

Pre-Draft “Virtual Visitation” Bill for California

Amends the California Family Code DIVISION 8
CUSTODY OF CHILDREN as follows:

- new wording is underlined

Division 8 – Custody of Children

Section 1 – Chapter 1, Section 3008 of the statutes is created to read:

“Visitation” means any form of contact or visitation with a child that may include “Virtual Visitation”. “Virtual Visitation” means time during which a parent and his or her child communicate by using communication tools such as the telephone, electronic mail, instant messaging, video conferencing or other wired or wireless technologies via the Internet, or another medium of communication.

Section 2 – Part 2, Chapter 1, Section 3020 (b) of the statutes is amended to read:

The Legislature finds and declares that it is the public policy of this state to assure 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 where the contact would not be in the best interest of the child, as provided in Section 3011.

(1) If the court grants periods of visitation to more than one parent, the court may grant to either or both parents a reasonable amount of virtual visitation at reasonable hours during the other parent’s periods of physical custody with the child. Virtual Visitation with the child may be used only to supplement a parent’s periods of physical custody with the child. Virtual Visitation may not be used as a replacement or as a substitute for a parent’s periods of physical custody with the child. Granting a parent virtual visitation with the child during the other parent’s periods of physical custody shall be based on whether it is in the child’s best interest and whether equipment for providing electronic communication is reasonably available to both parents.

(2) The courts shall not use the availability of virtual visitation in support of a modification of physical custody or to justify or allow a relocation by the custodial parent from the county, the state, or the country.

(3) The amount of time Electronic Communication is used shall not be a factor in the calculation of Child Support.

(4) Any ordered supervised visitation shall include any electronic communication

(5) The court may grant reasonable Electronic Communication to the grandparents of the child and issue any necessary orders to enforce the decree.

(6) The amount of Virtual Visitation is used shall not be a factor in the calculation of Child Support..

Section 3 – Part 2, Chapter 1, Section 3027.5 (b) of the statutes is amended to read:
The court may order supervised or virtual visitation or limit a parent's custody or visitation if the court finds substantial evidence that the parent, with the intent to interfere with the other parent's lawful contact with the child, made a report of child sexual abuse, during a child custody proceeding or at any other time, that he or she knew was false at the time it was made. Any limitation of custody or visitation, including an order for supervised or virtual visitation, pursuant to this subdivision, or any statute regarding the making of a false child abuse report, shall be imposed only after the court has determined that the limitation is necessary to protect the health, safety, and welfare of the child, and the court has considered the state's policy of assuring that children have frequent and continuing contact with both parents as declared in subdivision (b) of Section 3020.

Section 4 – Part 2, Chapter 5, Section 3100 (a) of the statutes is amended to read:
In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights, including but not limited to virtual visitation to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

Section 5 – Part 2, Chapter 5, Section 3102 (b) of the statutes is amended to read:
In granting visitation pursuant to this section to a person other than a grandparent of the child, the court shall consider the amount of personal contact or virtual visitation between the person and the child before the application for the visitation order.

Section 6 – Part 2, Chapter 5, Section 3103 (a) of the statutes is amended to read:
Notwithstanding any other provision of law, in a proceeding described in Section 3021, the court may grant reasonable visitation or virtual visitation to a grandparent of a minor child of a party to the proceeding if the court determines that visitation by the grandparent is in the best interest of the child.

Sections that might apply to clarify ruling and interpretation:

Section 3011 - In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

(a) The health, safety, and welfare of the child.

(b) Any history of abuse by one parent or any other person seeking custody against any of the following:

(1) Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.

(2) The other parent.

(3) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies,

courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of

the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section 6203 of this code.

(c) The nature and amount of contact with both parents, except as provided in Section 3046.

(d) The habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written

reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(e) (1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

Section 3020. (a) The Legislature finds and declares that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.

(b) The Legislature finds and declares that it is the public policy of this state to assure 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 where the contact would not be in the best interest of the child, as provided in Section 3011.

(c) Where the policies set forth in subdivisions (a) and (b) of this section are in conflict, any court's order regarding physical or legal 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.

Section 3046. (a) If a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining custody or visitation in either of the following circumstances: