellence; Family Violence Appellate Project; U.C. Hastings College of the Law Professor D. Kelly Weisberg; Association of Certified Family Law Specialists (support in part, oppose in part)

Opposition: Association of Certified Family Law Specialists (support in part, oppose in part)

ARGUMENTS

Proponents: Proponents are aware of many trial court decisions in this state in which sole or joint custody is awarded to a parent who has committed domestic violence against the other parent. This has continued to happen despite clear legislative directives in Family Code sections 3011, 3020, and 3044. This bill strengthens these three code sections, providing further protections for children from being in custody or visitation settings with abusive parents."

Opponents: The Association of Certified Family Law Specialists supports the best interests and judicial training provisions of the bill, but opposes all the enhancements to the presumption against custody to a batterer (except requiring that certain information be in writing or on the record), arguing that these changes could escalate custody litigation and could cause "good parents" to lose access to their children.

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AB-2044 Domestic violence: family court. (2017-2018)

SECTION 1. Section 3011 of the Family Code is amended to read:

3011. In making a determination of the best ~~interest~~ *interests* of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds ~~relevant,~~ *relevant and consistent with Section 3020*, consider all of the following:

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

(b) Any history of abuse by one parent or any other person seeking custody against any of the following:

(1) ~~Any~~ *A* child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to considering allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section ~~6203 of this code.~~ *6203*.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) ~~Where~~ *When* allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

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

SEC. 2. Section 3020 of the Family Code is amended to read:

3020. (a) The Legislature finds and declares that it is the public policy of this state to ~~assure~~ *ensure* that the health, safety, and welfare of children shall be the court's primary concern in determining the best ~~interest~~ *interests* of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that ~~the children have the right to be safe and free from abuse, and that the~~ *perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the* child.

(b) The Legislature finds and declares that it is the public policy of this state to ~~assure~~ *ensure* that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except ~~where~~ *when* the contact would not be in the best ~~interest~~ *interests* of the child, as provided in *subdivisions (a) and (c) of this section and* Section 3011.

(c) ~~Where~~ *When* the policies set forth in subdivisions (a) and (b) of this section are in conflict, ~~any~~ *a* court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

SEC. 3. Section 3044 of the Family Code is amended to read:

3044. (a) Upon a finding by the court that a party seeking custody *or visitation* of a child has perpetrated domestic violence *within the previous five years* against the other party seeking custody *or visitation* of the ~~child~~ *child*, or against the child or the child's ~~siblings within the previous five years,~~ *siblings, or against any other person with whom the party has had a relationship, as defined in Section 6211*, there is a rebuttable presumption that an award of sole or joint physical or legal custody *or unsupervised visitation* of a child to a person who has perpetrated domestic violence is detrimental to the best ~~interest~~ *interests* of the child, pursuant to ~~Section 3011. This presumption— Sections 3011 and 3020. This presumption applies for five years following a court's finding of domestic violence and~~ may only be rebutted by a preponderance of the evidence.

(b) ~~In determining whether— To overcome~~ the presumption set forth in subdivision ~~(a) has been overcome— (a)~~, the court shall ~~consider all of the following factors: find that paragraph (1) is satisfied and shall find that the factors in paragraph (2), on balance, support the legislative findings in Section 3020.~~

(1) ~~Whether the— The~~ perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal ~~custody— custody, or unsupervised visitation,~~ of a child to the perpetrator is in the best ~~interest of the child— interests of the child pursuant to Sections 3011 and 3020.~~ In determining the best ~~interest~~ *interests* of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the noncustodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Additional factors:

~~(2) (A) Whether the— The~~ perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

~~(3) (B) Whether the— The~~ perpetrator has successfully completed a program of alcohol or drug abuse ~~counseling~~ *counseling*, if the court determines that counseling is appropriate.

~~(4) (C) Whether the— The~~ perpetrator has successfully completed a parenting ~~class~~ *class*, if the court determines the class to be appropriate.

