

SENATE THIRD READING

SB 1364 (Menjivar)

As Amended June 17, 2026

Majority vote

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.

Major Provisions

- 1) 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.
- 2) 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.
- 3) 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.
- 4) Authorizes a child, the child's natural mother, a person presumed to be the child's parent under Family Code 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.
- 5) 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.

- 6) 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.

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.

First, the bill specifies 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 Family Code Section 3030 to prohibit a court from granting custody or visitation 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 the act or the child was born within 300 days after, that act against the victim and the act was one that could result in conception of a child. 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.

Third, the bill establishes 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. 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 the act of sexual assault or was born within 300 days after the act and the act was one that could result in the conception of a child.

Next, the bill amends existing law relating to parentage to mirror the changes to the custody and visitation statutes. 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 either conceived as a result of an act of sexual assault, or born within 300 days after an act of sexual assault against the child's mother and the act was one that could result in the conception of a child 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. 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.

Finally, the bill authorizes 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 or 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 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.

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.

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 and fewer than one percent of rapes result in a conviction for rape since some defendants plead to lesser charges. 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 were conceived. Vulnerable [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.

FISCAL COMMENTS

None.

VOTES

SENATE FLOOR: 38-0-2

YES: Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNeerney, Menjivar, Ochoa Bogh, Pérez, Reyes, Richardson, Rubio, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Niello, Padilla

ASM JUDICIARY: 12-0-0

YES: Kalra, Macedo, Bauer-Kahan, Bryan, Connolly, Dixon, Harabedian, Pacheco, Papan, Sanchez, Stefani, Zbur

UPDATED

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CONSULTANT: Manuela Boucher / JUD. / (916) 319-2334

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