

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 1364 (Menjivar)
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Fiscal: No
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AWM

SUBJECT

Child custody

DIGEST

This bill modifies various laws establishing when a parent may be awarded custody of their child, when a parent-child relationship cannot be legally established, and when a parent is deemed unfit to parent their child, on the basis that the person committed an act of sexual assault that resulted in the child's conception.

EXECUTIVE SUMMARY

The right to parent one's child is a liberty interest protected by the United States Constitution. The right is not an unlimited one, however. Current law requires a court in a custody dispute to order custody based on the best interest of the child, and includes a rebuttable presumption that, if one parent has committed specified acts of domestic violence, awarding joint or sole custody or visitation to that parent is not in the child's best interest. Additionally, where a person is convicted of a rape that led to the conception of a child, the law limits that person's rights to the child: the court cannot award sole or joint custody or visitation to that person; in a proceeding to free a child from the custody and control of a parent, there is a conclusive presumption that such a person is unfit to parent the child; and, in an action to determine the nonexistence of a parental agreement, the person can be deemed not legally the child's parent if they were not married to the child's other parent at the time.

This bill modifies various statutes relating to child custody and parentage to make it easier to prevent a person who committed an act of sexual assault that led to the conception of the child from having custodial or parental rights. With respect to custody proceedings, the bill expands the prohibition on awarding custody to a parent who has been convicted of rape that resulted in the child's conception, to apply to any conviction for sexual assault that led to the child's conception or occurred within 300 days before the birth. The bill also expands the conclusive presumptions relating to

(1) the nonexistence of a parent-child relationship, and (2) parental fitness to parent a child. In both cases, the bill no longer requires a conviction for rape for the conclusive presumption to apply; instead the conclusive presumption will apply if the child was conceived as the result of a sexual assault that is proved through clear and convincing evidence. In the case of a parent-child relationship, the bill extends this conclusive presumption to all potential parents, whether or not they were married at the time; and specifies that this conclusive presumption does not apply if, after the sexual assault and the birth of the child, the parents voluntarily shared the rights and responsibilities of raising the child, including through frequent and continuing contact with the child. The author has agreed to amendments to the presumption of parental unfitness so that it aligns with the terms of a finding of a nonexistent parent-child relationship.

This bill is sponsored by the Rape, Abuse & Incest National Network (RAINN). The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) States that it is the public policy of this state to ensure that:
 - a) The health, safety, and welfare of children is the court's primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children;
 - b) Children have the right to be safe and free from abuse, because 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
 - c) Children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and parents are encouraged to share the rights and responsibilities of child-rearing in order to effect this policy, except when the contact would not be in the best interests of the child, as provided. (Fam. Code, § 3020(a), (b).)
- 2) Provides that, when the policies in 1) are in conflict, a court's order regarding 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. (Fam. Code, § 3020(c).)
- 3) Requires a court, when determining the best interest of the child in a proceeding to determine child custody and visitation rights, to consider all of the following plus any other factors it finds relevant:
 - a) The health, safety, and welfare of the child.
 - b) A history of abuse by one parent or any other person seeking custody against a child to whom the parent is related or with whom the parent has a caretaking relationship, as specified; the other parent; a parent, current

- spouse, of the parent, or a person with whom the parent has a dating or engagement relationship.
 - c) The nature and amount of contact with both parents.
 - d) The habitual or continual illegal use of controlled substances and the habitual or continual abuse of alcohol or prescribed controlled substances, as specified. (Fam. Code, §§ 3011, 3021.)
- 4) Establishes an order of preference for custody of a child, starting with jointly to both parents or to either parent; but clarifies that this order of preference does not establish a presumption in favor of joint custody, and that any award of custody must be in the best interest of the child and that the court and the family have the widest possible discretion to choose a parenting plan that is in the best interest of the child. (Fam. Code, § 3040.)
- 5) Limits, notwithstanding 4), the court's discretion to award custody or visitation under specified circumstances, including the following:
- a) When a person is required to be registered as a sex offender and the victim was a minor, or the person was convicted of specified crimes involving violence against a minor, the court cannot award custody or unsupervised visitation to that person unless the court finds that there is no significant risk to the child and states its reasoning in writing or on the record.
 - b) When a person resides in a household with a person who is required to register as a sex offender as the result of a felony conviction and the victim was a minor, the court cannot award custody or unsupervised visitation with the person unless the court finds that there is no significant risk to the child and states its reasoning in writing or on the record.
 - c) When a person was convicted of rape and the child was conceived as a result of the rape, the court cannot award custody or visitation to that person.
 - d) When a person was convicted of first-degree murder and the victim of the murder was the child's other parent, the court cannot award custody or unsupervised visitation to that person unless the court finds that there is no risk to the child's health, safety, and welfare, and states its reasoning in writing or on the record. (Fam. Code, § 3030(a)-(c).)
- 6) Provides that, when a court declines an award of custody or visitation to a parent pursuant to 5), the court may order the parent to pay child support for the child through the local child support agency, as specified. (Fam. Code, § 3030(d).)
- 7) Establishes a rebuttable presumption that an award of sole or joint custody to a parent is not in the best interest of a child when the court finds that the parent perpetrated domestic violence within the previous five years against the other party seeking custody of the child, against the child's siblings, or against another individual with whom the party had an intimate or caretaking relationship. (Fam. Code, § 3044(a).)