~~(5) (D) Whether the— The~~ perpetrator is on probation or parole, and ~~whether—~~ he or she has *or has not* complied with the terms and conditions of probation or parole.

~~(6) (E) Whether the— The~~ perpetrator is restrained by a protective order or restraining order, and ~~whether—~~ he or she has *or has not* complied with its terms and conditions.

~~(7) (F) Whether the— The~~ perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in ~~any—~~ behavior involving, but not limited to, threatening, striking, harassing, destroying personal ~~property~~ *property*, or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of ~~any~~ *a* crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if ~~any~~ a court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) If the court determines that the presumption in subdivision (a) has been overcome, the court shall state its reasons in writing or on the record.

(g) In an evidentiary hearing or trial in which custody or visitation orders are sought and where there has been an allegation of domestic violence, the court shall make a determination as to whether this section applies prior to issuing a custody or visitation order.

~~(h)~~ (h) In ~~any~~ a custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.

SEC. 4. *Section 68555 of the Government Code is amended to read:*

68555. The Judicial Council shall establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council. The training programs shall include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. The training programs shall include instruction in all aspects of domestic ~~violence-~~ *violence, including the detriment to children of residing in a home where domestic violence occurs.*

Date of Hearing: April 3, 2018

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 2044 (Stone) – As Amended March 22, 2018

SUBJECT: CHILD CUSTODY: DOMESTIC VIOLENCE AND CHILD SAFETY

KEY ISSUE: IN ORDER TO PROTECT CHILDREN FROM ABUSE, SHOULD THE LAW BE CLARIFIED TO BETTER DEFINE A COURT'S RESPONSIBILITY WHEN MAKING A BEST INTERESTS OF THE CHILD CUSTODY DETERMINATION AND SHOULD THE PRESUMPTION AGAINST GIVING CUSTODY TO A BATTERER BE STRENGTHENED?

SYNOPSIS

All too often, children involved in contested custody and visitation matters in family court are subject to abuse, including child abuse, child sexual abuse, and exposure to domestic violence. California has been at the forefront in establishing laws to protect children from these abuses, but children involved in family court disputes still experience harm that could be prevented with more protective custody and visitation orders. Given recent research by the Centers for Disease Control on adverse childhood experiences, which confirms that even without being the direct targets of abusive behavior, if children are exposed to domestic violence in their households, they can suffer severe and lasting harm, the need to protect children from child abuse and exposure to domestic violence is all the greater.

This bill seeks to increase protections and help ensure that children in custody and visitation arrangements established in family court are safe from harm in several key ways. First, the bill better ties together two existing sections governing child custody and visitation determinations to focus on child safety. Second, it clarifies that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child and that children have the right to be safe and free from abuse. The most significant changes in the bill involve strengthening the existing presumption against custody to a perpetrator of domestic violence, to among other things, apply to visitation as well. Finally, the bill provides that the existing judicial training on domestic violence also include training on the detriment to children of residing in a home where domestic violence occurs. This bill is supported by, among others, the California Protective Parents Association and the Family Violence Appellate Project, who write of the dangers to children under current law and the need to strengthen existing law to better protect children from abuse. The Association of Certified Family Law Specialists supports the best interests and judicial training provisions of the bill, but opposes all the enhancements to the presumption against custody to a batterer (except requiring that certain information be in writing or on the record), arguing that these changes could escalate custody litigation and could cause "good parents" to lose access to their children.

