

Date of Hearing: June 16, 2026

ASSEMBLY COMMITTEE ON JUDICIARY  
Ash Kalra, Chair  
SB 1364 (Menjivar) – As Amended April 30, 2026

As Proposed to be Amended

**SENATE VOTE:** 38-0

**SUBJECT:** CHILD CUSTODY

**SYNOPSIS**

*Longstanding case law establishes the right of a parent to raise their children, and current law establishes a presumption of shared physical and legal custody in family law proceedings. However, both case law and statute acknowledge that not every circumstance will support such orders, and it is the overarching policy of the state to ensure that courts issue orders that are in the best interest of the child. While it is also the aim of the Legislature to ensure that courts retain as much discretion as possible to make such determinations for each family considering their individual circumstances, existing law restricts the ability of a biological parent who is convicted of rape that results in the conception of the child to obtain custody and visitation orders and establish parentage of that child. Existing law does not explicitly consider, however, that many acts of sexual assault that may result in the conception of a child will never lead to a conviction, leaving parents who are victims of rape to potentially co-parent with the person who assaulted them. This bill attempts to extend the protections in existing law to those parents by restricting courts' ability to issue custody and visitation orders, limiting when a parent-child relationship may be established, and expanding when a proceeding to free a child from the custody and control of a parent may be brought to include circumstances where a parent committed an act of sexual assault against the other parent that resulted in the conception of the child, even if the perpetrator was never convicted. As currently in print, the bill potentially allows for an interpretation that would impose those same changes on a parent who commits an act of sexual assault that could not result in the conception of a child. As that is not the stated intent of the author or the sponsor, and as such the author has proposed amendments to clarify the bill to only capture acts of sexual assault considered under the new Penal Code cross-reference that could result in conception. These amendments are incorporated into the SUMMARY section and discussed in the COMMENTS section of this analysis.*

*This bill is sponsored by the Rape, Abuse, and Incest National Network (RAINN) and is additionally supported by the California Women's Law Center. It is opposed by SFV Alliance who posit that the bill will violate a child's right to have a relationship with their parents.*

**SUMMARY:** Expands existing limitations on when a parent may be awarded custody of their child, when a parent-child relationship can be established, and when a parent may be deemed unfit to parent their child, to incorporate circumstances when a parent has committed an act of sexual assault against the other parent that resulted in the child's conception but has not been convicted of the sexual assault. Specifically, **this bill:**

- 1) Clarifies that a court making a determination of the best interests of the child in a custody and visitation proceeding must consider a history of abuse by the other parent, including abuse that resulted in conception of the child.
- 2) Prohibits a person from being granted custody of, or visitation with, a child if the person has been convicted of sexual assault, as defined in Section 11165.1 of the Penal Code, or a similar statute in another jurisdiction where the act occurred, if either 1) the child was conceived as a result of the act of sexual assault, or 2) the child was born within 300 days after the act of sexual assault against the victim and the act was one that could result in the conception of a child.
- 3) Establishes a rebuttable presumption, upon a finding 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 a child, 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 interests of the child. The presumption can only be rebutted by clear and convincing evidence that sole or joint physical or legal custody of the child is in the best interest of the child.
  - a) For purposes of this section, establishes that an act of sexual assault results in conception if either 1) the child was conceived as a result of the act of sexual assault or 2) the child was born within 300 days after the act of sexual assault, and the act was one that could result in the conception of a child.
- 4) Prohibits a man from being presumed to be the natural father of a child if the father was convicted of, or is found by clear and convincing evidence to have committed, an act of sexual assault against the mother and either 1) the child was conceived as a result of the act of sexual assault or 2) the child was born within 300 days after the act of sexual assault and the act was one that could result in the conception of a child. Prohibits the application of this section if, after the date of the sexual assault, the child's natural mother and the father voluntarily share the rights and responsibilities of rearing the child, including frequent and continuing contact with the child.
- 5) Authorizes a child, the child's natural mother, a person presumed to be the child's parent under Section 7611, an adoption agency to which the child has been relinquished, or a prospective adoptive parent of the child may bring an action to declare the nonexistence of the parent and child relationship at any time.
- 6) Authorizes the mother of a child to bring a proceeding against the child's father to establish a child's freedom from parental custody and control if the father is found by clear and convincing evidence to have committed an act of sexual assault against the mother of the child and either 1) the child was conceived as a result of the act of sexual assault, or 2) the child was born within 300 days after the act of sexual assault and the act was one that could result in the conception of a child. Establishes that 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 father voluntarily share the rights and responsibilities of rearing the child, including frequent and continuing contact with the child.
- 7) For purposes of this bill, defines "sexual assault" to have the same meaning as defined in Section 11165.1 of the Penal Code or a similar statute in another jurisdiction where the action occurred.