- 8) Provides that the rebuttable presumption established in 7) can be overcome with a finding that giving sole or joint physical custody to the parent who committed domestic violence is in the best interest of the child; the court should also consider the following factors:
- a) Whether the perpetrator successfully completed a treatment program for batterers or, where appropriate, drug or alcohol abuse counseling or a parenting class.
 - b) Whether the perpetrator is on probation or parole, and has or has not complied with the terms and conditions of probation or parole.
 - c) Whether the perpetrator is restrained by a protective order or a restraining order, and has or has not complied with the order's terms and conditions, including restrictions on the possession of a firearm or ammunition. (Fam. Code, § 3044(b).)
- 9) Establishes presumptions and procedures for the establishment of a legal parent-child relationship for a child born in this state. (Fam. Code, div. 12, pt. 3, §§ 7600 et seq.)
- 10) Provides that a person is presumed to be the natural parent of a child if the person meets any of the following conditions:
- a) The person is a spouse of the other parent and they were cohabitating at the time of conception and birth, unless specified conditions are met. (Fam. Code, §§ 7540, 7541.)
 - b) The person executes a voluntary declaration of parentage, when certain conditions are met. (Fam. Code, §§ 7570, 7573.)
 - c) The presumed parents and the child's natural mother¹ are, or have been, married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court. (Fam. Code, § 7611(a).)
 - d) Before the child's birth, the presumed parent and the child's natural mother have attempted to marry each other in apparent compliance with law, but the marriage was invalid, and the child was born during the attempted marriage or within 300 days of its termination. (Fam. Code, § 7611(b).)
 - e) After the child's birth, the presumed parent and the child's natural mother have attempted to marry each other in apparent compliance with law, but the marriage was invalid, and either the presumed parent was named as the child's parent on the birth certificate with their consent, or the presumed parent is obligated to support the child under a voluntary promise or court order. (Fam. Code, § 7611(c).)

¹ The Family Code inconsistently uses gendered and non-gendered language to refer to a child's parents. "Natural mother" is not formally defined but, within this context, refers to the person who carried the child in utero (*see* Fam. Code, § 7650), while a "presumed father" and "presumed parent" generally refer to the non-birthing parent (*see* Fam. Code, § 7611.5).

- f) The presumed parent receives the child into their home and openly holds out the child as their natural child. (Fam. Code, § 7611(d).)
 - g) The child is in utero after the death of the parent and the presumed parent has left specified instructions relating to the use of their genetic material used for the posthumous conception of a child. (Fam. Code, § 7611(e); Prob. Code, § 249.5.)
- 11) Provides that, when none of the conditions in 10) apply, a man shall not be presumed to be the natural father of a child if either of the following is true:
 - a) The child was conceived as a result of an act of rape and the father was convicted of that violation.
 - b) The child was conceived as a result of unlawful sexual intercourse with a person under the age of 18, the father was convicted of that violation, and the mother was under the age of 15 years and the father was 21 years of age or older at the time of conception. (Fam. Code, § 7611.5.)
- 12) Provides that, except in specified circumstances, a presumption of parentage under 10) is a rebuttable presumption that may be rebutted by clear and convincing evidence; if the case presents multiple presumptions which conflict with each other, the presumption that on the facts is founded on the weightier considerations of policy and logic controls, and the court may find that more than two persons with a claim to parentage are parents if it finds that recognizing only two parents would be detrimental to the child. (Fam. Code, § 7612.)
- 13) Permits the child, the child's natural mother, a person presumed to be the child's parent under 11)(c)-(e), a person seeking to be adjudicated a parent or donor following a birth through assisted reproduction, an adoption agency to whom the child has been relinquished, or a prospective adoptive parent of the child to bring an action as follows:
 - a) At any time for the purpose of declaring the existence of the parent and child relationship presumed under 11)(c)-(e) or established following a birth through assisted reproduction.
 - b) For the purpose of declaring the nonexistence of the parent and child relationship presumed under 11)(c)-(e) only if the action is brought within a reasonable time after obtaining knowledge of the facts; after the presumption has been rebutted, parentage of the child by another person may be determined in the same action, if that person has been made a party.
 - c) At any time for the purpose of declaring the nonexistence of the parent and child relationship of a donor. (Fam. Code, § 7630(a).)
- 14) Permits any interested party to bring an action at any time for the purpose of determining the existence or nonexistence of the parent and child relationship presumed under 11)(f) and (g). (Fam. Code, § 7360(b).)