SUMMARY: Clarifies the best interests determination for child custody and legislative findings and declarations on child custody, and strengthens the presumption against custody to a perpetrator of domestic violence. Specifically, **this bill:**

- 1) Requires the court, when making a best interests of the child determination in a custody or visitation case, to make the decision consistent with the revised legislative findings and declarations that (a) the health, safety, and welfare of the child is the court's primary concern

when determining the best interests of the child, and the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child; and (b) a child should have frequent and continuing contact with both parents; but when (a) and (b) are in conflict, requires any custody or visitation order be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

- 2) Finds and declares that children have the right to be free from abuse and that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child.
- 3) Adds the following to the presumption against custody to a party that a court finds has perpetrated domestic violence within the previous five years:
 - a) A presumption against unsupervised visitation;
 - b) Extension of the presumption to a party who has committed domestic violence against any person that the party has a close relationship with, as defined by the Domestic Violence Protection Act;
 - c) Clarification that the five-year presumption runs from the court's finding of domestic violence;
 - d) Permitting the presumption against custody or unsupervised visitation to be overcome if both:
 - i) It is in the best interests of the child to allow such contact; and
 - ii) On balance, the other existing factors support such contact;
 - e) Requiring the court, if it finds that the presumption has been overcome, to state its reasons in writing or on the record; and
 - f) Requiring the court, in any evidentiary hearing in which custody or visitation is sought and where an allegation of domestic violence is made, to determine if the presumption may apply before issuing a custody or visitation order.
- 4) Requires that existing judicial training on domestic violence also include training on the detriment to children of residing in a home where domestic violence occurs.

EXISTING LAW:

- 1) Requires that custody be granted, according to a set order of preference, based on the best interests of the child, as provided. (Family Code Section 3040. Unless otherwise stated, all further statutory references are to that code.)
- 2) Requires the court in making a best interests determination, to consider all of the following, among other relevant factors:
 - a) The health, safety, and welfare of the child;
 - b) Any history of abuse or domestic violence by the parent seeking custody of the child against a child, the other parent, or another person, as provided;
 - c) The nature and amount of contact with both parents; and

d) The habitual or continual use of drugs or abuse of alcohol.

Where there are allegations of child abuse or domestic violence, or drug or alcohol abuse, and the court gives custody to that parent, requires the court to state its reasons in writing or on the record. (Section 3011.)

- 3) Provides that the Legislature finds and declares that it is the public policy of California to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody of, or visitation with, children and that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child. Provides that the Legislature finds and declares that it is the public policy of California to assure that children have frequent and continuing contact with both parents and to encourage parents to share the rights and responsibilities of child rearing in order to affect this policy, except where the contact would not be in the child's best interests. Where the policies set forth above are in conflict, requires that any custody or visitation order be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members. (Section 3020.)
- 4) Requires the court to grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interests of the child. (Section 3100.)
- 5) Creates a rebuttable presumption against custody of a child to a parent who, the court finds, has perpetrated domestic violence against the other party, the child, or the child's sibling within the previous five years. Requires the court, in considering whether to overcome the presumption against custody, to consider, among other things, whether giving that parent custody is in the child's best interests; whether the perpetrator has completed a batterer's treatment program, substance abuse program or parenting classes; and whether there have been subsequent acts of domestic violence. (Section 3044.)
- 6) Requires the Judicial Council to establish judicial training programs for individuals who perform duties in domestic violence matters, including, but not limited to, judges, referees, commissioners, mediators, and others as deemed appropriate by the Judicial Council. Requires that the training program include a domestic violence session in any orientation session conducted for newly appointed or elected judges and an annual training session in domestic violence. Requires that the training programs include instruction in all aspects of domestic violence. (Government Code Section 68555; California Rules of Court, Rule 10.464.)

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS: All too often, children involved in contested custody and visitation matters in family court are subject to abuse, including child abuse, child sexual abuse, and exposure to domestic violence. California has been at the forefront in establishing laws to protect children from these abuses, but children involved in family court disputes still experience harm that could be prevented with more protective custody and visitation orders. This bill seeks to increase those protections and help ensure that children in custody and visitation arrangements established in family court are safe from harm.

The research is clear that exposure to domestic violence harms children, both initially and throughout their lives. It goes without saying that children are harmed if they are physically abused, including if they are sexually abused. It is equally true that children are harmed when neglected or subjected to emotional harm, and children are subject to removal from their families and made dependents of the juvenile court for such neglect or abuse. (See Welfare & Institutions Code Section 300.)

