

Regarding: An Act to add Family Code Section 3050-3055 concerning Equal Parenting

Below is an Act including supporting reasons to add Family Code Section 3050-3055 all relating to Equal Parenting; custody of children after divorce; providing certain rebuttable presumptions concerning custody; adding procedures and criteria relating to determining the custody of children; addressing relocation of parents; addressing certain tax implications; and including contempt provisions.

This proposal was prepared by the Children's Rights Council of San Diego (CRC San Diego), Coalition of Parent Support San Diego (COPS-SD), and Children's Rights Initiative for Sharing Parents Equally (CRISPE), the California Men's Centers (CMC), and National Coalition for Free Men San Diego Chapter (NCFM-SD; ALL concerned with children and their mothers and fathers being victimized through no fault of their own through the questionable administration or lack thereof of existing joint custody legislation and related common law.

We, the undersigned petitioners, demand that the California Legislature pass a bill to add Section 3050-3055 to the Family Code, all relating to an Equal Parenting Act; custody of children after divorce; providing certain rebuttable presumptions concerning custody; adding procedures and criteria relating to determining the custody of children; addressing relocation of parents; addressing certain tax implications; and including contempt provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 2.5 of the Family Code is added to read:

**CHAPTER 2.5 EQUAL PARENTING ACT.**

SECTION 2. Section 3050 of the Family Code is added to read:

**3050 Intent and Findings**

The Legislature, recognizing the long history of traditional and statutory protections afforded child and parent bonds and recognizing the fundamental liberty interest parents enjoy respecting the care, custody and companionship of their children, finds and declares the following with respect to the intent of this state's

statutes related to marriage, family and marital dissolution:

- (a) That an intact, involved two-parent home provides the optimal environment through which children grow into productive and responsible adult citizens;
- (b) That parents are the primary "polestar" with respect to developing their children. Our society, state and statutes are secondary structures designed to support, not supplant, both parents in their role as the primary shapers of their children;
- (c) That mothers and fathers provide unique and invaluable contributions towards the development of their children. Each parent's contributions to the upbringing of their children are equally necessary to assure children the best opportunity to develop into healthy citizens;
- (d) That children should be separated from their parents only under the most compelling and unusual circumstances necessary to protect the child from substantial and imminent harm;
- (e) That children have frequent and continuing physical contact with both parents under equal legal and physical custody arrangements when the parents live separately including after parental separation or dissolution of marriage. The proper role of the state in this situation is to interfere to the least degree in familial relationships with the specific purpose of preserving maximum time allocations among parents and their children;
- (f) That parents may, and should be encouraged to, reach any agreement mutually acceptable to them regarding their parenting time allocations as may reflect the individual circumstances of the parents. In the event parents cannot reach agreement on the parenting arrangement, it is the specific intent of the Equal Parenting Act that parents have a rebuttable presumption of equal time with the children;
- (g) It is the public policy through this Equal Parenting Act to (1) recognize both parents fundamental liberty interest in the care, custody, and companionship of their children (2) reduce the interference by either parent when parents live separately and (3) reduce the probability of the alienation and disenfranchisement of children from either parent lives through geographic relocation.

SECTION 3. Section 3051 of the Family Code is added to read:

**3051 Parenting**

- (a) In cases of marital dissolution or unmarried parentage, it is the policy of this state that both parents enjoy a rebuttable presumption of joint legal and physical custody of their children. Joint physical custody of the children is defined as equal time-sharing.
- (b) The burden of overcoming the presumption rests on the parent challenging the presumption. The presumption may be overcome only by demonstrating an unfitness of the parent being challenged that would cause substantial harm to the children. The clear and convincing evidentiary standard shall be used in making a fitness determination.
- (c) During the pendency of any custody case, if both parents were residing in the home before filing for separation or divorce, any temporary orders issued shall maintain an equal time-share allocation between both parents and their children. Both parents shall enjoy joint legal and physical custody of the children while any temporary order is in effect.
- (d) If both parents were not residing together in the home before filing for custody, then any temporary orders shall include a reasonable, specified timetable to establish an equal time-share allocation as soon as possible.
- (e) Allegations of substance, spousal or child abuse or neglect and any subsequent issuance of protective orders are not sufficient to cause cessation or reduction of parent-child contact. Only a written finding of substantiated abuse is sufficient to allow the court to deviate from an equal time-share arrangement and award custody to one parent. An allegation of abuse is considered substantiated if affirmed using the clear and convincing evidentiary standard. In no instance may the court limit parent-child contact during the pendency of custody determinations absent compelling necessity to prevent substantial and imminent harm to the child(ren).
- (f) Knowingly making false allegations of child or spousal abuse is sufficient grounds to challenge parental fitness of the accuser. Allegations raised in the context of divorce or custody proceedings deserve heightened scrutiny as to their veracity.