**EXISTING LAW:**

- 1) Requires the court to consider the following among any other factors it finds relevant when making a determination of the best interests of the child in a family court proceeding including a dissolution of marriage, proceeding to determine physical or legal custody or for visitation, or exclusive custody proceeding:
  - a) The health, safety, and welfare of the child;
  - b) A history of abuse by one parent, or any other person seeking custody, against the other parent. (Family Code Section 3011 (a).)
- 2) Establishes the public policy of the state to ensure that 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. Further establishes that 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. (Family Code Section 3020 (a).)
- 3) Establishes the public policy of the state to 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 when the contact would not be in the best interests of the child. (Family Code Section 3020 (b).)
- 4) Prohibits a person from being granted custody of, or visitation with, a child if the person has been convicted under Section 261 of the Penal Code and the child was conceived as a result of that violation. (Family Code Section 3030 (b).)
- 5) Authorizes a court to order child support to be paid by a person convicted of a violation of Penal Code Section 261 and therefore prohibited from receiving custody of or visitation with a child to be paid through the local child support agency (LCSA). (Family Code Section 3030 (d).)
- 6) Establishes that a person is presumed to be the natural parent of a child if the person meets any of the following conditions:
  - a) The child is the child of spouses who cohabitated at the time of conception and birth, subject to specified exceptions;
  - b) The parent completes a voluntary declaration of parentage;
  - c) The presumed parent and the child's natural mother 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, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court;
  - d) Before the child's birth, the presumed parent and child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, if specified circumstances are true;

- e) After the child's birth, the presumed parent and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and certain specified circumstances are true;
  - f) The presumed parent receives the child into their home and openly holds out the child as their natural child. (Family Code Section 7611.)
- 7) Prohibits a man from being presumed the natural father of the child, where 6) does not apply, if either of the following are true:
- a) 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;
  - b) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under 15 years and the father was 21 years of age or older at the time of the conception. (Family Code Section 7611.5.)
- 8) Authorizes the mother of a child to bring a proceeding to terminate parental custody and control against the father of the child, where the child was conceived as a result of an act in violation of Section 261 of the Penal Code, and where the father was convicted of that violation. For purposes of such a petition, there is a conclusive presumption that the father is unfit to have custody or control of the child. (Family Code Section 7825 (b).)
- 9) Defines "rape" as an act of sexual intercourse accomplished 1) if a person is at the time incapable of giving legal consent and that fact is known or reasonably should be known to the person committing the act, or 2) against a person's will by various specified means. (Penal Code Section 261.)
- 10) Defines "unlawful sexual intercourse" as an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. (Penal Code Section 261.5.)
- 11) Defines "sexual assault" as conduct in violation of one or more of the specified sections including provisions defining rape, statutory rape, rape in concert, incest, sodomy, oral copulation, lewd or lascivious acts upon a child, sexual penetration, and child molestation. (Penal Code Section 11165.1 (a).)
- 12) Further specifies that conduct described as "sexual assault" includes, but is not limited to: penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen; sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person; intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose; the intentional touching of the genitals or intimate parts, including specified areas of the body, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except as specified; the intentional masturbation of the perpetrator's genitals in the presence of a child. (Penal Code Section 11165.1 (b).)

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

**COMMENTS:** Existing law provides a complex and nuanced series of rules and guidelines for courts to follow when issuing orders relating to custody, visitation, and parentage in family court proceedings. California policy, as reflected in various Family Code statutes, focuses on ensuring courts protect the child's best interest and directs courts to consider the health, safety, and general welfare of the child in issuing any such orders. While the general policy is to allow courts the greatest discretion possible in order to allow courts to make case-by-case determinations in highly fact-specific proceedings where each family comes with their own particular dynamics and needs, the Legislature has determined that in a few circumstances, courts should be limited in their ability to issue orders involving children. In particular, courts are restricted in issuing custody and visitation orders, and there are statutory presumptions against a finding of parentage in circumstances where a parent was convicted of rape and the rape resulted in the conception of the child. Existing law does not address, however, scenarios where one parent sexually assaulted the other but was never convicted and the assault resulted in the conception of a child. This bill attempts to address that gap and provide some safeguards for parents who are survivors of sexual assault to protect them from having to maintain lifelong contact with their abuser by extending existing limitations on a court's ability to issue custody or visitation orders; establishing parentage; and petitioning to free a child from the custody and control of that parent.