Recent research confirms that even if children are not the direct targets of abusive behavior, but are exposed to domestic violence in their household, they can suffer severe and lasting harm. The Adverse Childhood Experiences (ACE) study, a collaboration between the Centers for Disease Control (CDC) and Kaiser Permanente, has studied the effect of child abuse and related childhood adversarial experiences on health consequences through surveys and health exams of over 17,000 members of the Kaiser HMO beginning in 1995. CDC continues to update those surveys. That study found that adverse childhood experiences, including exposure to domestic violence, can cause immediate and long-term adverse impacts to children, including increased risk of alcoholism, heart disease, depression, illicit drug use, poor academic achievement, poor work performance, risk of domestic violence and suicide, and early death. (Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, American Journal of Preventative Medicine (May 1998) Vol. 14, Issue 4, pp. 245-258.) The study has been replicated across more states, reaching the same conclusions. (CDC, *Adverse Childhood Experiences Reported by Adults --- Five States, 2009*, Morbidity and Mortality Weekly Report (December 17, 2010).) The dangers to children exposed to domestic violence are succinctly set forth in this summary of the results from the ACE study:

The ACE research demonstrates that exposure to domestic violence can increase risk for physical, mental health, and substance abuse conditions. Furthermore, research on children who witness domestic violence found that they face an increased risk for mental health issues related to juvenile delinquency, antisocial behavior, and escalated rates of depression, anxiety, and PTSD. The impact of chronic domestic violence exposure in childhood was found to have long-term effects throughout the life span. (National Association of Social Workers, *The Adverse Childhood Experiences (ACE) Study: Implications for Mothers' & Children's Exposure to Domestic Violence*, Spring Practice Perspectives (May 2013).)

Simply put, it is harmful to children, both immediately and throughout their lives, to be exposed to domestic violence.

If that were not enough, another reason to protect children from a parent who commits domestic violence is because there is a significant overlap between those who commit domestic violence against a partner and those who commit child abuse. In a concurring opinion to a recent court decision where the appellate court overturned a trial court's denial of renewal of a protective order, Justice Streeter wrote of the "abundance of social science studies showing a direct correlation between abuse against a parent and abuse against the children of that parent." (*De la Luz Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 402. He found:

Within this body of social science literature, most of the studies show that in 30–60 percent of families where either child abuse or spousal abuse exists, *both* forms of the abuse exist, a phenomenon no doubt reflective of the sad reality that some batterers abuse children as a way to inflict pain on the abused spouse. There is also a documented link in the severity of

spousal and related child abuse. A number of the studies show that the more severe the spousal abuse, the more severely the battered spouse's child is likely to be abused. The overlap between children witnessing domestic violence and being abused themselves has been widely documented as well. (*Id.* at 402-03 (citations omitted).)

Both direct child abuse and exposure to domestic violence harm children, and our statutes should support the prevention of these harms in family court through appropriate protective and custody orders.

California law recognizes the harms caused to children by abuse and domestic violence.

Existing law already recognizes the harm caused to children as a result of abuse or domestic violence. When determining the best interests of a child – the key determination of a custody or visitation decision – the court must consider, among other factors, the health, safety, and welfare of the child, and any history of abuse or domestic violence by the parent seeking custody of the child against a child, the other parent, or other person with whom that parent has an intimate relationship. (Section 3011.)

In addition, there are two legislative declarations regarding public policies for child custody. First, it is the public policy of California to assure that: 1) the health, safety, and welfare of children is the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody of, or visitation with, children; and 2) the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child. Second, it is the public policy of California to assure that children have frequent and continuing contact with both parents and to encourage parents to share the rights and responsibilities of child rearing, except where the contact would not be in the best interest of the child. Where the two policies are in conflict, any custody or visitation order must be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members. (Section 3020.)

