

# **CHILD CUSTODY INVESTIGATOR EVALUATOR REPORT**

## **PART III**

### **ATTACHMENTS**

**A. Family Violence Fact Sheets**

**B. Suggested Procedure/Checklists for Cases with Abuse to  
Ensure the Health, Safety, and Welfare of All Parties**

**C. Pertinent California Codes**

**D. California Rules of Court**

## A. FAMILY VIOLENCE FACT SHEETS

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### PARENTAL HISTORY OF SUBSTANCE ABUSE, DOMESTIC VIOLENCE AND/OR CHILD ABUSE

It is the **public policy** of California to **assure** that the **health, safety, and welfare of children** shall be the **court's primary concern**. [Family Code 3020(a)] "The best interests of the child" is defined as a consideration of:

- a) the health, safety and welfare of the child;
- b) any history of abuse by a parent or other person seeking custody;
- c) the nature and amount of contact with both parents; and
- d) the habitual/continual illegal use of controlled substances or abuse of alcohol by either parent.

[Family Code 3011; Rule 1257.1(c)(1); 1257.3(c)(2); and 1257.4(c)(6)]

**Family law cases** are **civil cases**. The **burden of proof** in civil cases is a "**preponderance of the evidence**"

This means that there is a **50.1% likelihood** of occurrence (i.e., "that which is more likely than not.")

This burden of proof is substantially lower than for criminal cases.

**Domestic violence** perpetrated by a party against the other party, the child, or the child's siblings within 5 years creates a rebuttable **presumption against sole or joint custody** to the perpetrator. [Family Code 3044]

The court is encouraged not to make a custody or visitation order that is inconsistent with emergency **protective orders**, protective orders or other restraining order, with certain exceptions. [Family Code 3031]

**A serious allegation of child sexual abuse** consists of, but is not limited to:

1) **Statements made by the child** to:

- \* Law enforcement;
- \* A child welfare services agency investigator;
- \* Any person required by statute to report suspected child abuse; or
- \* Any other court-appointed personnel

**or**

2) **An allegation that is supported by substantial independent corroboration**. [Family Code 3118]

**Substantial independent corroboration**, includes but is not limited to, **written reports** by:

- \* Law enforcement agencies;
- \* Child protective services;
- \* Other social welfare agencies;
- \* Courts;
- \* Medical facilities;
- \* Probation departments;
- \* Rehabilitation facilities;
- \* Other public agencies or private nonprofit organizations providing services to victims of sexual assault/domestic violence or drug/alcohol abuse services;
- \* MDIT interviews;
- \* Forensic examinations. [Family Codes 3011, 3118]

**The custody investigator/evaluator must err on the side of caution** due to:

- 1) The deleterious long-term effects on children of domestic violence and child abuse, to which substance abuse is a significant contributing factor;
- 2) The legislative intent to safeguard the health, safety and welfare of the child and safety of other family members; [Family Codes 3011, 3020, 3030, 3031, 3044, 3046, 3100, 3110.5, 3113, 3118, 3190, 6303, and 6211]
- 3) Criminal/civil penalties if a child is permitted or allowed to suffer. [Penal Codes 273a, 261-269, 11165.1 et seq]

## FAMILY VIOLENCE

- The level of **verbal abuse** has been shown to be an indicator of likelihood that a batterer will continue to be violent in the future. Saunders 1995
- The **higher the severity or frequency** of a batterer's violence, the greater the likelihood that he will **continue to assault** the mother. Weisz, Tolman and Saunders 2000
- **Violence during pregnancy** is correlated with future frequent or severe violence. Campbell et al 1998
- Batterers who **abuse substances** are an increased risk to reoffend violently against the mother. Gondolf 1999
- Men who batter when they are drinking **also batter** when they are not drinking. Nisonoff and Bitman 1979
- 60-70% of abusive husbands **assault** their partners while drunk. Gorney, 1989
- A review of the literature suggests that **chronic alcohol abuse** by the male, rather than acute intoxication, is a better **predictor** of battering. Tolman and Bennett, 1990.
- There is a dramatically elevated rate of child physical abuse by **batterers**. McCloskey, Figueredo and Koss 1995; Sirls and Franks 1989; Paveza 1998
- **Batterers** have high rates of physically abusing children and this risk may increase post-separation. Bancroft 2002
- The higher the **severity or frequency** of a batterer's violence, the greater the likelihood that he will physically abuse the children. Straus 1990
- Batterers who **abuse substances** are an increased risk to physically abuse children. Suh and Abel 1990
- **Dictatorial** control is a risk factor for child physical abuse. Milner and Chilamkurti 1991
- Children are sometimes **physically injured** by accident or by attempting to intervene when their mother is assaulted. Jaffe, Wolfe and Wilson 1990
- Children who are exposed to their mother's batterer are likely to **witness** his physical assaults. Kolbo, Blakely, and Engleman 1996
- Children who witness physical assaults against their mother by their mother's batterer experience **traumatic effects**. Cummings 1998
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- The establishment of a **sense of safety is indispensable** to any process of recovery from trauma. Van der Kolk and McFarlane 1996

- Recovery in children traumatized by domestic violence depends largely on their **relationship with their mother**. Jaffe and Geffner 1998; Graham-Bermann 1998
- When a **batterer is no longer present** in a home, there is a strong possibility that **recovery** will begin for the children. Holden, Stein, Ritchie, Harris, and Journiles 1998
- The establishment of a sense of **safety is indispensable** to any process of recovery from trauma. Van der Kolk and McFarlane 1996
- Assisting battered mothers and their children in strengthening their **relationship** is one of the most critical aspect of promoting recovery. Erickson and Henderson 1998
- Child abuse cases constitute only 2-5% of total disputed custody cases. (Theornnes, 1988; Ash, 1991; Brown, 2000)

### SEXUAL ABUSE

- There is a **dramatically elevated rate of child sexual abuse by batterers**. McCloskey, Figueredo and Koss 1995; Sirls and Franks 1989; Paveza 1998
- There is a substantial overlap between **battering and incest** perpetration. Bancroft 2002
- A father's very **low involvement** in parenting during a child's early years increases his statistical risk of perpetrating incest. Milner 1998
- **Dictatorial** control is a risk factor for child sexual abuse. Salter 1995
- Propensity to perpetrate incest is linked to **self-centeredness**. Leberg 1997; Bresee, Stearns, Bess and Packer 1986
- Propensity to perpetrate incest is linked to a view of the children as **owned objects**. Salter 1996
- **Substance abuse** has also been linked to increased risk to perpetrate sexual abuse. Beckner & Quinsey 1993
- Subtle **boundary violations** can be psychologically destructive, can create a context for future sexual abuse, or could be signs of current undisclosed sexual abuse. Salter 1995
- "The **single most important indicator** (of child sexual abuse) is **disclosure by the child** to a friend, classmate, teacher, friend's mother or other trusted adult.... It is not uncommon for the disclosure by children experiencing chronic or acute sexual abuse to be delayed. Children rarely fabricate these accounts; they should be taken seriously." *Child Abuse, An Educator's Responsibility* California Attorney General's Office August 1999
- A child's statement may be **corroborated** by medical, laboratory, scientific, or physical **evidence**. Footnote examples of corroboration: "child's hearsay statement describing painful urination corroborated her statement to profession describing penetration; "child demonstrated extreme anxiety and masturbated on being questioned regarding sexual abuse by stepfather;" "He has nightmares, was sick and refused to allow himself to be touched;" "child's precocious knowledge of urolagnia corroborated her hearsay statement." John E. B. Myers, Professor of Law, Evidence in Child Abuse and Neglect Cases textbook, Third Edition Volume 2 Section 7.52, , 1997

## ***Child Abuse, An Educator's Responsibility, California Attorney General's Office, August 1999***

“Sexual abuse of children within the family, or incest, is the most hidden form of child abuse. In spite of its taboo and the difficulty of detection, some researchers believe it may be even more common than physical abuse.

In most reported cases, the father or a male caretaker is the initiator and the victim is usually a female child. However, boys are also victims more often than previously believed.

Indicators of sexual abuse can surface through a child's history, physical symptoms and behavior. Some of these indicators, taken separately, may not be symptomatic of sexual abuse. They are listed as a guide and should be examined in the context of other factors:

### **Disclosure:**

The child  disclosed sexual abuse.

### **Physical indicators:**

The child wears  torn,  stained or  bloody underclothing,  has injury/disease unusual for the age,  history of previous or recurrent injuries/diseases,  unexplained injuries/diseases,  pregnancy,  sexually transmitted disease,  genital discharge,  genital infection, physical  trauma or  irritation to the anal and/or genital area ( pain,  itching,  swelling,  bruising,  bleeding,  lacerations,  abrasions), pain during  urination or  defecation, difficulty  walking or  sitting due to genital or anal pain, psychosomatic symptoms such as  stomachaches,  headaches,

### **Sexual behavior indicators:**

The child has  detailed/age-inappropriate understanding of sexual behavior,  inappropriate,  unusual, or  aggressive sexual behavior with  peers or  toys, excessive curiosity about  sexual matters or  genitalia in  self or  others,  unusually seductive with  classmates,  teachers and  others adults,  excessive concern about homosexuality, especially boys

### **General behavioral indicators:**

The child exhibits  enuresis ( wetting pants,  wetting bed),  fecal soiling,  eating disturbances such as  overeating or  undereating,  fears and  phobias,  overly compulsive behavior,  school problems or  significant change in school performance ( attitude and  grades),  age-inappropriate behavior that includes  pseudomaturity or  regressive behavior such as bed wetting or  thumb sucking,  inability to concentrate,  sleeping disturbances ( nightmares,  fear of falling asleep,  fretful sleep pattern,  sleeping long hours),  drastic behavioral changes,  speech disorders, frightened of  parents or  caretakers or of  going home,  withdrawal,  chronic fatigue,  clinical depression,  apathy,  overly compliant behavior,  poor hygiene or  excessive bathing, poor  peer relations and  social skills,  inability to make friends,  acting out,  running away,  aggressive,  antisocial or  delinquent behavior,  alcohol or  drug abuse,  prostitution or  excessive promiscuity, school problems such as  frequent absences,  sudden drop in school performance,  refusal to dress for physical education, non-participation in  sports and  social activities,  fearful of other things ( going outside or  participating in familiar activities),  extraordinary fear of males,  self-consciousness of body beyond that expected for age, sudden acquisition of  money,  new clothes or  gifts with no reasonable explanation,  suicide attempt or other  self-destructive behavior,  crying without provocation,  setting fires.

## BEHAVIORAL INDICATORS OF POSSIBLE CHILD SEXUAL ABUSE

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Although there is no single behavioral response to sexual abuse, some indicia have been noted that differentiate children who report sexual abuse from those who do not.

William Friedrich, PhD from the Mayo Clinic describes some of these differences in an article “Sexual Behavior in Sexually Abused Children” published in the January 1993 edition of *Violence Update*.

The following are some behaviors that differentiate the two populations, as reported by adults:

The child imitates

- intercourse
- sexual behavior with dolls

The child touches or rubs his or her

- own sex parts in public
- mouth or body on other people’s sex parts
- body against people or hugs complete strangers

The child acts out by

- showing his or her sex parts to other children or adults
- masturbating or inserting objects in his or her vagina/anus
- trying to French kiss or making sexual sounds
- trying to look at people undressing
- drawing sex parts

The child’s behavior is unusually or extremely

- passive
- aggressive

The child verbalizes

- sexual words
- sexual acts
- wanting to watch explicit TV programs or looking at nude pictures
- wanting other people to engage in sex acts
- flirtatious conversation

**B. SUGGESTED PROCEDURE/CHECKLISTS FOR CASES WITH ABUSE TO ENSURE THE HEALTH, SAFETY, AND WELFARE OF ALL PARTIES**

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**ASSESS THE HISTORY OF VIOLENCE.**

Request all parties, witnesses, and children (if they are willing and able) to prepare and submit written declarations under penalty of perjury describing a chronological history of all incidents of family violence.

Summarize the estimated dates, occurrences, perpetrators, victims, child witnesses and outcomes of events (i.e., report to law enforcement or social welfare agency, entry in battered women’s shelter, reunification, etc.)

<b>Date</b>	<b>Occurrence</b>	<b>Perpetrator</b>	<b>Victim</b>	<b>Witness</b>	<b>Outcome</b>
<b>EXAMPLE</b> May 12, 2000	Michael hit me in the face	Michael (husband)	Jane (wife)	Sandra (daughter) saw this	Reported to police. Michael arrested. Jane dropped charge

## ASSESS THE FREQUENCY/SEVERITY OF VIOLENCE.

Request all parties and witnesses to list the frequency of the following acts of intimidation and violence.

Name of identified perpetrator \_\_\_\_\_ Relationship to child \_\_\_\_\_

<b>Behavior</b>	<b>Last week</b>	<b>Last month</b>	<b>Past three (3) months</b>	<b>Within one (1) year</b>	<b>Within five (5) years</b>
Degrading criticism					
Teasing, taunting					
Yelling, shouting					
Swearing, name calling					
Publicly humiliating					
Threatening harm					
Intense jealousy					
Isolating, prevent from job					
Accusing of having affairs					
Having affairs with others					
Stalking					
Threatening to take child					
Withholding finances					
Financially depriving child					
Causing financial drain					
Destroying property					
Pinching					
Slapping					
Pulling hair					
Grabbing					
Pushing					
Shoving					
Kicking					
Biting					
Punching					
Bruising					
Throwing things					
Throwing person					
Hitting with object					
Choking					
Breaking bones					
Cutting					
Burning					
Mutilation					
Stabbing					
Locking up					



<b>Behavior</b>	<b>Last week</b>	<b>Last month</b>	<b>Past three (3) months</b>	<b>Within one (1) year</b>	<b>Within five (5) years</b>
Watching pornography					
Watching child pornography					
Forcing pornography					
Forcing sex/rape					
Forcing prostitution					
Abhorrent or violent sex					
Threatening with weapon					
Wounding with weapon					
Harming animals					
Drinking alcohol					
Abusing medication					
Using illegal drugs					
Receiving DUI					
Threatening suicide					
Attempting suicide					
Batterers treatment					
Being arrested					
Being convicted					
Restraining order(s)					
Violating restraining orders					
Violating probation					
Other					
Other					

Person completing the list \_\_\_\_\_ Relationship to child \_\_\_\_\_

## ASSESS THE RISK TO FAMILY MEMBERS

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Assess the safety of family members and the risk of future violence by the aggressor/batterer.

### High risk

- First incident at an early age
- More than one violent incident
- Frequency
- Violence during pregnancy
- Description
- Verbal abuse against victim
- Description
- Substance abuse
- Substance(s) used
- Externalizes blame
- Denies problems
- Focuses on victim
- No treatment
- Failed treatment
- Criminal history
- Probation violation(s)

### Lower Risk

- First incident at a late age
- One violent incident
- No violence during pregnancy
- No verbal abuse against victim
- No substance abuse
- Accepts responsibility
- Describes problems with empathy
- Has remorse and focuses on victims
- 52 week batterer treatment program
- Proactive changes evident
- No criminal history
- No probation/violation

## 2. PRIOR TO MEETING WITH THE PARTIES CONJOINTLY

- When there has been a history of domestic **violence**, **ask** if the parties wish to meet conjointly or separately.
- Ask any party who wishes **to meet separately** to provide a written **declaration** under penalty of **perjury** requesting to meet separately and at separate times.
- If there is a **protective order** in effect, ask if the protected party **requests** separate meetings.  
*[Family Code 3113]*

## INTERVIEWS

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The following family violence related issues need to be assessed for each party during the interviews.

Name of person being assessed \_\_\_\_\_ Date \_\_\_\_\_

1) **Power, Control and Dominance** (Geffner)

Who controls the relationship currently?

How is control exercised?

Who controlled the relationship in the past?

How was control exercised?

Who disciplines the children?

How are the children disciplined?

How often are the children disciplined?

- Mother** exercises power, control, and dominance in relationship
- Father** exercises power, control, and dominance in relationship
- Child** exercises power, control, and dominance in relationship

**Power and control are considered risk factors for abuse and are associated with violent behavior.**

2) **Anger and Hostility** (Geffner)

What happens when one person is angry?

How do arguments usually develop?

What are the triggers for arguments?

How are differences usually resolved?

- Mother** acts out in anger.
- Father** acts out in anger.
- Child** acts out in anger.

**Anger and hostility are considered risk factors for abuse and are associated with violent behavior.**

3) **Antisocial Personality Disorder** (DSM IV)

Does the person being assessed:

- Demonstrate a pervasive pattern of disregard for and violation of the rights of others?
- Fail to conform to social norms/lawful behaviors by performing repeated illegal action?
- Demonstrate deceitfulness as indicated by repeatedly lying and using aliases?
- Demonstrate deceitfulness as indicated by conning others for personal profit or pleasure?
- Act impulsively or recklessly?
- Fail to plan ahead?
- Behave in an irritable/aggressive manner as indicated by repeated physical fights/assaults?
- Behave in an irresponsible manner by repeated failure to sustain consistent work behavior?
- Behave in an irresponsible manner as indicated by repeated failure to honor financial obligations?
- Display a lack of remorse as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another?

- Mother** has symptoms of anti-social personality
- Father** has symptoms of anti-social personality
- Child** has symptoms of anti-social personality

**Anti-social personality is considered a risk factor for abuse and is associated with violent behavior.**

**4) Substance Abuse (Alcoholics Anonymous, National Council)**

- Has the person being assessed ever been in treatment resulting from drinking/drug use?  
If so, what type of treatment?  
How long was the treatment?  
Why did s/he enter treatment?  
What is the longest period of abstinence?  
What is the currently length of abstinence?
- Does s/he think s/he has a problem with drinking/drug use?
- Does s/he ever worry about his/her drinking/drug use?
- Does s/he drink/use drugs to build up self-confidence?
- Does s/he drink/use drugs to escape worries?
- Does his/her relatives/friends ever worry or complain about his/her drinking/drug use?
- Does it bother him/her is someone says s/he drinks/uses drugs too much?
- Has drinking/drug use ever created problems with his/her partner?
- Has s/he ever lost friends because of drinking/drug use?
- Does s/he have new friends who drink/use drugs to the same extent?
- Has s/he ever moved to get away from friends who drink/use drugs?
- Has s/he drank/used drugs the night before and was unable to remember part of the night?
- Does s/he have a struggle stopping drinking after one or two drinks?
- Does s/he drink until the bottle is empty or the drugs are all gone?
- Is s/he unable to stop drinking/drug use whenever s/he wants to?
- Does s/he ever hide his/her drinking/drug use?
- Does s/he drink/use drugs every day?
- Does s/he ever try to limit drinking/drug use to a certain time of day or certain place?
- Does s/he ever drink before noon?
- Has s/he ever neglected eating and instead drank/used drugs?
- Has s/he ever gotten into trouble at work because of drinking/drug use?
- Has s/he ever lost a job due to drinking/drug use?
- Has s/he ever had financial problems due to drinking/drug use?
- Has s/he ever been arrested for driving under the influence (DUI)?
- Has s/he ever been arrested because of drunken/drug use behavior?
- Has s/he ever been in the hospital or psychiatric ward because of drinking/drug use?
- Has s/he ever had delirium tremens (DTs)shaking/hallucinations after drinking/drug use?
- Has s/he ever had seizures after drinking/drug use?
- Does s/he have liver trouble/cirrhosis?

**If any of these questions are answered positively, substance abuse is a problem.**

- Mother** has problem with substance abuse.
- Father** has problem with substance abuse.
- Child** has problem with substance abuse.

**Substance abuse is considered a risk factor for abuse and is associated with violent behavior. However, substance abuse may be a response by the victim and not be a risk factor.**

- Every effort must be made to encourage treatment.
- In-patient treatment for the non-abusive substance abuser parent and child together may be recommended.
- Resources are found through mandated annual community networking, including but not limited to the National Council on Alcohol and Drug Dependence 916-922-9217, CA Department of Alcohol and Drug Abuse 916-445-0834 Referred to \_\_\_\_\_

**5) Fear and Isolation (Geffner)**

In what situations does the person feel unsafe?  
Whom and what is feared?  
How often do the parties each socialize?  
What type of socializing is done?

- Mother** feels afraid and isolated.
- Father** feels afraid and isolated.
- Child** feels afraid and isolated.

**Fear/isolation may be evidence of victimization.**

**6) Depression (DSM IV)**

Does the person being assessed have any of the following symptoms that cause significant distress or impairment in social, occupational or other important areas:

- Depressed mood most of the day nearly every day (i.e., feels sad/empty/irritable, appears tearful)?
- Markedly diminished interest/pleasure in all/almost all activities most of the day nearly every day?
- Significant weight loss/gain or decrease/increase in appetite nearly every day?
- Insomnia/sleeps an excessive amount nearly every day?
- Physical agitation nearly every day?
- Fatigue/loss of energy nearly every day?
- Feelings of worthlessness or excessive/inappropriate guilt nearly every day?
- A diminished ability to think/concentrate or indecisiveness nearly every day?
- Recurrent thoughts of death?
- Suicidal ideation without a specific plan?
- A specific plan for committing suicide?

- Mother** is chronically depressed
- Father** is chronically depressed
- Child** is chronically depressed

**Depression may be evidence of victimization.**

**7) Symptoms of Trauma/Posttraumatic Stress Disorder (DSM IV)**

Does the person being assessed report:

- Witnessing event(s) that involved actual death?
- Experiencing event(s) that involved threat of own death?
- Witnessing event(s) that involved threat of death of others (including animals)?
- Experiencing event(s) that involved actual serious injury to self?
- Witnessing event(s) that involved actual serious injury to others (including animals)?
- Experiencing event(s) that involved threat of serious injury to self?
- Witnessing event(s) that involved threat of serious injury to others (including animals)?
- Experiencing event(s) that involved threat to the physical integrity of self?
- Witnessed event(s) that involved threat to the physical integrity of others?
- Felt intense fear, helplessness and/or horror in response to the event(s)?
- Behaved in a disorganize/agitated way in response to the event(s)?

- Mother** has witnessed/experienced violence.
- Father** has witnessed/experienced violence.
- Child** has witnessed/experienced violence.

PTSD symptoms may be delayed, and may abate with treatment. Medications may diminish reactions.

Does the person being assessed:

- Have recurrent /intrusive distressing recollections of events (images, thoughts, perceptions)?
- Reenact the trauma?
- Have repetitive actions/play with themes or aspects of trauma?
- Have recurrent distressing dreams of the event?
- Have frightening dreams without recognizable content (nightmares/night terrors)?
- Have persistent difficulty falling or staying asleep?
- Have persistent irritability or outbursts of anger?
- Have difficulty concentrating?
- Demonstrate hypervigilance?
- Have an exaggerated startle response?
- Act/feel as if the traumatic even were recurring (such as a sense of reliving the experience, illusions, hallucinations and dissociative flashback episodes)?
- Experience intense psychological distress at exposure to internal/external cues that symbolize or resemble an aspect of the trauma?
- Experience physiological reactivity at exposure to internal/external cues that symbolize or resemble an aspect of the trauma?
- Persistently avoid stimuli associated with the trauma such as avoiding thoughts, feelings, or conversations associated with the trauma?
- Make efforts to avoid activities, places, or people that arouse recollections of the trauma?
- Demonstrate markedly diminished interest or participation in significant activities?
- Experience a feeling of detachment or estrangement from others?
- Have a restricted range of affect (e.g., unable to have loving feelings)?
- Experience a sense of foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span)?
- Not recall an important aspect of the trauma or feel outside of him/herself watching the event?
- Not recall the traumatic event (dissociative amnesia)?

- Mother** has psychological symptoms of Posttraumatic Stress Disorder (PTSD)
- Father** has psychological symptoms of Posttraumatic Stress Disorder (PTSD)
- Child** has psychological symptoms of Posttraumatic Stress Disorder (PTSD)

**PTSD is usually evidence of victimization.**

If the person with PTSD is not currently in treatment, every effort must be made to refer to qualified trauma specialists found through the mandated annual community networking training.

Referred to \_\_\_\_\_

**RISK FACTOR MATRIX**

	<b>A=abuser V=victim</b>	<b>Power/ Control</b>	<b>Anger Hostility</b>	<b>Anti- social Per</b>	<b>Alcohol Drugs</b>	<b>Fear Isolation</b>	<b>Depres- sion</b>	<b>PTSD</b>
Mother								
Father								
Child								

Power/control, anger/hostility, anti-social personality, and substance abuse are considered risk factors for abusive behavior. Fear, depression and PTSD are considered indicators of victimization.

These indicators provide corroboration along with written reports by law enforcement, social services, etc.

## ASSESSMENT INSTRUMENTS

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Psychological tests and evaluations such as the Minnesota Multiphasic Personality Inventory-II (MMPI-II); Coolidge Axis II Inventory (CATI); Rohrschach;

- 1) Do not predict parenting capacity well (Brodzinsky, 1994),
- 2) Cannot distinguish a batterer from a non-batterer (O'Leary, 1993), and
- 3) Cannot measure propensity to perpetrate incest (Milner, 1998)

The following instruments are designed to specifically assess issues of divorce, custody and family violence:

### **DIVORCE AND PARENTING**

- Parent-Child Relationship Inventory (PCRI) – Gerard – **WPS**
- Parenting Stress Index (PSI) – Abidim - **PAR**
- Prokop Divoce Adjustment Inventory – Prokop - **ALEGRA**

### **FAMILY VIOLENCE/SUBSTANCE ABUSE**

- Trauma Symptom Inventory – Briere
- Spousal Abuse Risk Assessment (SARA)
- Conflict Tactics Scale (CTS-2)
- Aggression Questionnaire – Buss & Warren - **WPS**
- Psychological Violence Inventory
- Psychopathy Checklist (Multi-Health Systems, Inc)
- ASI Lite OMB #0930-0207 (alcohol/drug)
- Michigan Alcoholism Screening Test (MAST)

### **CHILD ABUSE**

- Trauma Symptom Checklist for Children (TSCC) – Briere - **PAR**
- Child Anxiety Scale (CAS) - **WPS**
- Revised Children's Manifest Anxiety Scale (RCMAS) – Reynolds & Richmond - **WPS**
- Children's Depression Inventory (CDI) – Kovacs - **WPS**
- Children's Inventory of Anger (ChIA) – Gerard - **WPS**
- Child Sexual Behavior Inventory
- Piers-Harris Children's Self-Concept Scale (PHCSCS) – Piers & Harris - **WPS**
- Roberts Apperception Test for Children (RATC) – Robers & McArthur - **WPS**

### **PUBLISHERS:**

**ALLEGRA**-Allegra House Publishers: P.O. Box 1443, Warren, Ohio 44482

**PAR**-Psychological Assessment Resources, Inc: P.O. Box 998, Odessa, FL 33556 800-331-8378  
www.parinc.com

**WPS**-Western Psychological Services: 120331 Wilshire Blvd., LA, CA 90025 800-648-8857  
www.wpspublish.com

## ATTACHMENT C: PERTINENT CALIFORNIA CODES

### LEGISLATIVE INTENT - ASSURE THE HEALTH, SAFETY, AND WELFARE OF CHILDREN

#### FAMILY CODE 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.

#### FAMILY CODE 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**.

#### FAMILY CODE SECTION 3027.5.

- (a) No parent shall be placed on **supervised visitation**, or be denied custody of or visitation with his or her child, and no custody or visitation rights shall be limited, solely because the parent
  - (1) lawfully **reported suspected sexual abuse** of the child,
  - (2) otherwise acted lawfully, based on a reasonable belief, to determine if his or her child was the victim of sexual abuse, or
  - (3) sought treatment for the child from a licensed mental health professional for suspected sexual abuse.
- (b) The court may order supervised 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 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.