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 endure ongoing abuse and harassment while sharing custody. In the family courts, the burden of proof in custody and visitation decisions is "clear and convincing" proof, yet in California, survivors of sexual abuse, are held to a higher burden. It is time for California to catch up with the other states who put survivors first and require "clear and convincing" evidence of the nonconsensual sexual act to prohibit custody and visitation by the rapist.

***The Constitutional right to parent your child and existing law.*** Longstanding Supreme Court jurisprudence establishes the constitutional right of a parent to make decisions on behalf of and generally parent their child. In a case striking down a Nebraska state law that prohibited teaching any language other than English to certain school children, the Supreme Court held that the Due Process clause of the Fourteenth Amendment to the United States Constitution "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399.)

That right is far from universal or unbounded, however. Instead, where a state seeks to limit or terminate parental rights, it must provide the parent with fundamentally fair procedures to satisfy the Constitution's due process protections. For purposes of terminating parental rights, the Court

has held that the facts underlying the termination must be established by clear and convincing evidence. (*Santosky v. Kramer* (1982) 455 U.S. 745.)

Existing California law tasks the courts with issuing orders that are in the best interest of the child, and requires courts to consider a variety of factors such as the health, safety, and welfare of the child, and whether there is a history of abuse by one parent or any other seeking custody. (Family Code Sections 3011, 3020.) Existing law also imposes a number of limits on courts issuing orders for custody and visitation of a child; establishing parentage of a child; and when a court can grant an order freeing a child from the custody and control of a parent. Each of these restrictions is tailored to balance the rights of the parent or parents to exert authority and control over their child against the best interest of the child. In the ideal circumstances, those interests are wholly aligned and courts can issue orders that appease all parties that maintain the health and safety of the child. In many cases, however, the interests diverge.

***Custody and visitation.*** Family Code Section 3040 sets out the order of preference courts should follow when making custody and visitation orders and makes shared custody the default preference. Existing law also establishes presumptions against, and restrictions on, awarding custody in certain circumstances based on policy determinations that those circumstances are likely to be detrimental to a child. For example, a parent who must register as a sex offender pursuant to various provisions of the Penal Code may never receive physical or legal custody of, or unsupervised visitation with, a child unless the court finds there is no significant risk to the child. (Family Code 3030 (a).) Section 3044 also establishes a presumption against awarding custody or visitation to a parent where the other parent proves that they, the child, or another person were the victim of domestic violence at the hands of the parent seeking custody or visitation within the last five years. Additionally, and particularly relevant to this bill, a parent who has been convicted of rape under Penal Code Section 261 and the child was conceived as a result of that violation is prohibited from being granted custody of, or visitation with, the child. (Family Code Section 3030 (b).)

***This bill*** modifies the statutes relating to custody and visitation in three ways. First, the bill amends Section 3011 to specify that courts should consider abuse that resulted in the conception of a child when making a determination that is in the child's best interest.

Second, the bill expands the existing prohibition in Section 3030 against awarding custody and visitation to a parent who was convicted of rape to instead prohibit such a grant to a parent who was convicted of sexual assault, as defined in Penal Code Section 11165.1 or a similar statute in another jurisdiction where the act occurred and the child was conceived as a result of, or born within 300 days after, that act against the victim. The addition of the provision capturing children born within 300 days after an act of sexual assault acknowledges that in many relationships, one instance of consensual sex may occur around the same time as an instance of nonconsensual sex. In these cases, it is nearly impossible for a survivor to conclusively demonstrate that it was the nonconsensual act that resulted in the conception.