- (g) The state shall consider all abuse allegations as criminal complaints affording the accused all rights and due process of law available to those criminally accused.
- (h) Since modern-day video and audio recording devices are readily available, affordable and effective, they are admissible as tools to affirm ongoing patterns of abuse.
- (i) The court shall require parents to prepare and submit a parenting plan to the court reflecting parental preferences and agreement on the matters of substance concerning the children's education, upbringing and religious training.
- (j) The parents shall share decision-making authority and responsibility as to the important decisions affecting the child's welfare and when parents are unable to agree, they will submit to and abide by the decision of a preselected mediator.
- (k) The court, in making a determination of parental fitness pursuant to this section shall consider and evaluate all the following factors:
  - (1) The capacity and disposition of the parents to give the child love, affection, guidance and protection;
  - (2) The capacity and disposition of the parents to continue the academic and religious education of the child;
  - (3) The capacity and disposition of the parents to provide food, clothing and medical care;
  - (4) The mental and physical health of the parents and other household members. When mental health evaluations are requested of either parent and the court orders an evaluation, then the evaluation shall be required of both parents;
  - (5) The home, school and community behavior of the child; and
  - (6) The willingness and ability of each of the parents to demonstrate facilitation and encouragement of a close and continuing relationship between the child and the other parent.
- (l) In any adversarial custody hearing, the judge shall provide written findings of fact and conclusions of law when entering any order not reflecting maintenance of the rebuttable presumption of joint legal and physical custody and written findings that enumerate which of the factors set forth in subsection

(k) of this section are applicable and by what evidence these factors were demonstrated.

SECTION 4. Section 3052 of the Family Code is added to read:

**3052 Relocation.**

- (a) Where parents enjoy joint legal and physical custody of children, relocation by either parent with the children may only take place by joint agreement of both parents. In the absence of a joint relocation agreement, the burden of overcoming the presumption against relocation is on the relocating parent. A move from the children's existing school district is considered relocation subject to all notice, response and hearing procedures.
- (b) The relocating parent shall file, with the clerk of the court that issued the custody order or that has current jurisdiction over custody proceedings, a notice of intent to relocate and a revised parenting plan and send a copy of the notice and revised plan by registered mail to the no relocating parent no later than ninety days before the date that the relocating parent intends to move.
- (c) No later than thirty days after receipt of the notice from the relocating parent, the no relocating parent must file notice of objection and a revised parenting plan to preserve the presumption against relocation with the children. Both the relocating and the no relocating parent's revised parenting plans shall be submitted to a preselected mediator. If the mediator is unable to resolve the parenting plan differences, then the court may issue a revised parenting plan by written findings, after an evidentiary hearing for which notice has been provided to both parents, in accordance with the considerations set forth in subsection (g) of this section. The relocating parent has the burden of proof at the evidentiary hearing.
- (d) If the non relocating parent does not file a notice of objection, the court may approve the relocation with the children, unless the court has any knowledge that the no relocating parent desired to file an objection but was unable to file within the specified time limit.
- (e) If relocating parent moves with the children before a signed, revised parenting plan is in place,

they are guilty of kidnapping and subject to mandatory arrest and criminal prosecution.

- (f) If uncontested, a court may approve the request upon written stipulation of both parties, without the requirement of a hearing.
- (g) In determining whether the relocating parent has overcome the presumption against relocation with the children, the court shall give equal consideration to all of the following:
  - (1) Whether the child will lose substantial contact, joy and rearing with the no relocating parent;
  - (2) Whether the relocation with the children would improve the general quality of life for the children, giving primary consideration to the disruption, caused to the day-to-day relationship between the no relocating parent and the children;
  - (3) The relocating parent's motives for seeking the relocation;
  - (4) Whether the costs of transportation or revised access time is financially affordable by both parents;
  - (5) Whether the relocation with the children will cause hardship or undue burden on the no relocating parent; and
  - (6) Access to extended family support; and
  - (7) The impact on the child including whether the relocation is harmful to health or well-being of the child.