- 15) Permits an action under 13) or 14) to be brought before the birth of the child, and enforcement of the order or judgment or order shall be stayed until the birth of the child. (Fam. Code, § 7633.)
- 16) Establishes the procedures by which a minor child can be declared to be free from the custody and control of either or both parents. (Fam. Code, div. 12, pt. 4, §§ 7800 et seq.)
- 17) Provides that a declaration under 16) terminates all parental rights and responsibilities with regard to the child. (Fam. Code, § 7803.)
- 18) Provides that a finding in a proceeding under 16) must be supported by clear and convincing evidence, unless otherwise provided. (Fam. Code, § 7821.)
- 19) Provides the circumstances under which a minor child can be declared free from the custody and control of a parent, including:
 - a) A child who has been abandoned by their parent, as specified.
 - b) A child who has been neglected or cruelly treated by their parent, as specified; a finding that a parent committed severe sexual abuse, as defined, against the child shall be prima facie evidence of neglect or cruel treatment.
 - c) A child whose parent suffers a disability because of the habitual use of alcohol or controlled substances, as specified.
 - d) A child whose parent has been convicted of a felony which is of such a nature as to prove the unfitness of the parent; the court may consider the parent's prior criminal record to the extent it demonstrates a pattern of behavior related to the welfare of the child.
 - e) In an action brought by the mother of the child against the father of the child, when the child was conceived as a result of an act of rape and the father was convicted of that violation; there is a conclusive presumption that the father is unfit to have custody or control of the child.
 - f) A child whose parent is mentally ill or developmentally disabled, as defined, when specified medical evidence is presented relating to the parent's inability to care and control the child adequately and the parent's condition is unlikely to change in the near future. (Fam. Code, §§ 7822-7827.)
- 20) Requires, in connection with a petition under 16), the court to order an investigation into the circumstances of the child and the allegations in the petition and to submit a report of the investigation, including recommendations, to the court. (Fam. Code, §§ 7850, 7851.)
- 21) Requires a court, in a proceeding under 16), to consider the wishes of the child, bearing in mind the age of the child, and to act in the best interest of the child. (Fam. Code, § 7890.)

This bill:

- 1) Clarifies that a court, when determining the best interest of a child for purposes of making a custody order, should consider, as part of its consideration of a parent's history of abuse by one parent of the other parent, abuse that resulted in the conception of the child.
- 2) Modifies the provision prohibiting an award of custody for a person who was convicted of rape that resulted in the conception of the child, to provide that no award of custody or visitation shall be made when the person has been convicted of sexual assault, as defined, and the child was conceived as a result of, or born within 300 days after, that act against the victim.
- 3) Provides that, upon a finding by a court, by clear and convincing evidence, that a party seeking custody of a child perpetrated an act of sexual assault that resulted in the conception of the child, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to the person who perpetrated the sexual assault is detrimental to the best interest of the child.
 - a) This presumption may be rebutted only by clear and convincing evidence that sole or legal custody of the child is in the best interests of the child.
 - b) Provides that an act of sexual assault results in conception of the child if the child was conceived as a result of, or born within 300 days after, an act of sexual assault against the other party.
 - c) "Sexual assault" has the same meaning as defined in Penal Code section 11165.1 or a similar statute in another jurisdiction where the action occurred.
- 4) Eliminates the provision permitting a person to be a presumed natural father of a child if the child was conceived as a result of an act of rape and the person was convicted of that violation.
- 5) Provides that a man shall not be presumed to be the natural father of a child if the child was conceived as a result of, or born within 300 days after, an act of sexual assault, as defined, against the child's mother and the father was convicted of, or is found by clear and convincing evidence to have committed, that act.
- 6) Provides that 5) does not apply if, after the date of the sexual assault, the child's natural mother and the father voluntarily share the rights and responsibilities of rearing that child, including frequent and continuing contact with the child.
- 7) Permits a child, the child's natural mother, a person presumed to be a natural father, a person seeking to be adjudicated as a parent or donor, an adoption agency, or a prospective adoptive parent to bring an action for a declaration of parentage at any time for the purpose of declaring the nonexistence of the parent and child relationship under 5).