#### FAMILY CODE SECTION 3030

- (a) No person shall be granted **physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under Section 290 of the Penal Code where the victim was a minor**, or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, **unless** the court finds that there is no significant risk to the child and states its reasons in writing or on the record.
- (b) No person shall be 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.
- (c) No person shall be granted custody of, or unsupervised visitation with, a child if the person has been **convicted of murder** in the first degree, as defined in Section 189 of the Penal Code, and the victim of the murder was the **other parent of the child** who is the subject of the order, **unless** the court finds that there is **no risk** to the child's health, safety, and welfare, and states the reasons for its finding in writing or on the record. In making its finding, the court may consider, among other things, the following:
- (1) The **wishes** of the child, if the child is of sufficient age and capacity to reason so as to form an intelligent preference.
  - (2) Credible **evidence** that the convicted parent was a victim of **abuse**, as defined in Section 6203, committed by the deceased parent. That evidence may include, but is 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 domestic abuse.**
  - (3) Testimony of an **expert witness**, qualified under Section 1107 of the Evidence Code, that the convicted parent suffers from the effects of battered women's syndrome. Unless and until a custody or visitation order is issued pursuant to this subdivision, no person shall permit or cause the child to visit or remain in the custody of the convicted parent without the consent of the child's custodian or legal guardian.
- (d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.
- (e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

#### FAMILY CODE SECTION 3031.

- (a) Where the court considers the issue of custody or visitation the court is encouraged to make a reasonable effort to ascertain whether or not any emergency protective order, protective order, or other restraining order is in effect that concerns the parties or the minor. **The court is encouraged not to make a custody or visitation order that is inconsistent with the emergency protective order, protective order, or other restraining order**, unless the court makes both of the following findings:
- (1) The custody or visitation order cannot be made consistent with the emergency protective order, protective order, or other restraining order.
  - (2) The custody or visitation order is in the best interest of the minor.
- (b) Whenever custody or visitation is granted to a parent in a case in which domestic violence is alleged and an emergency protective order, protective order, or other **restraining order has been issued, the custody or visitation order shall specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members.** Where the court finds a party is staying in a place designated as a **shelter** for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for custody or visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.
- (c) When making an order for custody or visitation in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the court shall consider whether the best interest of the child, based upon the circumstances of the case, requires that any custody or visitation arrangement shall be **limited** to situations in which a **third person**, specified by the court, is present, or whether custody or visitation shall **be suspended or denied.**

#### FAMILY CODE SECTION 3040.

- (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:
- (1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing **contact** with the noncustodial parent, **consistent with Section 3011 and 3020**, and shall not prefer a parent as custodian because of that parent's sex. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.
  - (2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.
  - (3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

**FAMILY CODE SECTION 3040** (continued)

- (b) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child. 3041. Before making an order granting custody to a person or persons other than a parent, without the consent of the parents, the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

**FAMILY CODE SECTION 3042.**

- (a) If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall **consider and give due weight to the wishes of the child** in making an order granting or modifying custody.
- (b) In addition to the requirements of subdivision (b) of Section 765 of the Evidence Code, the court shall control the examination of the child witness so as to protect the best interests of the child. The court may preclude the calling of the child as a witness where the best interests of the child so dictate and may provide alternative means of obtaining information regarding the child's preferences.

**FAMILY CODE SECTION 3043.** In determining the person or persons to whom custody should be granted under paragraph (2) or (3) of subdivision (a) of Section 3040, the court shall consider and give due weight to the nomination of a guardian of the person of the child by a parent under Article 1 (commencing with Section 1500) of Chapter 1 of Part 2 of Division 4 of the Probate Code.

**FAMILY CODE SECTION 3044.**

- (a) Upon a finding by the court that a party seeking custody of a child has perpetrated **domestic violence** against the other party seeking custody of the child or against the child or the child's siblings **within the previous five years**, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is **detrimental to the best interest** of the child, pursuant to Section 3011. This presumption may only be rebutted by a preponderance of the evidence.
- (b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:
- (1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child.
  - (2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.
  - (3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.
  - (4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

**FAMILY CODE 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:
- (1) The absence or relocation is of short duration and the court finds that, during the period of absence or relocation, the party has demonstrated an interest in maintaining custody or visitation, the party maintains, or makes reasonable efforts to maintain, regular contact with the child, and the party's behavior demonstrates no intent to abandon the child.
  - (2) **The party is absent or relocates because of an act or acts of actual or threatened domestic or family violence by the other party.**
- (b) The court may consider attempts by one party to interfere with the other party's regular contact with the child in determining if the party has satisfied the requirements of subdivision (a).
- (c) This section does not apply to the following:
- (1) A party against whom a protective or restraining order has been issued excluding the party from the dwelling of the other party or the child, or otherwise enjoining the party from assault or harassment against the other party or the child, including, but not limited to, orders issued under Part 4 (commencing with Section 6300) of Division 10, orders preventing civil harassment or workplace violence issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, and criminal protective orders issued pursuant to Section 136.2 of the Penal Code.
  - (2) A party who abandons a child as provided in Section 7822.

**FAMILY CODE SECTION 3100.**

- (a) In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights 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.
- (b) If a protective order, as defined in Section 6218, has been directed to a parent, the court shall consider whether the best interest of the child requires that any visitation by that parent shall be limited to situations in which a third person, specified by the court, is present, or whether visitation shall be suspended or denied. The court shall include in its deliberations a consideration of the nature of the acts from which the parent was enjoined and the period of time that has elapsed since that order. A parent may submit to the court the name of a person that the parent deems suitable to be present during visitation.
- (c) Whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of transfer of the child, so as to **limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members**.
- (d) Where the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order for time, day, place, and manner of transfer of the child for visitation shall be designed to prevent disclosure of the location of the shelter or other confidential location.

**FAMILY CODE SECTION 3110.** As used in this chapter, "court-appointed investigator" means a probation officer, domestic relations investigator, or court-appointed evaluator directed by the court to conduct an investigation pursuant to this chapter.

**FAMILY CODE SECTION 3110.5.**

- (a) No person shall be a court-connected or private child custody evaluator **under this chapter** unless the person has completed the domestic violence and child abuse training program described in Section 1816 and has complied with Rules 1257.3 and 1257.7 of the California Rules of Court.
- (b) (1) On or before January 1, 2002, the Judicial Council shall formulate a statewide rule of court that establishes education, experience, and training requirements for all child custody evaluators appointed pursuant to this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure.
  - (A) The rule shall require a child custody evaluator to declare under penalty of perjury that he or she meets all of the education, experience, and training requirements specified in the rule and, if applicable, possesses a license in good standing. The Judicial Council shall establish forms to implement this section. The rule shall permit court-connected evaluators to conduct evaluations if they meet all of the qualifications established by the Judicial Council. The education, experience, and training requirements to be specified for court-connected evaluators shall include, but shall not be limited to, knowledge of the psychological and developmental needs of children and parent-child relationships.
  - (B) The rule shall **require all evaluators to utilize comparable interview, assessment, and testing procedures for all parties that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards**. The rule shall also require evaluators to inform each adult party of the purpose, nature, and method of the evaluation.
  - (C) The rule may allow courts to permit the parties to stipulate to an evaluator of their choosing with the approval of the court under the circumstances set forth in subdivision (d). The rule may require courts to provide general information about how parties can contact qualified child custody evaluators in their county.
- (2) On or before **January 1, 2004**, the Judicial Council shall include in the statewide **rule** of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop **standards** for this training that shall include, but not be limited to, the following:
  - (A) Children's patterns of hiding and disclosing sexual abuse occurring in a family setting.
  - (B) The effects of sexual abuse on children.
  - (C) The nature and extent of child sexual abuse.
  - (D) The social and family dynamics of child sexual abuse.
  - (E) Techniques for identifying and assisting families affected by child sexual abuse.
  - (F) Legal rights, protections, and remedies available to victims of child sexual abuse.
- (c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person shall be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or Section 2032 of the Code of Civil Procedure unless the person meets one of the following **criteria**:
  - (1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.
  - (2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
  - (3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
  - (4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

**FAMILY CODE SECTION 3110.5** (continued)

- (5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).
- (d) Subdivision (c) shall not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.
- (e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.
- (f) On or after January 1, 2005, a court-connected or private child custody evaluator shall not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division **unless that person has completed child sexual abuse training as required by this section.**

**FAMILY CODE SECTION 3111.**

- (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. Where directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. **At least 10 days before any hearing regarding custody of the child** the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys. The report may be considered by the court.
- (b) The report shall not be made available other than as provided in subdivision (a).
- (c) **The report may be received in evidence on stipulation of all interested parties** and is competent evidence as to all matters contained in the report.

**FAMILY CODE SECTION 3112.**

- (a) Where a court-appointed investigator is directed by the court to conduct a custody investigation or evaluation pursuant to this chapter or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall inquire into the financial condition of the parent, guardian, or other person charged with the support of the minor. If the court finds the parent, guardian, or other person able to pay all or part of the expense of the investigation, report, and recommendation, the court may make an order requiring the parent, guardian, or other person **to repay the court** the amount the court determines proper.
- (b) The repayment shall be made to the court. The court shall keep suitable accounts of the expenses and repayments and shall deposit the collections as directed by the Judicial Council.