While the provisions in Sections 3011 and 3020 are well-stated, it is not entirely clear, under existing law, how these two sections work together.

There is also a rebuttable presumption against custody to a batterer. (Section 3044.) That provision creates a rebuttable presumption against custody to a parent who, the court finds, has perpetrated domestic violence against the other party, the child, or the child's sibling within the previous five years. The requirement that a court make a finding of domestic violence is satisfied by, among other things, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence or abuse within the Domestic Violence Protective Act. The requirement of a finding is also satisfied if a court has made a finding under this section within the last five years.

In considering whether to overcome the presumption, the court must consider a series of factors, including, among other things, whether giving that parent custody is in the child's best interests; whether the perpetrator has completed a batterer's treatment program, substance abuse program or parenting classes; and whether there have been subsequent acts of domestic violence.

This bill seeks to clarify how courts make child custody and visitation determinations in order to strengthen abuse protections for children. This bill seeks to strengthen protections for children and prevent harm, both immediate and long-term, from abuse and domestic violence in

several key ways. First, the bill seeks to better tie together the two existing sections governing child custody and visitation determinations. Currently the Section 3011 lists factors that a court must consider in making its best interest of the child determination for awarding custody or visitation, but makes no mention of the legislative findings and declarations on some of those factors in Section 3020. This bill clarifies that the best interests determination under Section 3011 must be consistent with the legislative findings and declarations set out in Section 3020.

In addition, the bill clarifies, under the legislative findings and declaration in Section 3020, that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child and that children have the right to be safe and free from abuse. While the clarifications of these legislative findings and declarations may seem so obvious as to not require any clarification, occasional family law decisions demonstrate the need for the clarification, especially given the recent research on the long-term, detrimental effects of children's exposure to domestic violence. Supporters of this bill have shared information on various cases where trial court custody decisions do not appear to have adequately protected children from abuse or exposure to domestic violence, appearing instead to prioritize contact with both parents over child safety.

The presumption against custody to a batterer was established 20 years ago and has not recently been updated to better protect against the long-term harms to children exposed to domestic violence. The presumption against awarding custody to a perpetrator of domestic violence was first established in law nearly 20 years ago by AB 840 (Kuehl), Chap. 455, Stats. 1999. It was updated slightly 15 years ago through SB 265 (Kuehl), Chap. 243, Stats. 2003, which addressed several of the substantial issues that had been found by family law attorneys and domestic violence advocates to hinder the implementation of the original presumption in order to limit inconsistent application of the presumption around California. Since then advocates have found additional problems with implementation of the presumption that have put children in jeopardy, and this bill includes long-needed updates to better protect children from harm.

First and foremost, this bill applies to visitation as well as custody, so that if a court finds that a party has perpetrated domestic violence within the past five years, the presumption would apply to prevent, not just custody of the child, but also unsupervised visitation with the child, unless the presumption has been overcome. Visitation orders can potentially give a parent as much time or more than a custody order (for example, a visitation order could provide for multiple weekday overnight visits and full weekend visits). Even if the time is shorter, significant harm can still occur. If it is not safe to give custody to a parent with a recent history of domestic violence, it may well not be safe to give that parent unsupervised visitation with the child. In addition to the time the child will spend with the batterer, the child will likely be exposed to the transfers between the parents, which can create unique opportunities for witnessing abusive behavior. This bill will not prevent visitation; it simply requires the court to determine, if the court has made a finding of recent domestic violence triggering the presumption, if the presumption has been overcome by a preponderance of the evidence before unsupervised visitation can be ordered.

Second, the current presumption against custody to a batterer only applies if the batterer has abused the other party, the child, or the child's sibling. However, if the batterer is now abusing his or her new partner, the presumption would not apply, even though the child's danger of being exposed to domestic violence, or becoming a victim herself, would still exist. This bill extends

the presumption to cover those permitted under the Domestic Violence Protection Act, which includes a spouse or former spouse, a person the parent is dating, a person with whom the parent has a child, or a close relative. (Section 6211.) This expansion would better protect the child from being exposed to domestic violence and potentially suffering lifetime trauma. And, simply expanding the people to whom the presumption may apply will not prevent a parent from seeing the child. It will just ensure that the court first determines if the presumption is overcome and if it is safe for the child to spend time with that parent.