Penal Code Section 11165.1 is more expansive than Penal Code Section 261, which only defines "rape." In addition to incorporating rape by cross-referencing Section 261, Section 11165.1 defines "sexual abuse" as "sexual assault or sexual exploitation" including a violation of one or more of several Penal Code sections defining acts such as rape, statutory rape, rape in concert, incest, sodomy, oral copulation, lewd and lascivious acts upon a child, sexual penetration, and child molestation. Replacing the cross-reference to Penal Code Section 261 with Section 11165.1

for purposes of Family Code Section 3030 allows the statute to potentially capture acts not contemplated by Penal Code Section 261. However, Penal Code Section 11165.1 also includes acts that could not, on their own, result in the conception of a child. As currently drafted, the bill could result in prohibiting courts from granting custody or visitation to a parent who was convicted of an act of sexual assault that could *not* result in conception.

While it is entirely possible that a court would find that it is not in the best interest of the child to grant custody or visitation to a biological parent who has sexually assaulted the other parent in *any* of the ways included in Penal Code Section 11165.1, to capture all such acts is broader than the author's intent. Instead, this bill is intended to capture sexual assaults *that resulted in the conception of a child*. In order to clarify this intent, the author proposes the following amendments to Section 2 of the bill, amending Family Code Section 3030:

(b) A person shall not be granted custody of, or visitation with, a child if the person has been convicted of sexual assault, as defined in Section 11165.1 of the Penal Code, or a similar statute in another jurisdiction where the act occurred, and ~~the child was conceived as a result of, or born within 300 days after, that act against the victim.~~ ***either of the following are true:***

***(1) The child was conceived as a result of the act of sexual assault.***

***(2) The child was born within 300 days after the act of sexual assault, and the act was one that could result in the conception of a child.***

The third change this bill makes to custody statutes is to provide some protections to parents who were assaulted and had a child as a result, but where that assault did not result in a conviction. The bill attempts to do so by establishing a rebuttable presumption that an award of sole or joint physical or legal custody of a child is against the child's best interests if a court finds by clear and convincing evidence that the party seeking custody perpetrated an act of sexual assault that resulted in the conception of the child. The presumption is rebuttable only by clear and convincing evidence that granting custody is in the child's best interest. While it may be challenging for a parent to satisfy the clear and convincing standard, even in those cases where such a showing is made, the parent seeking custody would still have the opportunity to demonstrate that granting them custody or visitation is in the child's best interest.

The bill establishes that for purposes of this rebuttable presumption, "an act of sexual assault results in conception if the child was conceived as a result of, or born within 300 days after, an act against the other party, and the act was sexual assault," and defines "sexual assault" as having the same meaning as Penal Code Section 11165.1 or a similar statute in another jurisdiction where the action occurred. Similar to the bill's changes to Family Code Section 3030, discussed above, this language creates the potential for interpretation that a rebuttable presumption should be imposed if the parent seeking custody committed *any* act contemplated by Penal Code Section 11165.1. To align this section with the underlying intent of the bill, the author proposes the following amendment to Section 3 of the bill enacting Family Code Section 3044.1:

3044.1. (a) Upon a finding by the 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 interests of the child pursuant to Sections 3011 and 3020. This presumption may only be

rebutted by clear and convincing evidence that sole or joint physical or legal custody of the child is in the best interests of the child.

(b) For purposes of this section, an act of sexual assault results in conception if ~~the child was conceived as a result of, or born within 300 days after, an act against the other party, and the act was a sexual assault.~~ ***either of the following are true:***

***(1) The child was conceived as a result of the act of sexual assault.***

***(2) The child was born within 300 days after the act of sexual assault, and the act was one that could result in the conception of a child.***

***Establishing parentage.*** Current law establishes who can be considered a legal parent or is otherwise prohibited from being considered, a “presumed” parent. Family Code Section 7611 establishes that two married parents that lived together at the time of the conception and birth are, subject to some minimal exceptions, presumed to be the parents of the child. Section 7611 enumerates additional bases for presuming a child’s parentage, including when the presumed parent receives the child into their home and openly holds them out as their natural child. When parents are not married at the time the child is conceived and born and the parents do not meet any of the additional statutory bases for a presumption of parentage, Family Code Section 7611.5 prohibits a man from being presumed as the father of the child if he was convicted of rape and the child was conceived as a result of that act.

Family Code Section 7630 authorizes a natural mother (the person who gave birth to the child), the presumed parent, or the child to bring an action to establish parentage, the nonexistence of parentage, or finally to terminate a parent’s parental rights. In order to terminate parental rights, a court must find by clear and convincing evidence that the termination is in the best interest of the child. (*In re Charlotte D.* (2009) 45 Cal.4th 1140, 1147 – 1148.)