**FAMILY CODE SECTION 3113.**

Where there has been a history of **domestic violence** between the parties, or where a **protective order** as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a **written declaration under penalty of perjury** or at the **request of a party who is protected by the order**, the parties shall meet with the court-appointed investigator separately and at **separate times.**

**FAMILY CODE SECTION 3118.**

- (a) In any contested proceeding involving child custody or visitation rights, where the court has appointed a child custody evaluator and the **court determines that there is a serious allegation or allegations of child sexual abuse**, the court **shall** require an evaluation pursuant to this section. For purposes of this section, a serious allegation of child sexual abuse means an allegation of child sexual abuse, as defined in Section 11165.1 of the Penal Code, that is based in whole or in part on statements made **by the child to law enforcement, a child welfare services agency investigator, any person required by statute to report suspected child abuse, or any other court appointed personnel, or that is supported by substantial independent corroboration** as provided for in subdivision (b) of Section 3011. When an allegation of child abuse arises in any other **circumstances** in any proceeding involving child custody or visitation rights, the court **may** require an evaluator to conduct an evaluation pursuant to this section. The order appointing a child custody evaluator pursuant to this section shall provide that the evaluator have **access to all juvenile court records** pertaining to the child who is the subject of the evaluation. The order shall also provide that any juvenile court records or information gained from those records remain confidential and shall only be released as specified in Section 3111.
- (b) The evaluator **shall**, at a minimum, do all of the following:
- (1) Consult with the agency providing **child welfare services and law enforcement** regarding the allegations of child sexual abuse, and obtain **recommendations** from these professionals regarding the child's safety and the child's need for protection.
  - (2) **Review and summarize the child welfare services agency file**; however, no document contained in the child welfare

**FAMILY CODE SECTION 3118.**(continued)

services agency file shall be photocopied, but a **summary** of the information in the file, including statements made by the children and the parents, and the recommendations made or anticipated to be made by the child welfare services agency to the juvenile court, **may be recorded** by the evaluator, except for the identity of the reporting party. The evaluator's notes summarizing the child welfare services agency information shall be stored in a **file separate** from the evaluator's file and may only be released to either party under order of the court.

- (3) Obtain from a law enforcement investigator all available information obtained from **criminal background checks of the parents and any suspected perpetrator that is not a parent.**
- (4) Review the results of a **multidisciplinary child interview team** (hereafter MDIT) interview if available, or if not, or if the evaluator believes the MDIT interview is inadequate for purposes of the investigation, **interview the child or request an MDIT interview**, and shall wherever possible avoid repeated interviews of the child.
- (5) Request a **forensic medical examination** of the child from the appropriate agency, or include in the report required by paragraph (6) a **written statement explaining why the examination is not needed.**
- (6) File a confidential written report with the clerk of the court in which the custody hearing will be conducted and which shall be served on the parties or their attorneys at least **10 days prior to the hearing.** This report shall not be made available other than as provided in this subdivision. This report **shall** include, but is not limited to, the following:
  - (A) **Documentation of material interviews**, including any MDIT interview of the child or the evaluator, written documentation of interviews with **both parents** by the evaluator, and interviews with other **witnesses** who provided relevant information.
  - (B) A **summary of any law enforcement investigator's investigation**, including information obtained from the **criminal background check** of the parents and any suspected perpetrator that is not a parent.
  - (C) Relevant **background** material including, but not limited to, a summary of a written report from any **therapist** treating the child for suspected child sexual abuse, excluding any communication subject to Section 1014 of the Evidence Code, reports from other professionals, and the results of any forensic medical examination and any other medical examination or treatment that could help establish or disprove whether the child has been the victim of sexual abuse.
  - (D) The evaluator's **written recommendations regarding the therapeutic needs of the child and how to ensure the safety** of the child.
  - (E) A **summary of the following information: whether the child and his or her parents are or have been the subject of a child abuse investigation and the disposition of that investigation; the name, location, and phone number of the children's services worker; the status of the investigation and the recommendations made or anticipated to be made regarding the child's safety; and any dependency court orders or findings** that might have a bearing on the custody dispute.
  - (F) **Any other information** the evaluator believes would be helpful to the court in determining what is in the best interests of the child.
- (c) If the evaluator obtains information as part of a family court mediation, that information shall be maintained in the family court file, which shall not be subject to subpoena by either party. If, however, the members of the family are the subject of an ongoing child welfare services investigation, or the evaluator has made a child welfare services referral, the evaluator shall so inform the family law judicial officer in writing and this information shall become part of the family law file. This subdivision shall not be construed to authorize or require a mediator to disclose any information not otherwise authorized or required by law to be disclosed.
- (d) In accordance with subdivision (d) of Section 11167 of the Penal Code, the **evaluator may not disclose any information regarding the identity of any person making a report of suspected child abuse.** Nothing in this section is intended to limit any disclosure of information by any agency that is otherwise required by law or court order.
- (e) The evaluation standards set forth in this section represent **minimum requirements** of evaluation and the court shall order further evaluation beyond these minimum requirements when necessary to determine the safety needs of the child.
- (f) If the court orders an evaluation pursuant to this section, the court shall consider whether the best interest of the child requires that a temporary order be issued that limits visitation with the parent against whom the allegations have been made to situations in which a third person specified by the court is present or whether visitation will be suspended or denied in accordance with Section 3011.
- (g) An evaluation pursuant to this section shall be suspended if a petition is filed to declare the child a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and all information gathered by the evaluator shall be made available to the juvenile court.
- (h) This section shall not be construed to authorize a court to issue any orders in a proceeding pursuant to this division regarding custody or visitation with respect to a minor child who is the subject of a dependency hearing in juvenile court or to otherwise supersede Section 302 of the Welfare and Institutions Code.

#### FAMILY CODE SECTION 3190.

- (a) The court may require parents or any other party involved in a custody or visitation dispute, and the minor child, to **participate in outpatient counseling** with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, including, but not limited to, mental health or substance abuse services, **for not more than one year**, provided that the program selected has counseling available for the designated period of time, if the court finds **both** of the following:
- (1) The dispute between the parents, between the parent or parents and the child, between the parent or parents and another party seeking custody or visitation rights with the child, or between a party seeking custody or visitation rights and the child, poses **a substantial danger** to the best interest of the child.
  - (2) The counseling is in the best interest of the child.
- (b) In determining whether a dispute, as described in paragraph (1) of subdivision (a), poses a substantial danger to the best interest of the child, the court shall consider, in addition to any other factors the court determines relevant, any **history of domestic violence, as defined in Section 6211, within the past five years between the parents, between the parent or parents and the child, between the parent or parents and another party seeking custody** or visitation rights with the child, or between a party seeking custody or visitation rights and the child.
- (c) Subject to Section 3192, if the court finds that the financial burden created by the order for counseling does not otherwise jeopardize a party's other financial obligations, the court shall fix the cost and shall order the entire cost of the services to be borne by the parties in the proportions the court deems reasonable.
- (d) The court, in its finding, shall set forth reasons why it has found both of the following:
- (1) The dispute poses a substantial danger to the best interest of the child and the counseling is in the best interest of the child.
  - (2) The financial burden created by the court order for counseling does not otherwise jeopardize a party's other financial obligations.
- (e) The court shall not order the parties to return to court upon the completion of counseling. Any party may file a new order to show cause or motion after counseling has been completed, and the court may again order counseling consistent with this chapter.

#### **FAMILY CODE 6203**

For purposes of this act, "abuse" means any of the following:

- (a) Intentionally or recklessly to cause or attempt to cause bodily injury.
- (b) Sexual assault.
- (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
- (d) To engage in any behavior that has been or could be enjoined pursuant to Section 6320.

#### **FAMILY CODE SECTION 6211**

6211. "Domestic violence" is abuse perpetrated against any of the following persons:

- (a) A spouse or former spouse.
- (b) A cohabitant or former cohabitant, as defined in Section 6209.
- (c) A person with whom the respondent is having or has had a dating or engagement relationship.
- (d) A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).
- (e) A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected.
- (f) Any other person related by consanguinity or affinity within the second degree.

#### **EVIDENCE CODE 720**

(a) A person is qualified to testify as an expert if he has **special knowledge, skill, experience, training, or education sufficient to qualify him** as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

(b) A witness' special knowledge, skill, experience, training, or education may be shown by any otherwise admissible evidence, including his own testimony.

#### **EVIDENCE CODE 721.**

(a) Subject to subdivision (b), a **witness testifying as an expert may be cross-examined to the same extent as any other witness** and, in addition, may be fully cross-examined as to (1) his or her **qualifications**, (2) the **subject** to which his or her expert testimony relates, and (3) the matter upon which his or her **opinion** is based and the **reasons** for his or her opinion.

(b) If a witness testifying as an expert testifies in the form of an opinion, he or she may not be cross-examined in regard to the content or tenor of any scientific, technical, or professional text, treatise, journal, or similar publication unless any of the following occurs:

(1) The witness referred to, considered, or relied upon such publication in arriving at or forming his or her opinion.

(2) The publication has been admitted in evidence.

(3) The publication has been established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

If admitted, relevant portions of the publication may be read into evidence but may not be received as exhibits.

**EVIDENCE CODE 722.**

(a) The fact of the appointment of an expert witness by the court may be revealed to the trier of fact.

(b) The **compensation and expenses paid or to be paid to an expert witness by the party calling him** is a proper subject of inquiry by any adverse party as **relevant to the credibility of the witness** and the weight of his testimony.