Third, the bill provides that the presumption runs for five years from the court's finding of domestic violence. Courts have not uniformly applied the existing five-year period and this change will help ensure that the five-year period is uniform across the state and that children are protected during this entire period. Again, this does not prevent custody or visitation orders during the time period. It just requires courts to determine if the presumption is overcome and if children can safely spend time with their parents who have perpetrated domestic violence in the recent past.

Next, the bill clarifies how the presumption against custody can be overcome. Under existing law, the court must consider a series of factors, including whether giving the batterer custody is in the child's best interest, whether he or she has completed a batterer's treatment program, substance abuse program or parenting classes, and whether there have been subsequent acts of domestic violence. While the child's best interests is included as one of the factors, it is not impossible, as the law is currently crafted, for the court to determine that the presumption against custody was overcome, even if it was not in the child's best interests to do so. This bill clarifies that the presumption can only be overcome if it is in the child's best interests to give the parent custody or visitation *and* the other factors, on balance, support that decision. This modest change will help ensure that the presumption cannot be overcome unless allowing contact with the parent who has perpetrated domestic violence is in the child's best interests.

Fifth, this bill clarifies that if the court finds that the presumption has been overcome, it must state its reasons in writing or on the record. This is not a new requirement. Section 3011 (e) requires that, where there are allegations of child abuse or domestic violence against a parent and the court gives sole or joint custody to that parent, the court must state its reasons in writing or on the record. In the case of Section 3044, there are not mere allegations of abuse or domestic violence; rather, the court has already *found* that the parent seeking custody has committed domestic violence. Thus, under Section 3011 (e), the court is already required to put in writing or on the record its reasoning for giving that batterer custody. This bill just conforms the two sections. This change is also consistent with *Celia S. v. Hugo H.* (2016) 3 Cal.App.5th 655, 662, which held that, under Section 3011 (e), if "the trial court determines a parent has overcome the section 3044 presumption and awards sole or joint custody to a parent who committed domestic violence, the court must state the reasons for its ruling in writing or on the record." The Family Violence Appellate Project, one of the bill's supporters, notes how important a record is in these cases: "Given that approximately 90 percent of litigants in California family courts have no attorneys, it is crucial that courts give such explanations so the parents, future trial court judges dealing with the same parties, and appellate courts understand the basis for the original custody award." (Footnote omitted.)

Finally, this bill requires that if an allegation of domestic violence is made in any hearing in which custody or visitation is sought, the court must determine if the Section 3044 presumption applies *before* issuing a custody or visitation order. This is just a common sense measure to

ensure that Section 3044 is actually implemented properly. An allegation of domestic violence against a parent, without more, should not create a presumption against custody to that parent. However, if an allegation is made, the court first must determine if the presumption might apply before making a custody award. If courts do not, upon receiving an allegation of domestic violence, even have to consider whether the Section 3044 presumption applied, the goal of that section – to protect children from the known harm of exposure to domestic violence – would be substantially undermined. This amendment does not make it any more likely that a court will find that the presumption exists; it simply requires that the court at least consider whether or not it might.

The Association of Certified Family Law Specialists opposes most of the changes to the presumption against custody to a batterer. The Association of Certified Family Law Specialists (ACFLS) supports the best interests clarifications, discussed above, and the judicial training provision, discussed below, but opposes all of the enhancements to the presumption against custody to a batterer, except requiring that certain information be in writing or on the record. The group argues that the changes to the presumption could escalate custody litigation, cause "good parents" to lose access to their children, and are "overbroad, over-reaching, ambiguous in some parts and can result in the loss to a child of all contact with a parent." In particular, ACFLS argues that the expansion of the presumption to unsupervised visitation and to batterers who may abuse a new roommate or a recent ex-partner applies "in all circumstance of domestic violence – regardless of the spectrum" and could deny a parent who has not, for example, completed a 52-week batterer's treatment program, unsupervised time with the child.