SECTION 5. Section 3053 of the Family Code is added to read:

**3053 Parenting time contempt.**

- (a) When one parent willfully prevents the other parent from their share of time with the children, the court shall in all cases, absent clear and convincing evidence written in the record to justify a denial, hold the violating parent in contempt of court and order the violating parent to give compensatory time to the other parent equivalent to the lost time and shall additionally order at least one of the following remedies:
  - (1) Payment of the expenses and attorney's fees of the parent bringing the contempt action;
  - (2) A five hundred dollar minimum fine;

- (3) Require a bond to assure future compliance with visitation orders;
  - (4) Confinement in jail; or
  - (5) A change in custody.
- (b) The court may order any of the following additional remedies as appropriate:
- (1) Requiring participation of the violating parent in a counseling program about the importance of the children's access to the other parent; or
  - (2) Order the violating parent to pay the cost of counseling to reestablish the parent-child relationship with the other parent.

SECTION 6. Section 3054 of the Family Code is added to read:

**3054 Financial responsibilities; civil liability; jurisdiction; evidence; recording of meetings.**

- (a) Each parent is financially liable for their own attorney's fees and the relocating parent is liable for all court costs. Both parents shall share equally all mediation costs.
- (b) Where both parents are providing equal shared parenting of their children, the parents shall alternate the dependent tax deductions, exemptions and credits each year. When one parent does not abide by this order, they owe a civil liability to the other parent in the amount of the increase in the other parent's tax liability and the other parent is eligible to claim the dependent tax deductions, exemptions and credits in the following two tax years.
- (c) A court has subject matter jurisdiction when the state intervenes to rescue the children. When the children are being cared for and under no substantial and imminent threat to their well-being, child support will not be ordered from either parent.
- (d) All law-enforcement officers are permitted and required to enforce all court orders arising under this article.
- (e) All unedited video or tape recordings are admissible as evidence in court.
- (f) Meetings, hearings or conferences may not be held without properly functioning video or audio recording devices provided by the court.
- (g) All recorded meetings, hearings or conferences shall be reproduced in unedited form at the request of

any of the parties to the action and provided to the requesting parties within ten days of the request.

SECTION 7. Section 3055 of the Family Code is added to read:

**3055 Applicability.**

If the provisions of this chapter conflict with any other provisions of this division, the provisions of this chapter apply.

1. WHEREAS Children who have equal amounts of exposure with both parents do best psychologically, academically, socially, and physically;
2. WHEREAS a recent survey by the National Academy of Sciences has shown that divorce hurts the environment by adding households and increasing utility and water usage;
3. WHEREAS a policy of equal parenting would substantially cut the number of move-aways, thereby reducing transportation costs and thus helping the environment;
4. WHEREAS the US Comptroller General has stated that the federal government has \$53T in debt and unfunded mandates and California is \$16B in deficit, an equal parenting act would reduce court costs;
5. WHEREAS high conflict situations will be substantially reduced creating less emotional stress and damage to the children.
6. WHEREAS it is widely recognized that disrespect for the rule of law leads to greater crime in general, an equal parenting act will bring back respect for law by changing the one sector of our legal system where perjury is widely tolerated;
7. WHEREAS according to the Texas Department of Corrections, 85% of youth in prison grew up in fatherless homes, joint custody will provide incentives for fathers to remain at home, thus reducing crime rates;
8. WHEREAS in approximately 84 percent of the cases where

- a parent is absent, that parent is the father;
9. WHEREAS if current trends continue, half of all children born today will live apart from one of their parents, usually their father, at some point before they turn 18 years old;
  10. WHEREAS committed and responsible fathering during infancy and early childhood contributes to the development of emotional security, curiosity, and math and verbal skills;
  11. WHEREAS an estimated 19,400,000 children (27 percent) in the United States live apart from their biological fathers, a large part of which live in California;
  12. WHEREAS 40 percent of the children under age 18 not living with their biological fathers had not seen their fathers even once in the past 12 months, according to national survey data;
  13. WHEREAS the California encourages responsible parenting and active involvement in children's lives by both fathers and mothers whenever possible;
  14. WHEREAS the most effective way to do that is to ensure equal parenting so that children maximize their time with both parents;
  15. WHEREAS social science literature shows that children are generally well adjusted in an intact family with 2 parents in the home; and, research also shows that for children of divorced, separated, and never-married parents, a high time share is strongly associated with positive outcomes for children on important measures of adjustment and well-being;
  16. WHEREAS research by the Department of Health and Human Services shows that the States with the highest time share subsequently had the lowest divorce rate, which is also true for the higher collection of child support, and
  17. WHEREAS it has been shown that equal parenting reduces the number of filings for bankruptcy,

**THEREFORE** be it resolved that the California Assembly adopt equal parenting laws for fit parents, so that more children are raised with the benefit of having a father and a mother in their lives, careful to protect domestic violence victims, abuse, neglect, children from potential kidnapping by a parent.