**EVIDENCE CODE 723.** The court may, at any time before or during the trial of an action, limit the number of expert witnesses to be called by any party.

**EVIDENCE CODE 730.** When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, **the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert** at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. **The court may fix the compensation** for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.

Nothing in this section shall be construed to permit a person to perform any act for which a license is required unless the person holds the appropriate license to lawfully perform that act.

**EVIDENCE CODE 731.**

(a) In all **criminal actions and juvenile court proceedings**, the compensation fixed under Section 730 shall be **a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county** on order of the court.

(b) In any county in which the **board of supervisors so provides**, the compensation fixed under Section 730 for **medical experts in civil actions in such county shall be a charge against and paid out of the treasury of such county** on order of the court.

(c) Except as otherwise provided in this section, in all **civil actions**, the compensation fixed under Section 730 shall, in the first instance, be apportioned and **charged to the several parties** in such proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

**EVIDENCE CODE 732.** Any expert appointed by the court under Section 730 may be called and examined by the court or by any party to the action. When such witness is called and examined by the court, the parties have the same right as is expressed in Section 775 to cross-examine the witness and to object to the questions asked and the evidence adduced.

**EVIDENCE CODE 733.** Nothing contained in this article shall be deemed or construed to prevent any party to any action from **producing other expert evidence on the same fact or matter** mentioned in Section 730; but, where other expert witnesses are called by a party to the action, their **fees shall be paid by the party calling them** and only ordinary witness fees shall be taxed as costs in the action.

**PENAL CODE SECTION 11164.**

(a) This article shall be known and may be cited as the Child Abuse and Neglect Reporting Act. (b) The **intent and purpose of this article is to protect children from abuse and neglect**. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim.

### **PENAL CODE SECTION 11165.1**

As used in this article, "**sexual abuse**" means sexual assault or sexual exploitation as defined by the following:

- (a) "Sexual assault" means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest), 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), 288a (oral copulation), 289 (sexual penetration), or 647.6 (child molestation.)
- (b) Conduct described as "sexual assault" includes, but is not limited to, all of the following:
- (1) Any 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.
  - (2) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
  - (3) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that, it does not include acts performed for a valid medical purpose.
  - (4) The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that, it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
  - (5) The intentional masturbation of the perpetrator's genitals in the presence of a child.
- (c) "**Sexual exploitation**" refers to any of the following:
- (1) Conduct involving matter depicting a minor engaged in obscene acts in violation of Section 311.2 (preparing, selling, or distributing obscene matter) or subdivision (a) of Section 311.4 (employment of minor to perform obscene acts).
  - (2) Any person who knowingly promotes, aids, or assists, employs, uses, persuades, induces, or coerces a child, or any person responsible for a child's welfare, who knowingly permits or encourages a child to engage in, or assist others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction, involving obscene sexual conduct.  
For the purpose of this section, "person responsible for a child's welfare" means a parent, guardian, foster parent, or a licensed administrator or employee of a public or private residential home, residential school, or other residential institution.
  - (3) Any person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, any film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except for those activities by law enforcement and prosecution agencies and other persons described in subdivisions (c) and (e) of Section 311.3.

### **PENAL CODE SECTION 11165.3**

"**Willful cruelty or unjustifiable punishment of a child**" means a situation where **any person willfully causes or permits any child to suffer**, or inflicts thereon, unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered.

### **PENAL CODE 11165.4**

"**Unlawful corporal punishment or injury**" means a situation where any person willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition.

### **PENAL CODE SECTION 11165.6**

As used in this article, the term "**child abuse or neglect**" includes physical injury inflicted by other than accidental means upon a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4.

### **PENAL CODE SECTION 11166.**

(a) Except as provided in subdivision (c), a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, **in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes** a child whom the mandated reporter **knows or reasonably suspects has been the victim** of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone, and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident.

- (1) For the purposes of this article, "reasonable suspicion" means that it is **objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect.** For the purpose of this article, the pregnancy of a minor does not, in and of itself, constitute a basis for a reasonable suspicion of sexual abuse.
- (2) The agency shall be notified and a report shall be prepared and sent even if the child has expired, regardless of whether or not the possible abuse was a factor contributing to the death, and even if suspected child abuse was discovered during an autopsy.
- (3) A report made by a mandated reporter pursuant to this section shall be known as a mandated report.



**PENAL CODE SECTION 11166.** (continued)

(b) Any mandated reporter who **fails to report** an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that fine and punishment.

**PENAL CODE SECTION 273a.**

- (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or **willfully causes or permits that child to be placed in a situation where his or her person or health is endangered**, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.
- (b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, **willfully causes or permits the person or health of that child to be injured**, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

**CODE OF CIVIL PROCEDURES 2032.**

- (a) Any party may obtain **discovery**, subject to the restrictions set forth in Section 2019, by means of a **physical or mental examination** of (1) a **party** to the action, (2) an **agent** of any party, or (3) a natural **person in the custody** or under the legal control of a party, in any action in which the mental or physical condition (including the blood group) of that party or other person is in controversy in the action.
- (b) A physical examination conducted under this section shall be performed only by a licensed physician or other appropriate licensed health care practitioner. A **mental examination** conducted under this section shall be performed only by a licensed **physician, or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders**. Nothing in this section affects tests under the Uniform Act on Blood Tests to Determine Paternity (Chapter 2 (commencing with Section 7550) of Part 2 of Division 12 of the Family Code).
- (c) (1) As used in this subdivision, plaintiff includes a cross-complainant, and defendant includes a cross-defendant.  
(2) In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one physical examination of the plaintiff, provided the examination does not include any diagnostic test or procedure that is painful, protracted, or intrusive, and is conducted at a location within 75 miles of the residence of the examinee. A defendant may make this demand without leave of court after that defendant has been served or has appeared in the action, whichever occurs first. This demand shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the physician who will perform the examination.
- (3) A physical examination demanded under this subdivision shall be scheduled for a date that is at least 30 days after service of the demand for it unless on motion of the party demanding the examination the court has shortened this time.
- (4) The defendant shall serve a copy of the demand for this physical examination on the plaintiff and on all other parties who have appeared in the action.
- (5) The plaintiff to whom this demand for a physical examination has been directed shall respond to the demand by a written statement that the examinee will comply with the demand as stated, will comply with the demand as specifically modified by the plaintiff, or will refuse, for reasons specified in the response, to submit to the demanded physical examination. Within 20 days after service of the demand the plaintiff to whom the demand is directed shall serve the original of the response to it on the defendant making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the defendant making the demand the court has shortened the time for response, or unless on motion of the plaintiff to whom the demand has been directed, the court has extended the time for response.
- (6) If a plaintiff to whom this demand for a physical examination has been directed fails to serve a timely response to it, that plaintiff waives any objection to the demand. However, the court, on motion, may relieve that plaintiff from this waiver on its determination that (A) the plaintiff has subsequently served a response that is in substantial compliance with paragraph (5), and (B) the plaintiff's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. The defendant may move for an order compelling response and compliance with a demand for a physical examination. The court shall impose a monetary sanction under Section 2033 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel response and compliance with a demand for a physical examination, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a plaintiff then fails to obey the order compelling response and compliance, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2033. In lieu of or in addition to that sanction the court may impose a monetary sanction under Section 2033.
- (7) If a defendant who has demanded a physical examination under this subdivision, on receipt of the plaintiff's response to that demand, deems that any modification of the demand, or any refusal to submit to the physical examination is unwarranted, that defendant may move for an order compelling compliance with the demand. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The

**CODE OF CIVIL PROCEDURES 2032** (continued)

court shall impose a monetary sanction under Section 2033 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand for a physical examination, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

- (8) The demand for a physical examination and the response to it shall not be filed with the court. The defendant shall retain both the original of the demand, with the original proof of service affixed to it, and the original response until six months after final disposition of the action. At that time, the original may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.
- (d) If any party desires to obtain discovery by a physical examination other than that described in subdivision (c), or by a mental examination, the party shall obtain leave of court. The motion for the examination shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt to arrange for the examination by an agreement under subdivision (e). Notice of the motion shall be served on the person to be examined and on all parties who have appeared in the action. The court shall grant a motion for a physical or mental examination only for good cause shown. If a party stipulates that (1) no claim is being made for mental and emotional distress over and above that usually associated with the physical injuries claimed, and (2) no expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages, a mental examination of a person for whose personal injuries a recovery is being sought shall not be ordered except on a showing of exceptional circumstances. The order granting a physical or mental examination shall specify the person or persons who may perform the examination, and the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination. If the place of the examination is more than 75 miles from the residence of the person to be examined, the order to submit to it shall be (1) made only on the court's determination that there is good cause for the travel involved, and (2) conditioned on the advancement by the moving party of the reasonable expenses and costs to the examinee for travel to the place of examination.
- (e) In lieu of the procedures and restrictions specified in subdivisions (c) and (d), any physical or mental examination may be arranged by, and carried out under, a written agreement of the parties.
- (f) If a party required by subdivision (c), (d), or (e) to submit to a physical or mental examination fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2033. In lieu of or in addition to that sanction, the court may, on motion of the party, impose a monetary sanction under Section 2033. If a party required by subdivision (c), (d), or (e) to produce another for a physical or mental examination fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2033, unless the party failing to comply demonstrates an inability to produce that person for examination. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2033.
- (g) (1) The attorney for the examinee or for a party producing the examinee, or that attorney's representative, shall be permitted to attend and observe any physical examination conducted for discovery purposes, and to record stenographically or by audiotape any words spoken to or by the examinee during any phase of the examination. This observer may monitor the examination, but shall not participate in or disrupt it. If an attorney's representative is to serve as the observer, the representative shall be authorized to so act by a writing subscribed by the attorney which identifies the representative. If in the judgment of the observer the examiner becomes abusive to the examinee or undertakes to engage in unauthorized diagnostic tests and procedures, the observer may suspend it to enable the party being examined or producing the examinee to make a motion for a protective order. If the observer begins to participate in or disrupt the examination, the person conducting the physical examination may suspend the examination to enable the party at whose instance it is being conducted to move for a protective order. The court shall impose a monetary sanction under Section 2033 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If the examinee submits or authorizes access to X-rays of any area of his or her body for inspection by the examining physician, no additional X-rays of that area may be taken by the examining physician except with consent of the examinee or on order of the court for good cause shown.
- (2) The examiner and examinee shall have the right to record a mental examination on audio tape. However, nothing in this article shall be construed to alter, amend, or affect existing case law with respect to the presence of the attorney for the examinee or other persons during the examination by agreement or court order.

