

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 2279 (Blanca Rubio) – As Amended March 30, 2022

**SUBJECT:** CUSTODY DISPOSITION SURVEY

**KEY ISSUE:** IN ORDER TO BETTER ANALYZE CUSTODY ORDERS TO BETTER PROTECT CHILD SAFETY, SHOULD THE JUDICIAL COUNCIL BE REQUIRED TO UPDATE ITS EXISTING CUSTODY DISPOSITION SURVEY TO CAPTURE SPECIFIED INFORMATION REGARDING CUSTODY DETERMINATIONS IN FAMILY LAW PROCEEDINGS?

**SYNOPSIS**

*Existing law 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. Current law, also requires the use of a custody disposition survey which captures information regarding custody determinations in family law proceedings involving children. Theoretically, such information could track whether certain factors, such as whether parents reached a custody agreement without a mediator, led to better custody outcomes.*

*However, current law does not provide guidance as to the extensiveness of the current custody disposition survey nor does it mandate a timeline during which it must be issued. This bill intends to increase the amount of data regarding custody dispositions in family law proceedings involving children by requiring specified information. The bill would require the Judicial Council, in consultation with advocates for children and families, on or before January 1, 2024, to update the required custody disposition survey to collect specified information. The custody disposition survey would collect data by county on custody disposition outcomes from mediators, child custody recommending counselors, and court files. The survey would also be required to include information about custody agreements reached through mediation, allegations and findings of domestic violence, and custodial arrangements after findings of domestic violence were made. By expanding the scope of the custody disposition survey, this bill would arguably allow the Legislature increased access to information that can help shape policy to prevent avoidable violence against children in family law proceedings.*

*The bill is sponsored by the Legislative Coalition to Prevent Child Abuse and supported by other advocates for children and families. It has now reported opposition, although the Judicial Council has raised concerns about the workload involved in the survey.*

**SUMMARY:** Modifies the existing custody disposition survey to apply in more family law proceedings involving children and to include specified additional details regarding the custody disposition. Specifically, **this bill:**

- 1) Requires the Judicial Council to expand its existing uniform statistical reporting system regarding mediation and conciliation in family law to include proceedings brought for parentage establishment.
- 2) Requires the Judicial Council, on or before January 1, 2024, in consultation with advocates for children and families, to modify the required custody disposition survey to collect data by county on custody disposition outcomes from mediators, child custody recommending counselors, and court files. Requires the custody disposition survey to collect information on all of the following:
  - a) Whether the parents entered into a custody agreement as the result of court mediation, divided by whether they used a mediator or recommending counselor.
  - b) For cases in which a custody agreement was not reached by the parties, whether a parent is alleged to have a history of committing domestic violence or child abuse.
  - c) Whether a court made a finding that a parent has perpetrated domestic violence or child abuse within the previous five years.
  - d) Whether a parent, who had the finding in c) made by a court, was awarded custody of, or visitation with, a child, and, if so, what type of custody or visitation, from the following options: supervised visitation; unsupervised visitation; physical custody, whether sole or joint; and legal custody, whether sole or joint.

**EXISTING LAW:**

- 1) Requires the Judicial Council of California to implement a uniform statistical reporting system regarding proceedings brought for dissolution of marriage, nullity of marriage, and legal separation, including, but not limited to child custody dispositions. (Family Code Section 1850 (b). Unless stated otherwise, all further statutory citations are to the Family Code.)
- 2) Requires that child custody be granted, according to a set order of preference, based on the best interests of the child, as provided. (Section 3040.)
- 3) Requires the court in making a best interests determination under 2), 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.)

- 4) 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.)
- 5) Requires a court to grant reasonable visitation rights to a parent when it is shown that visitation would be in the child's best interest. (Section 3100.)
- 6) 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 certain others within the previous five years. Permits the court to overcome the presumption against custody if it is in the best interests of the child to allow such contact and the court considers, among other things, 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.)

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

**COMMENTS:** This bill expands the type of information that courts and the Judicial Council are tasked with collecting relating to family law matters involving children. In identifying the need for this bill, the author states:

Children have suffered abuse or death after being ordered into unsupervised visitation or custody with a parent who had a history of violence. Warnings from legal experts, data from advocates and academicians, child advocates requesting stronger child protection in the Family Code, and cases of children in custody cases murdered by violent parents have raised public concern. However, the crisis has not resulted in systemic annual data collection by the courts to review the disposition of these cases where children are at risk.

***California law recognizes the harms caused to children by abuse and domestic violence.*** The lifetime of harm caused to children by child abuse or domestic violence cannot be underestimated. Beyond the obvious immediate harm to children, child abuse creates adverse childhood experiences or ACES, which are “linked to chronic health problems, mental illness, and substance use problems in adulthood. ACEs can also negatively impact education, job opportunities, and earning potential.” (Centers for disease Control and Prevention, *Violence Prevention* (Jan. 18, 2022), available at <https://www.cdc.gov/violenceprevention/about/index.html>.) The goal of both family law and the child welfare system is to protect children from these harms.

Existing law already seeks to protect children from this harm. 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.)

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 Section 3044 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.