- 8) Provides that the mother of a child may bring a proceeding against the father of the child to have the child declared free from the father's custody and control of the child, where the child was conceived as a result of, or born within 300 days after, an act of sexual assault, as defined, against the mother of the child and the father is found, by clear and convincing evidence, to have committed that act.
- 9) Provides that there is a conclusive presumption that a father described in 8) is unfit to have custody or control of the child.
- 10) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

No survivor should be forced to co-parent with the person who raped them. However, in California that can often be the case when a conviction of nonconsensual sexual conduct is required before a court can prohibit custody or visitation of the child who was conceived from that. Research shows that less than 2% of rapists are actually convicted, making it even more likely that a survivor will be forced to deal with ongoing abuse, harassment while sharing custody. It is time for California to catch up with the majority of other states who put survivors first in lessening the burden of proof and just require "clear and convincing" evidence of the nonconsensual sexual act when prohibiting custody and visitation by the rapist.

2. The right to parent one's child

Parents have a fundamental right to raise their children:

The [Supreme] Court has spoken of the "fundamental liberty interest of natural parents in the care, custody, and management of their child." Indeed, the Court recognized that a parent's desire for and right to the companionship, care custody, and management of [their] children is...far more precious than any property right." Thus, the Court has held that when the government seeks to terminate parental rights, "it must provide the parents with fundamentally fair procedures."²

One such procedural protection is that, in a proceeding to terminate parental rights, the facts supporting the termination must be established by "clear and convincing

² Chemerinsky, Constitutional Law (7th ed. 2023) p. 632 (internal citations omitted, ellipses in original).

evidence,” which is a higher degree of proof than the “preponderance of the evidence” standard used in most civil cases but less exacting than “beyond a reasonable doubt.”³

3. Background on proceedings affecting custody, care, and parental rights

a. Custody proceedings

“Under California’s statutory scheme governing child custody and visitation determinations, the overarching concern is the best interest of the child.”⁴ That scheme “allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.”⁵ When determining the best interest of a child, a court may consider any relevant factors, and must consider the following: the health, safety, and welfare of the child; any history of abuse or neglect by the party seeking custody; the nature and amount of contact with the parents; and substance abuse by a parent.⁶ The analysis is always informed by the fact that the right to participate in the raising of one’s child is a protected constitutional right that cannot be cast aside without good cause.⁷

The state’s default preference is that parents share custody of their child.⁸ This default preference is overridden, however, by the court’s determination that the child’s best interests would be served through an alternative arrangement.⁹ The statutes also establish certain presumptions and restrictions based on policy determinations about the circumstances that are likely to be in the child’s best interest. For example, a court is prohibited from awarding custody or visitation to a parent who was convicted of raping the other parent, and that rape resulted in the child’s conception.¹⁰ Additionally, when a parent proves that the other parent committed an act of domestic violence against them, the child, or other listed persons within the last five years, there is a presumption that an award of custody or visitation to the abusive parent is not in the child’s best interest; this presumption can be overcome by a preponderance of the evidence.¹¹

b. Proceedings to establish the existence or nonexistence of parentage or to terminate parental rights

Current law establishes who is considered a parent and who is considered, and who may not be considered, a “presumed” parent. For example, a child who is born to two

³ *Santosky v. Kramer* (1982) 455 U.S. 745.

⁴ *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255; see §§ 3011, 3020, 3040 & 3041.

⁵ Fam. Code, § 3040.

⁶ *Id.*, §§ 3011, 3020.

⁷ E.g., *Troxel v. Granville* (2000) 530 U.S. 57, 65-66.

⁸ Fam. Code, § 3040.

⁹ *Ibid.*

¹⁰ *Id.*, § 3030(b).