***This bill*** amends Family Code Section 7611.5 to mirror the changes proposed to the custody and visitation statutes. The bill changes the cross-reference from Penal Code Section 261 to Section 11165.1. Second, the bill expands the existing prohibition against a finding of parentage to prohibit a man from being presumed to be the natural father 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 child’s mother and *either* the father was convicted or is found by clear and convincing evidence to have committed the assault. The bill eliminates the existing possibility that a parent who was convicted of rape could establish parentage if they otherwise meet one of the statutory bases for presumption of parentage. This change is in keeping with recent policy trends to acknowledge rape even if it happens between spouses.

Importantly, the proposed prohibition does not apply if, after the date of the sexual assault, the child’s natural mother and father voluntarily share the rights and responsibilities of rearing the child, including frequent and continuing contact with the child. Put more simply, if that parent has participated as a parent in the child’s life, the prohibition would not apply.

As with the previous sections, this provision of the bill runs the risk of interpretation to apply to a more expansive set of circumstances than those contemplated by the underlying intent of the bill. The author is proposing the following amendments to clarify the amendments in Section 4 of the bill:

7611.5 (a) Notwithstanding Section 7611, 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 in Section 11165.1 of the Penal Code or a violation of a similar statute in another jurisdiction where the act occurred, against the child's mother and the father was convicted of, or is found~~ **found**, by clear and convincing ~~evidence~~ **evidence**, to have committed ~~that act.~~ ***an act of sexual assault against the mother and either of the following are true:***

***(1) The child was conceived as a result of the act of sexual assault.***

***(2) The child was born within 300 days after the act of sexual assault, and the act was one that could result in the conception of a child.***

[...]

***(c) As used in this section, "sexual assault" has the same meaning as defined in Section 11165.1 of the Penal Code or a similar statute in another jurisdiction where the act occurred.***

The bill also amends Family Code Section 7630 to allow a person to bring an action at any time to establish the nonexistence of a parent-child relationship in cases where the child was conceived by an act of sexual assault pursuant to Section 7611.5. Notably, because the prohibition in 7611.5 would not apply in cases where the parent who committed the act of sexual assault shared the rights and responsibilities of caring for the child, it does not raise the possibility that a court could order the nonexistence of a parent and child relationship where there is a standing relationship between the parent and the child. In these cases, the potential termination of the relationship would still be adjudicated under the "best interest of the child" standard.

***Proceedings to free a child from parental custody and control.*** Family Code Sections 7800 *et seq.* lay out the procedure and standards by which one or both parents can be deemed unfit to parent a child, thereby freeing the child from the parent's custody and control. It is important to note that these proceedings are distinct from dependency proceedings brought under the Welfare and Institutions Code which terminate parental rights through dependency court and makes a child a dependent of the court. Similar to dependency proceedings, however, a declaration of freedom from parental custody and control terminates all parental rights and responsibilities with regard to the child. (Family Code Section 7803.) Additionally, as with a proceeding to terminate parental rights in dependency court, a petition to free a child from parental custody and control can only be granted upon a showing of clear and convincing evidence that the parent is unfit and that granting the petition is in the best interest of the child. A determination that a parent is unfit rests on a number of factors, including whether the parent has failed or is likely to fail in the future to provide a home for the child; provide care and control for the child; and maintain an adequate parental relationship with the child. (*In re Robert J.* (1982) 129 Cal. App.3d 894, 900 – 901.) Mirroring Family Code Section 7611.5 prohibiting a presumption of parentage where the father was convicted of rape resulting in the conception of the child, Section 7825 (b) establishes a conclusive presumption that the father is unfit to have custody or control of the child if the father was convicted of rape under Penal Code Section 261 and the child was conceived as a result of that act.

***This bill*** modifies Section 7825 to authorize a party to petition for a child to be ordered free from parental custody and control if the child was conceived as a result of an act of sexual assault against the mother and the father is found, by clear and convincing evidence, to have committed that act. The bill establishes a conclusive presumption that the father is unfit to have custody or control of the child. Mirroring the changes to the parentage statute, the presumption would not apply where the mother and father share in the act of raising the child.

