

NRS 125.480 Best interests of child; preferences; presumptions when court determines parent or person seeking custody is perpetrator of domestic violence or has committed act of abduction against child or any other child.

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

- (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody.
- (b) Any nomination by a parent or a guardian for the child.
- (c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.
- (d) The level of conflict between the parents.
- (e) The ability of the parents to cooperate to meet the needs of the child.
- (f) **The mental and physical health of the parents, including the abuse of alcohol, prescriptions and other legal or illegal substances. The court may require independent corroboration of an allegation that a parent is habitually or continually using controlled substances or illegal drugs.**
- (g) The physical, developmental and emotional needs of the child.
- (h) The nature of the relationship of the child with each parent.
- (i) The ability of the child to maintain a relationship with any sibling.
- (j) Any history of parental abuse or neglect of the child or a sibling of the child.
- (k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.
- (l) Whether either parent or any other person seeking custody has committed any act of abduction against the child or any other child.

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2365

Introduced by Assembly Member Nestande

February 24, 2012

An act to amend Section 3011 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 2365, as amended, Nestande. Family law: child custody.

Existing law requires a family court to determine the best interest of the child for purposes of deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. In making that determination, existing law requires the court to consider specified factors, including whether either of the child's parents ~~has a documented history of~~ habitually or continually ~~using~~ uses alcohol or illegal drugs. *The court may require independent corroboration of an allegation that a parent is habitually or continually using controlled substances or illegal drugs.*

This bill would require a family court to consider, in determining the best interest of the child in custody proceedings, either parent's ~~documented use~~ *habitual or continual abuse* of prescribed controlled substances, ~~including medical marijuana and narcotic maintenance medications for heroin and opioid addictions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

Arguments Raised in California Legislature

Proponents' Points:

- Abuse of prescription drugs must be considered on equal footing with abuse of illegal (street) drugs and abuse of alcohol by family courts in order to address the epidemic of abuse among our young parents;
- Family court judges should be directed to consider prescription drug abuse in appropriate cases by specific statutory language to ensure that prescribed drugs are used by parents consistent with best practices and do not endanger children;
- Children must be protected from the cycle of prescription drug abuse. It is the family court's function to protect children's interests. Many times the family court is the child's last avenue of protection; and
- The existing law predates the current epidemic of prescription drug abuse in that it only speaks to alcohol and illegal drug abuse. This amendment simply catches the law up to the times.

Opponents' Points:

- Courts may invade a parent's privacy rights when investigating an allegation of prescription drug abuse;
- Parents may be discouraged from seeking medical care for fear of losing custody of their children; and
- The law is not necessary; courts already look to and evaluate the behavior of parents and make custody decisions accordingly.

Response to Opponents' Points:

- There are specific sources of corroborating evidence specified in the statute that courts look to when assessing prescription drug abuse that make no intrusion into a parent's privacy such as arrest records, DUIs, independent witness testimony, and employment history (which is automatically disclosed in child custody cases);
- The court already looks at medical histories of parents regularly in California when an Evidence Code section 730 evaluation is ordered. This amendment is less intrusive than what the court already looks at in evaluating many custody cases;
- The court must strike a balance, weighing the privacy rights of the parents against the best interest of the child. Courts, familiar with the facts of the cases, are designed to do just this.
- Parents may be encouraged to get help and appropriate care to be healthy parents with this amendment;
- The law is necessary; without specific direction to consider prescription drug abuse many courts simply do not and assume that if a medication was prescribed by a physician it is not a source of addiction or a danger to the child.