¹¹ *Id.*, § 3044.

married parents who cohabitated at the time of the conception are birth are presumed to be natural parents of the child.¹² For parents who are not married at the time of the conception and birth, a man shall not be considered the natural father of the child if the child was conceived as a result of rape and the man was convicted of that offense.¹³ Any presumption established by the Family Code can be rebutted by clear and convincing evidence.¹⁴

A proceeding to establish parentage or the nonexistence of parentage, or to terminate the parental rights of a person determined to be a parent, may be brought by the child, the child's natural mother (the person who gave birth to the child) or any presumed parent.¹⁵ An action to determine the legal parentage of a presumed parent can be brought at any time.¹⁶ There is no set timeframe in which a party has to bring an action to declare the nonexistence of a parent-child relationship; instead, the law requires that the action be brought "within a reasonable time after obtaining knowledge of relevant facts."¹⁷ To terminate the parental rights of a person who has been established as a legal parent, the court must find, by clear and convincing evidence, that the termination is in the best interest of the child.¹⁸

c. Proceedings to permanently free a child from the custody and control of a parent

California has a proceeding through which a child can be freed from the custody and control of one or both parents on the basis that the parent is, for enumerated reasons, unfit to parent the child.¹⁹ These proceedings are generally brought in connection with a proceeding wherein a person named the child's guardian under the Probate Code wishes to adopt the child. These proceedings are distinct from termination proceedings under the Welfare and Institutions Code, which provide for the termination of parental rights through the juvenile court. As with the above proceeding to terminate parental rights, a petition to free a child from the custody and control of a parent can be granted only with a showing, by clear and convincing evidence, that the parent is unfit and that granting the petition is in the best interest of the child.²⁰

Similar to the provision prohibiting the existence of a parent-child relationship when the person was convicted of rape that led to the conception of the child, current law

¹² *Id.*, §§ 7611, 7540. This presumption does not apply if the husband of the woman who gave birth was impotent or sterile at the time of conception and the child was not conceived through assisted reproduction. (*Id.*, § 7540(b).)

¹³ *Id.*, § 7611.5.

¹⁴ *Id.*, § 7612.

¹⁵ *Id.*, § 7630. The law also provides for parentage actions in the case of persons born through assisted reproduction and when termination of parental rights is sought to facilitate an adoption; these situations are not relevant to this bill. (*Ibid.*)

¹⁶ *Id.*, § 7630(a)(1).

¹⁷ *Id.*, § 7630(a)(2).

¹⁸ *E.g.*, *In re Charlotte D.* (2009) 45 Cal.4th 1140, 1147-1148.

¹⁹ Fam. Code, div. 12, pt. 4, §§ 7800 et seq.

²⁰ *E.g.*, *In re Robert J.* (1982) 129 Cal.App.3d 894, 901.

provides a conclusive presumption that a parent is unfit to have custody or control of their child when the child was conceived as a result of rape and the parent was convicted of that rape.²¹

4. This bill modifies the presumptions and rights granted when one parent sexually assaulted the other parent

This bill is intended to add protections for a parent and child when the child was conceived through an act of sexual assault committed by the other parent. To that end, the bill makes a number of changes to California's custody and parentage laws.

a. Custody proceedings

This bill makes a number of changes to the statutes relating to an award of custody or visitation to a parent, as follows:

- In the statute listing the factors that a court should consider in determining the child's best interest, the bill clarifies that the court should consider abuse that resulted in the conception of the child in its overall consideration of a parent's history of abuse.
- The bill expands the prohibition on awarding custody or visitation to a parent who was convicted of a rape that resulted in the child's conception, to apply to a parent who was convicted of a sexual assault that led to the child's conception or when the child was born within 300 days after the sexual assault.
- The bill adds a rebuttable presumption against an award of sole or joint custody against a parent when the other parent establishes, by clear and convincing evidence, that the parent committed an act of sexual assault that resulted in the child's conception or where the child was born within 300 days after the sexual assault. The rebuttable presumption can be rebutted with a showing of clear and convincing evidence that an award of custody is in the child's best interest.

b. Nonexistence of parent status in the case of sexual assault

This bill alters the provision providing that a person cannot be a presumed parent if the person was convicted of a rape resulting in the conception of the child, provided that the potential parents were not married at the time of the conception or did not fall into other categories establishing a presumption of parentage:

- The bill expands the category of crimes to which the prohibition applies, from rape to any sexual assault. "Sexual assault" is defined as any act listed within Penal Code section 11165.1 and includes a broader range of nonconsensual contact.

²¹ Fam. Code, § 7825.

- The bill allows the presumption to apply, in addition to instances where there has been a vocation, where the sexual assault is proven by clear and convincing evidence.
- The bill applies this prohibition on parent status to all persons, regardless of whether the parents were married at the time or whether the parent would otherwise qualify for presumed parent status. This is generally consistent with California's elimination of a separate category of sexual assault when committed by a spouse.²²
- The bill provides that an act of sexual assault is deemed to have resulted in the conception of the child if the child is born within 300 days of the sexual assault.