To maintain consistency with the previously discussed amendments and clarify the bill in order to achieve its intent, the author proposes the following amendments:

SEC. 6. Section 7825 of the Family Code is amended to read:

[...]

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

(1) ***(A)*** 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.

***(B)*** 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 father voluntarily share the rights and responsibilities of rearing the child, including frequent and continuing contact with the child.~~

***(2)(A)*** *If the father is found, by clear and convincing evidence, to have committed an act of sexual assault against the mother of the child and either of the following are true:*

***(i)*** *The child was conceived as a result of the act of sexual assault.*

***(ii)*** *The child was born within 300 days after the act of sexual assault, and the act was one that could result in the conception of a child.*

***(B)*** *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 natural mother and father voluntarily share the rights and responsibilities of rearing the child, including frequent and continuing contact with the child.*

***(c)*** *As used in this section, "sexual assault" has the same meaning as defined in Section 11165.1 of the Penal Code or a similar statute in another jurisdiction where the act occurred.*

***ARGUMENTS IN SUPPORT:*** This bill is sponsored by the Rape, Abuse, and Incest National Network (RAINN). It is additionally supported by the California Women's Law Center. In support of the bill, RAINN submits:

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. However, for every 1,000 sexual assaults, 975 perpetrators walk away without a conviction,<sup>2</sup> and fewer than one percent of rapes result in a conviction for rape since some defendants plead to lesser charges.<sup>3</sup> Without a conviction, a rapist retains the right to sue for child custody and rape survivors are forced to interact for decades with the person that committed the rape. This not only prevents healing, but actively harms the survivor and their child.

By requiring a conviction, current California law uses 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 nearly half the states which already provide this protection for survivors, including Arizona, Texas, Virginia, and Washington.

***ARGUMENTS IN OPPOSITION:*** This bill is opposed by SFV Alliance. They submit:

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 be loved, care for and by those parents.

This is not to deny or dismiss the crimes that have been committed on to the mother that this legislation hope to address. A crime that could be as heinous as forcible rape with or under the threat of violence to a what some would think as an unfortunate situation of a 14 year old female who's body told her what she was doing was consensual, natural and right but we know or have decided that she does not have the full mental facilities to make that decision for herself, while an older adult who could be as young as 19 should have had the maturity to know to either say NO or not carry on with her in that situation.

Even though we have concluded through our elected officials that the minor child does not have the mental capacity to decide to create that life but has the capacity to end a pregnancy at age 12 without her parents ever knowing.

As always, we are all over the map and inconsistent in California.

The question of why should that mother have to share the child she bared with the father that either; brutally ,statutorily raped her or some other horrible form of a nonconsensual situation? Let us not think of the Parents in this situation, let us think of the child. The child is innocent of how he or she was created. They come out of the womb with no knowledge of how they where conceived. Vsulnerable [sic] with the need of love and care from their parents.

We have for many years and decided by the courts through the 14th amendment that the best place for the child if possible is with their natural mother and father. We have worked to that goal for 175 years in California no matter how difficult it has been.

[...]

This legislation is a blanket removal of the father in the child's life because the father was convicted of non-consensual sex with the mother. While our mind goes to the worst case scenario possible, the worse case is not always the situation. The male spouse in a sexual relationship could have been told no, but wrongly did so anyways, resulting in pregnancy. It could have been a willing minor as I mentioned already, who was not mentally capable to make that decision. It could be coercion by the perpetrator, creating a feeling a guilt with the victim, a victim having to prove ones self, and other forms of emotional manipulation. The victim may have been inebriated. While these reasons are all wrong, it will be the child who will have to suffer with the consequences of not having a willing father in their life if this legislation is passed.

[...]

We do know the majority of this committee has demonstrated they believe in

rehabilitation and redemption. This legislation will only allow this if the mother says so. California needs to do a better job of teaching the men of our society what nonconsensual sex is. To teach men to look for it, to make sure they are never participating in such a horrible act.

With abortion not only being an option in current day California, it is also celebrated by most of you and most voters saying that it is the mother's right to choose to end that life come before that child's right to live outside of the womb. I would think most of those who put that right of the "would be mother before the child" would already have chosen or encourage to end that child's life in the situation of non consensual conception.

[...]

SB 1364 works against the child's natural right to have his or her parents.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Rape, Abuse, & Incest National Network (sponsor)  
California Women's Law Center  
1 individual

### **Opposition**

SFV Alliance

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