**CODE OF CIVIL PROCEDURES 2032 (continued)**

- (h) If a party submits to, or produces another for, a physical or mental examination in compliance with a demand under subdivision (c), an order of court under subdivision (d), or an agreement under subdivision (e), that party has the option of making a written demand that the party at whose instance the examination was made deliver to the demanding party (1) a copy of a detailed written report setting out the history, examinations, findings, including the results of all tests made, diagnoses, prognoses, and conclusions of the examiner, and (2) a copy of reports of all earlier examinations of the same condition of the examinee made by that or any other examiner. If this option is exercised, a copy of these reports shall be delivered within 30 days after service of the demand, or within 15 days of trial, whichever is earlier. The protection for work product under Section 2018 is waived, both for the examiner's writings and reports and to the taking of the examiner's testimony. If the party at whose instance the examination was made fails to make a timely delivery of the reports demanded, the demanding party may move for an order compelling their delivery. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel delivery of medical reports, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey an order compelling delivery of demanded medical reports, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to those sanctions, the court may impose a monetary sanction under Section 2023. The court shall exclude at trial the testimony of any examiner whose report has not been provided by a party.
- (i) By demanding and obtaining a report of a physical or mental examination under subdivision (h), or by taking the deposition of the examiner, other than under subdivision (i) of Section 2034, the party who submitted to, or produced another for, a physical or mental examination waives in the pending action, and in any other action involving the same controversy, any privilege, as well as any protection for work product under Section 2018, that the party or other examinee may have regarding reports and writings as well as the testimony of every other physician, psychologist, or licensed health care practitioner who has examined or may thereafter examine the party or other examinee in respect of the same physical or mental condition.
- (j) A party receiving a demand for a report under subdivision (h) is entitled at the time of compliance to receive in exchange a copy of any existing written report of any examination of the same condition by any other physician, psychologist, or licensed health care practitioner. In addition, that party is entitled to receive promptly any later report of any previous or subsequent examination of the same condition, by any physician, psychologist, or licensed health care practitioner. If a party who has demanded and received delivery of medical reports under subdivision (h) fails to deliver existing or later reports of previous or subsequent examinations, a party who has complied with subdivision (h) may move for an order compelling delivery of medical reports. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel delivery of medical reports, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey an order compelling delivery of medical reports, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to the sanction, the court may impose a monetary sanction under Section 2023. The court shall exclude at trial the testimony of any health care practitioner whose report has not been provided by a party ordered to do so by the court.
- (k) Nothing in this section shall require the disclosure of the identity of an expert consulted by an attorney in order to make the certification required in an action for professional negligence under Sections 411.30 and 411.35.

## 2002 CALIFORNIA RULES OF COURT

### **Rule 1257.1 Uniform standards of practice for court-connected child custody mediation**

**(a) [Authority]** This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211, 3160, and 3162(a).

**(b) [Purpose]** This rule sets forth standards of practice and administration for court-connected child custody mediation services that are consistent with the requirements of Family Code section 3161.

**(c) [Definitions]**

(1) "Best interest of the child" is defined in Family Code section 3011.

(2) "Parenting plan" is a plan describing how parents or other appropriate parties will share and divide their decision making and caretaking responsibilities to protect the health, safety, welfare, and best interest of each child who is a subject of the proceedings.

**(d) [Responsibility for Mediation Services]**

(1) Each court shall ensure that:

(A) Mediators are impartial, competent, and uphold the standards of practice contained in this rule of court.

(B) Mediation services and case management procedures implement state law and allow sufficient time for parties to receive orientation, participate fully in mediation, and develop a comprehensive parenting plan without unduly compromising each party's right to due process and a timely resolution of the issues.

(C) Mediation services demonstrate accountability by:

(i) Providing for acceptance of and response to complaints about a mediator's performance;

(ii) Participating in statewide data collection efforts; and

(iii) Disclosing the use of interns to provide mediation services.

(D) The mediation program uses a detailed intake process that screens for, and informs the mediator about, any restraining orders or safety-related issues affecting any party or child named in the proceedings to allow compliance with relevant law or court rules before mediation begins.

(E) Whenever possible, mediation is available from bilingual mediators or other interpreter services that meet the requirements of Evidence Code sections 754(f) and 755(a) and section 18 of the California Standards of Judicial Administration.

(F) Mediation services protect, in accordance with existing law, party confidentiality, in:

(i) Storage and disposal of records and any personal information accumulated during the mediation process;

(ii) Interagency coordination or cooperation regarding a particular family or case; and

(iii) Management of child abuse reports and related documents.

(G) Mediation services provide a written description of limitations on the confidentiality of the process.

(H) Within one year of the adoption of this rule, the court adopts a local court rule regarding ex parte communications.

(2) Each court-connected mediator shall:

(A) Maintain an overriding concern to integrate the child's best interest within the family context;

(B) Inform the parties and any counsel for a minor child if the mediator will make a recommendation to the court as provided under Family Code section 3184;

(C) Use reasonable efforts and consider safety issues to:

(i) Facilitate the family's transition and reduce acrimony by helping the parties improve their communication skills, focus on the child's needs and areas of stability, identify the family's strengths, and locate counseling or other services;

(ii) Develop a comprehensive parenting agreement that addresses each child's current and future developmental needs; and

(iii) Control for potential power imbalances between the parties during mediation.

*(Subd (d) amended effective January 1, 2002.)*

**(e) [Mediation process]** All court-connected mediation processes shall be conducted in accordance with state law and include:

(1) Review of the intake form and court file, if available, before the start of mediation;

(2) Oral or written orientation or parent education that facilitates the parties' informed and self-determined decision-making about:

(A) The types of disputed issues generally discussed in mediation and the range of possible outcomes from the mediation process;

(B) The mediation process, including the mediator's role; the circumstances that may lead the mediator to make a particular recommendation to the court; limitations on the confidentiality of the process; and access to information communicated by the parties or included in the mediation file;

(C) How to make best use of information drawn from current research and professional experience to facilitate the mediation process, parties' communication, and co-parenting relationship; and

(D) How to address each child's current and future developmental needs;

(3) Interviews with children at the mediator's discretion and consistent with Family Code section 3180(a). The mediator may interview the child alone or together with other interested parties, including stepparents, siblings, new or step-siblings, or other family members significant to the child. If interviewing a child, the mediator shall:

(A) Inform the child in an age-appropriate way of the mediator's obligation to disclose suspected child abuse and neglect and the local policies concerning disclosure of the child's statements to the court; and

(B) With parental consent, coordinate interview and information exchange among agency or private professionals to reduce the number of interviews a child might experience;

(4) Assistance to the parties, without undue influence or personal bias, in developing a parenting plan that protects the health, safety, welfare, and best interest of the child and that optimizes the child's relationship with each party by including, as appropriate,

provisions for supervised visitation in high-risk cases; designations for legal and physical custody; a description of each party's authority to make decisions that affect the child; language that minimizes legal, mental health, or other jargon; and a detailed schedule of the time a child is to spend with each party, including vacations, holidays, and special occasions, and times when the child's contact with a party may be interrupted;

(5) Extension of time to allow the parties to gather additional information if the mediator determines that such information will help the discussion proceed in a fair and orderly manner or facilitate an agreement;

(6) Suspension or discontinuance of mediation if allegations of child abuse or neglect are made until a designated agency performs an investigation and reports a case determination to the mediator;

(7) Termination of mediation if the mediator believes that he or she is unable to achieve a balanced discussion between the parties;

(8) Conclusion of mediation with:

(A) A written parenting plan that summarizes the parties' agreement or mediator's recommendation that is given to counsel or the parties before the recommendation is presented to the court; and

(B) A written or oral description of any subsequent case management or court procedures for resolving one or more outstanding custody or visitation issues, including instructions for obtaining temporary orders; and

(9) Return to mediation to resolve future custody or visitation disputes.

**(f) [Training, continuing education, and experience requirements for mediator, mediation supervisor, and family court services director]** As specified in Family Code sections 1815 and 1816:

(1) All mediators, mediation supervisors, and family court service program directors must:

(A) Complete a minimum of 40 hours of custody and visitation mediation training within the first six months of initial employment as a court-connected mediator;

(B) Attend related continuing education programs, conferences, and workshops; and

(C) Participate in performance supervision and peer review.