The bill exempts, from the expanded prohibition on presumed parent status, circumstances where, after the date of the sexual assault, the perpetrator and victim voluntarily share the rights and responsibilities of raising the child. This exemption prevents an automatic preclusion of parental rights in cases where the person who was convicted of sexual assault but nevertheless established a parental relationship with their child. The bill also provides that a person may bring an action at any time to determine the nonexistence of a parent-child relationship in the case of a conception as the result of sexual assault; because the prohibition would not apply in circumstances where the perpetrator and victim lived together and shared in the parenting of the child, there is no concern that this will permit a court order declaring the nonexistence of a parent-child relationship in circumstances where the alleged perpetrator has an actual relationship with the child. In such cases, if a perpetrator of sexual assault was determined to be a child's legal parent, the court would review an action to terminate their parentage under the "best interest of the child" standard.

c. Freedom from parental custody and control

This bill changes the conclusive presumption that a parent is unfit to have custody of their child when convicted of a rape that led to the child's conception, to instead establish a conclusive presumption that a parent is unfit when they are found, by clear and convincing evidence, to have committed an act of sexual assault that led to the conception of the child or the child was born within 300 days of the act. Unlike the bill's changes to the parentage statutes, there is no exception for a circumstance in which the parent alleged to have committed the act has a relationship with their child. The author has agreed to amend this provision so that the conclusive presumption applies when the parents did not, following the sexual assault, voluntarily share in the rights and responsibilities of the child, thereby creating a parent-child relationship. In such cases, the parent seeking to free their child from the custody and control of a parent who committed a sexual assault still has the right to bring a petition, and the court will determine whether removing the child from the parent's custody or control is in the child's best interest. The amendments are set forth in Comment 5, below.

²² See AB 1171 (Christina Garcia, Ch. 626, Stats. 2021).

5. Amendments

As discussed above, the author has agreed to amend the provisions relating to the conclusive presumption in a proceeding to free a child from the custody and control of a parent. The amendments are set forth below, subject to any nonsubstantive changes the Office of Legislative Counsel may make.

Amendment

On page 11, delete lines 15-26 and insert:

(b) The mother of a child may bring a proceeding under this part against the father of the child, as follows:

(1) If the child was conceived as a result of an act in violation of Section 261 of the Penal Code, and the father was convicted of that violation. For purposes of this paragraph, there is a conclusive presumption that the father is unfit to have custody or control of the child.

(2) If the child was conceived as a result of an act of sexual assault, as defined in Section 11165.1 of the Penal Code, against the mother of the child and the father is found, by clear and convincing evidence, to have committed that act. For purposes of this paragraph, there is a conclusive presumption that the father is unfit to have custody or control of the child unless, after the date of the sexual assault, the child's mother and the father voluntarily share the rights and responsibilities of rearing the child, including frequent and continuing contact with the child.

6. Arguments in support

According to RAINN:

The CDC reports that nearly three million women have experienced pregnancy as a result of rape. At least half of survivors who became pregnant as a result of rape reported that the rapist threatened to seek custody or other parental rights to harass or intimidate them, retaliate against them, or coerce them into not reporting the rape to law enforcement.

In California, survivors have a limited ability to protect themselves from being forced to co-parent with a rapist, since the current statute requires a conviction to disallow custody or visitation. For every 1,000 sexual assaults, 975 perpetrators walk away without a conviction, and fewer than one percent of rapes result in a conviction for rape since some defendants plead to lesser charges. Thus a rapist can retain the right to sue for child custody and rape survivors can be forced to co-

parent with the person that committed the rape. This can put the survivor and child at risk for further harm.

By requiring a conviction, current California law requires a higher standard of proof to protect survivors than the legal standard used in everyday custody determinations, which is “clear and convincing evidence.” This legal standard should be used in these situations to ensure survivors have a true opportunity for justice. S.B. 1364 would bring California in line with at least half the states providing this protection for survivors, including Washington, Montana, Virginia, and Texas.

SUPPORT

RAINN (sponsor)

OPPOSITION

None received

RELATED LEGISLATION

Pending legislation: None known.

Prior legislation: SB 599 (Caballero, Ch. 493, Stats. 2023) required a court to consider additional factors when determining whether to award custody or visitation when one parent has committed or threatened domestic violence against the other parent.
