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THIRD READING

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Bill No: SB 1364  
Author: Menjivar (D)  
Amended: 4/30/26  
Vote: 21

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SENATE JUDICIARY COMMITTEE: 13-0, 4/28/26  
AYES: Umberg, Niello, Allen, Alvarado-Gil, Ashby, Caballero, Durazo, Laird,  
Reyes, Stern, Wahab, Weber Pierson, Wiener

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**SUBJECT:** Child custody

**SOURCE:** RAINN

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**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, in circumstances where the person is shown, by clear and convincing evidence, to have committed an act of sexual assault that resulted in the child's conception.

**ANALYSIS:**

Existing law:

- 1) 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. (Family (Fam.) Code, §§ 3011, 3021.)
- 2) 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.)
- 3) Limits, notwithstanding 2), the court's discretion to award custody or visitation under specified circumstances, including providing that 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. (Fam. Code, § 3030.)
- 4) 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).)
- 5) Provides that the rebuttable presumption established in 4) 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. (Fam. Code, § 3044(b).)
- 6) 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.)
- 7) Provides that a person is presumed to be the natural parent of a child if the person meets specified conditions, including that 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.)
- 8) Provides that, when none of the conditions in 7) 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.)
- 9) Provides that, except in specified circumstances, a presumption of parentage under 7) is a rebuttable presumption that may be rebutted by clear and convincing evidence. (Fam. Code, § 7612.)
  - 10) Permits the child, the child's natural mother, and other specified persons to bring an action at any time for the purpose of declaring the existence of the parent and child relationship presumed under 7) or established following a birth through assisted reproduction. (Fam. Code, § 7630(a).)
  - 11) 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.)
  - 12) Provides that a declaration under 11) terminates all parental rights and responsibilities with regard to the child. (Fam. Code, § 7803.)
  - 13) Provides that a finding in a proceeding under 11) must be supported by clear and convincing evidence, unless otherwise stated. (Fam. Code, § 7821.)
  - 14) Provides the circumstances under which a minor child can be declared free from the custody and control of a parent, including abandonment, neglect or cruel treatment, or the parent's disability due to habitual substance use or a mental illness or developmental disability, as defined. (Fam. Code, §§ 7822-7827.)
    - a) Provides that, in an action under 11) 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. (Fam. Code, § 7825.)
  - 15) Requires a court, in a proceeding under 11), 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, unless, 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.
- 10) Makes nonsubstantive technical and conforming changes.

## Comments

The right to parent one's child is a liberty interest protected by the United States Constitution.<sup>1</sup> The right is not an unlimited one, however: parental rights may be terminated when the facts supporting termination are supported by clear and convincing evidence.<sup>2</sup>

California has a number of statutes governing custody disputes, the parent-child relationship, and the ability to terminate a parent-child relationship or free a child from the custody and control of a parent. Certain statutes prevent the establishment of a parent-child relationship, such as when, outside of a marital relationship, the person seeking parentage committed an act of rape that led to the child's conception and was convicted of that crime.<sup>3</sup> For a person whose parentage is established, the "best interest of the child" standard generally governs the court's award or denial of custody and care. There is 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, 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.

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<sup>1</sup> See *Santosky v. Kramer* (1982) 455 U.S. 745.

<sup>2</sup> *Ibid.*

<sup>3</sup> Fam. Code, § 7611.5.

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 prohibits an award of custody to a person who has been convicted of sexual assault that led to the child's conception or occurred within 300 days before the birth. The bill also modifies the presumptions relating to (1) the nonexistence of a parent-child relationship, and (2) parental fitness to parent a child. In both cases, the bill establishes a conclusive presumption against parentage or fitness when the child was conceived as the result of a sexual assault that is proved through clear and convincing evidence. These presumptions will not apply, however, 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 bill does not modify the existing absolute bar on parentage or custody when the putative parent or parent was convicted of the rape that led to the child's conception.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:** (Verified 4/30/26)

RAINN (source)

16 individuals

**OPPOSITION:** (Verified 4/30/26)

San Fernando Valley Alliance

**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.

**ARGUMENTS IN OPPOSITION:** According to the San Fernando Valley Alliance:

We as adults must always do that what is hard so the children do not have to. In the face of this legislation, that what is hard, is honoring the natural rights of the child. It is every child’s natural right to live, to know who their natural mother and father is, and to also beloved, care for and by those parents.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113  
5/1/26 13:13:08

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