***The role of custody determinations in protecting children from harm.*** The author and proponents of this measure undoubtedly identify a valid concern present in family law proceedings involving children – depending on the factors and evidence considered by a court, children in family court proceedings may be ordered into custodial arrangements that pose a risk to them. One recent and particularly egregious example occurred in the Legislature's backyard when a father shot and killed his three children during a court-supervised visit. (Jacobo and Heck, *Man kills 4, including his 3 children, in Sacramento church shooting* (February 28, 2022), ABC News.) Further, California is reported to have the nation's highest number of preventable child homicides committed by a divorcing or separating parents. (Butts Stahly, Valentine, and York, *Protective Mothers, Endangered Children: Tracing System Failure for Children of Divorce and Separation*, Family & Intimate Partner Violence Quarterly 7, 9 (Feb. 2022).) That article analyzed data from California and other states and determined that "California mothers lost custody of their children to identified abusers more often than mothers in other states (85.3% versus 74.6%)." (*Id.* at 10.)

While current law provides factors for courts to consider when making custody and visitation determinations, it is not a flawless system. Current law directs Judicial Council to track statistical information regarding custody determinations in family law proceedings involving children.

Theoretically, such information could track whether certain factors, such as whether parents reached a custody agreement without a mediator, led to better custody outcomes. However, there is no guidance or statutory mandate regulating what information is included in the survey, or when or how often the surveys are gathered. The most recent overview of the annual survey, provided by the bill's proponents, is a 2012 review based on 2008 data. (Administrative Office of the Courts, Center for Families, Children & the Courts, *Snapshot Study 2008: Family Court Services Profile* (June 2012).) While it includes data on the number of mediations conducted, who the mediators were, and what services were provided, it does not include any information about the results of those services in terms of agreements reached or the types of custodial arrangements made. Further, the existing statutory requirements of the custody disposition survey do not require some arguably relevant details, including whether parents entered into a custody agreement based on mutual agreement, or whether a parent with a finding of domestic violence was awarded custody or visitation.

***This bill seeks to improve the existing family law reporting system to better protect children.***

This bill requires the Judicial Council, on or before January 1, 2024, to update its custody disposition survey to collect specified information. The bill would direct the Judicial Council to update the survey in consultation with advocates for children and their families. The custody disposition survey would collect data by county on custody disposition outcomes from mediators, child custody recommending counselors, and court files. The survey would also be required to include the following information: 1) whether the parents entered into a custody agreement as a result of court mediation, divided by whether they used a mediator or recommending counselor; 2) for cases in which a custody agreement was not reached by the parties, whether a parent is alleged to have a history of committing domestic violence or child abuse; 3) whether a court made a finding that a parent has perpetrated domestic violence or child abuse within the previous five years; and 4) whether a parent who had a finding of domestic violence or child abuse was then awarded custody or visitation of a child. With regard to this final element, the data would be further identified by whether the custody or visitation order was an order of supervised visitation, unsupervised visitation, physical custody (sole or joint), or legal custody (sole or joint). By expanding the scope of the custody disposition survey, this bill would arguably allow the Legislature increased access to information that would inform policy development to help courts in preventing avoidable violence against children resulting from high-risk custody placements.

***While not opposed, Judicial Council has raised concerns about the bill.*** Although not opposed to the bill at this point, the Judicial Council has concerns about the substance of, and the procedures for, conducting, the survey. The Judicial Council is now in discussions with the author. In particular, both sides have agreed to continued conversations on, among other things, identifying a reasonable time period during which the data may be collected so as to avoid a year round data collection process which would be both time consuming and expensive.

***ARGUMENTS IN SUPPORT:*** A coalition of child advocates support the bill. The Legislative Coalition to Prevent Child Abuse states:

A 2011 study funded by the United States Department of Justice and conducted by domestic violence and legal experts from the New York Legal Assistance Group investigated 69 custody cases involving domestic violence with the goal of understanding evaluator recommendation influences on case outcomes including child safety plans. Despite the known risks, almost half of custody evaluators continued to recommend unsupervised

visitation with a parent, even when there were reports of violence in that home. Additionally, severity of the abuse in the couple's history did not predict safety measures in the parenting plan. [...] As advocates request child safety measures, Judicial Council representatives remind us that children are not a party to the case, and that the court is tasked with insuring that *the parties* to the case are afforded their legal rights. However, children in custody cases have *human rights*, among them a right to be free from violence and abuse, and this human right must be the court's priority. It is catastrophic for courts to view division of time with children only through the lens of parental rights, without setting protection of children from violence as the overarching priority. The outcome of the court's protection of parental rights must not be, the injury or death of a child.

AB 2279 (Rubio) will provide data necessary to improve child protection. Along with this important step, we need leadership in family courts willing to use this data to tackle bias against those reporting crimes, systemic lack of risk assessment and response to danger, and inadequate interagency communication that currently allow preventable criminal assaults on children.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Legislative Coalition to Prevent Child Abuse (sponsor)  
Advocates for Child Empowerment and Safety  
California Protective Parents Association  
California Women's Law Center  
Center for Judicial Excellence  
Child Support Directors Association of California  
Incest Survivor's Speakers Bureau of California  
Mothers of Lost Children  
One Mom's Battle

### **Opposition**

None on file

**Analysis Prepared by:** Manuela Boucher-de la Cadena / JUD. / (916) 319-2334