This bill, however, would not necessarily prevent custody or unsupervised visitation in these instances. If the presumption applies, the court does not, as ACFLS suggests, have to require that the batterer has complied with *all* of the factors in Section 3044 (b). Rather the court must find that custody or unsupervised visitation is in the child's best interests, as provided, and that the additional factors, including for example whether the batterer has complied with conditions of probation and successfully completed various programs, *on balance* support the important legislative findings set forth in Section 3020. Consistent with Section 3020, this bill prioritizes the child's health, safety, and welfare over contact with a parent who has a history of domestic violence and could harm the child, but is not a complete bar to contact. The court has discretion to determine if the presumption against contact has been overcome.

Additionally, ACFLS believes that the bill's provision that the presumption against custody applies for five years following the court's finding of domestic violence is ambiguous. As stated in the bill, the presumption applies for five years after the finding. During that time, the court can award custody or unsupervised visitation to the batterer if the court determines that the presumption has been overcome. After five years, the presumption would no longer apply unless the court has made a new finding of domestic violence. Additionally, this provision does not modify the changed circumstances requirement – which requires changed circumstances before a final custody order can be changed. That requirement still exists. A subsequent inapplicability of the presumption could well be a changed circumstance.

This bill also modifies the required judicial training on domestic violence to ensure judges have information on the latest studies on the harms caused by domestic violence. Existing law and court rules require that judges receive various training, including specific training in family law and domestic violence. (*See* Government Code Sections 68553, 6855; California Rules of Court, Rules 10.463, 10.464.) The training on domestic violence is required to include "all

aspects of domestic violence." (Government Code Section 68555.) This bill expands that duty slightly to specifically require that the domestic violence training include instruction on the detriment to children of residing in a home where domestic violence occurs. Given the extensive research on the harms caused to children who are exposed to violence (see the ACE study discussed above), it seems eminently reasonable that when judges, referees, commissioners, and mediators are receiving their required training on domestic violence they should also receive training on the harms caused to children by being exposed to domestic violence. It is hoped that this training will help ensure that court decisions in cases involving domestic violence better protect children from the harms they may suffer, both immediately and in the long-term.

ARGUMENTS IN SUPPORT: The Family Violence Appellate Project is "aware of the many trial court decisions in this state in which sole or joint custody is awarded to a parent who has committed domestic violence against the other parent. This has continued to happen despite clear legislative directives in Family Code sections 3011, 3020, and 3044. . . . AB 2044 strengthens these three code sections, providing further protections for children from being in custody or visitation settings with abusive parents."

In support of the bill, Professor Kelly Weisberg of University of California Hastings College of Law writes: "Exposing children to violence harms them and creates a significant threat to their health and well-being. Additionally, children exposed to violence are often physically abused themselves. This bill will better protect children by helping prevent them from being placed with parents who will harm them."

California Protective Parents Association adds:

There is an epidemic of domestic violence and child abuse in our state. Many victims are working hard to free themselves from abusers, but if they have children, it is much harder due to the courts' proclivity to place children in unprotected contact with those abusers.

As a direct result of family courts placing children at risk, there were 6 child murders in California by violent fathers during their parenting time in 2017. AB 2044 will make a big difference, not only by keeping children from being killed, but also preventing children from being forced to live in brutal homes.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Certified Family Law Specialists (support in part, oppose in part)
 California Protective Parents Association
 Center for Judicial Excellence
 Family Violence Appellate Project
 U.C. Hastings College of the Law Professor D. Kelly Weisberg

Opposition

Association of Certified Family Law Specialists (oppose in part, support in part)

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