(2) Each family court services director and mediation supervisor shall attend at least 32 hours of additional training each calendar year. This requirement may be satisfied in part by the domestic violence training required by Family Code section 1816.

**(g) [Ethics]** Mediation shall be conducted in an atmosphere that encourages trust in the process and a perception of fairness. To that end, mediators shall:

(1) Meet the practice and ethical standards of the Code of Ethics for the Court Employees of California and of related law;

(2) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(3) Protect the confidentiality of the parties and the child in making any collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

(4) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

(5) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;

(6) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;

(7) Operate within the limits of his or her training and experience and disclose any limitations or bias that would affect his or her ability to conduct the mediation;

(8) Not require children to state a custodial preference;

(9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;

(10) Disclose to the court, parties, attorneys for the parties, and attorney for the child conflicts of interest or dual relationships and not accept any appointment except by court order or the parties' stipulation;

(11) Be sensitive to the parties' socioeconomic, gender, race, ethnicity, cultural values, religious, family structures, and developmental characteristics; and

(12) Disclose any actual or potential conflicts of interest. In the event of a conflict of interest, the mediator shall suspend mediation and meet and confer in an effort to resolve the conflict of interest to the satisfaction of all parties or according to local court rules. The court may order mediation to continue with another mediator or offer the parties alternatives. The mediator cannot continue unless the parties agree in writing to continue mediation despite the disclosed conflict of interest.

*Rule 1257.1 amended effective January 1, 2002; adopted effective July 1, 2001.*

#### **Drafters' Notes**

**1999**-Effective July 1, 2001, section 26 of the California Standards of Judicial Administration will be repealed, and new rule 1257.1, providing standards of practice for court-connected child custody mediation, will be in effect. The revised standards will better serve the growing number of pro per litigants with increasingly complex and diverse family law disputes and ensure minimum service levels and accountability. The effective date of this rule change has been extended to July 1, 2001, to allow time for each family court services unit to consider the administrative or case management changes it may need and to submit and receive funding for whatever incremental or budget development proposals are indicated.

**2002**-The rule now requires that notification of the limits of confidentiality be provided to the parties in writing so that litigants are more likely to be informed of the circumstances under which information they provide to mediators may be disclosed to third parties.

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## **Rule 1257.2. Domestic violence protocol for Family Court Services**

**(a) [Authority]** This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211, 1850(a), and 3170(b).

**(b) [Purpose]** This rule sets forth the protocol for Family Court Services' handling of domestic violence cases consistent with the requirement of Family Code section 3170(b).

### **(c) [Definitions]**

(1) "Domestic violence" is used as defined in Family Code sections 6203 and 6211.

(2) "Protective order" is used as defined in Family Code section 6215 "Emergency protective order", Family Code section 6218 "Protective order", and Penal Code section 136.2 (orders by court). "Domestic violence restraining order" is synonymous with "protective order."

(3) "Mediation" refers to proceedings described in Family Code section 3161.

(4) "Evaluation" and "investigation" are synonymous terms.

(5) "Family Court Services" refers to court-connected child custody services and child custody mediation made available by superior courts pursuant to Family Code section 3160.

(6) "Family Court Services staff" refers to contract and employee mediators, evaluators, investigators, and counselors who provide services on behalf of Family Court Services.

(7) "Differential domestic violence assessment" is a process used to assess the nature of any domestic violence issues in the family so that Family Court Services may provide services in such a way as to protect any victim of domestic violence from intimidation, provide services for perpetrators, and correct for power imbalances created by past and prospective violence.

### **(d) [Family Court Services: Description and duties]**

(1) (*Local protocols*) Family Court Services must handle domestic violence cases in accordance with pertinent state laws and all applicable rules of court and must develop local protocols in accordance with this rule.

(2) (*Family Court Services duties relative to domestic violence cases*) Family Court Services is a court-connected service that must:

(A) Identify cases in Family Court Services that involve domestic violence, and code Family Court Services files to identify such cases;

(B) Make reasonable efforts to ensure the safety of victims, children, and other parties when they are participating in services provided by Family Court Services;

(C) Make appropriate referrals; and

(D) Conduct a differential domestic violence assessment in domestic violence cases and offer appropriate services as available, such as child custody evaluation, parent education, parent orientation, supervised visitation, child custody mediation, relevant education programs for children, and other services as determined by each superior court.

(3) (*No negotiation of violence*) Family Court Services staff must not negotiate with the parties about using violence with each other, whether either party should or should not obtain or dismiss a restraining order, or whether either party should cooperate with criminal prosecution.

(4) (*Domestic violence restraining orders*) Notwithstanding the above, to the extent permitted under Family Code section 3183(c), in appropriate cases, Family Court Services staff may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

(5) (*Providing information*) Family Court Services staff must provide information to families accessing their services about the effects of domestic violence on adults and children. Family Court Services programs, including but not limited to orientation programs, must provide information and materials that describe Family Court Services policy and procedures with respect to domestic violence. Where possible, the videotapes provided should be closed-captioned.

(6) (*Separate sessions*) In a Family Court Services case in which there has been a history of domestic violence between the parties or in which a protective order as defined in Family Code section 6218 is in effect, at the request of the party who is alleging domestic violence in a written declaration under penalty of perjury or who is protected by the order, the Family Court Services mediator, counselor, evaluator, or investigator must meet with the parties separately and at separate times. When appropriate, arrangements for separate sessions must protect the confidentiality of each party's times of arrival, departure, and meeting with Family Court Services. Family Court Services must provide information to the parties regarding their options for separate sessions pursuant to Family Code sections 3113 and 3181. If domestic violence is discovered after mediation or evaluation has begun, the Family Court Services staff member assigned to the case must confer with the parties separately regarding safety-related issues and the option of continuing in separate sessions at separate times. Family Court Services staff, including support staff, must not respond to a party's request for separate sessions as though it were evidence of his or her lack of cooperation with the Family Court Services process.

(7) (*Referrals*) Family Court Services staff, where applicable, must refer family members to appropriate services. Such services may include but are not limited to programs for perpetrators, counseling and education for children, parent education, services for victims, and legal resources, such as family law facilitators.

(8) (*Community resources*) Family Court Services should maintain a liaison with community-based services offering domestic violence prevention assistance and support so that referrals can be made based on an understanding of available services and service providers.

**(e) [Intake]**

(1) (*Court responsibility*) Each court must ensure that Family Court Services programs use a detailed intake process that screens for, and informs staff about, any restraining orders, dependency petitions under Welfare and Institutions Code section 300, and other safety-related issues affecting any party or child named in the proceedings.

(2) (*Intake form*) Any intake form that an agency charged with providing family court services requires the parties to complete before the commencement of mediation or evaluation must state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the Family Court Services staff must meet with the parties separately and at separate times.

(3) (*Review of intake form and case file*) All Family Court Services procedures must be conducted in accordance with state law and must include review of intake forms and court files, when available, by appropriate staff.

**(f) [Screening]**

(1) (*Identification of domestic violence*) Screening for a history of domestic violence incidents must be done throughout the Family Court Services process. As early in the case as possible, Family Court Services staff should make every effort to identify cases in which incidents of domestic violence are present. The means by which Family Court Services elicits screening information may be determined by each program. Screening techniques may include but are not limited to questionnaires, telephone interviews, standardized screening devices, and face-to-face interviews.

(2) (*Procedures for identification*) Procedures for identifying domestic violence may include, but are not limited to: (a) determination of an existing emergency protective order or domestic violence restraining order concerning the parties or minor; (b) review of court papers and declarations; (c) telephone interviews; (d) use of an intake form; (e) orientation; (f) information from attorneys, shelters, hospital reports, Child Protective Services, police reports, and criminal background checks; and (g) other collateral sources. Questions specific to incidents of domestic violence should request the following information: date of the parties' separation, frequency of domestic violence, most recent as well as past incidents of domestic violence, concerns about future domestic violence, identities of children and other individuals present at domestic violence incidents or otherwise exposed to the domestic violence, and severity of domestic violence.

(3) (*Context for screening*) In domestic violence cases in which neither party has requested separate sessions at separate times, Family Court Services staff must confer with the parties separately and privately to determine whether joint or separate sessions are appropriate.

**(g) [Safety issues]**

(1) (*Developing a safety plan*) When domestic violence is identified or alleged in a case, Family Court Services staff must consult with the party alleging domestic violence away from the presence of the party against whom such allegations are made, and discuss the existence of or need for a safety plan. Safety planning may include but is not limited to discussion of safe housing, workplace safety, safety for other family members and children, access to financial resources, and information about local domestic violence agencies.

(2) (*Safety procedures*) Each Family Court Services office should develop safety procedures for handling domestic violence cases.

(3) (*Confidential addresses*) Where appropriate, Family Court Services staff must make reasonable efforts to keep residential addresses, work addresses, and contact information-including but not limited to telephone numbers and e-mail addresses-confidential in all cases and on all Family Court Services documents.

**(h) [Support persons]**

(1) (*Support person*) Family Court Services staff must advise the party protected by a protective order of the right to have a support person attend any mediation orientation or mediation sessions, including separate mediation sessions, pursuant to Family Code section 6303.

(2) (*Excluding support person*) A Family Court Services staff person may exclude a domestic violence support person from a mediation session if the support person participates in the mediation session or acts as an advocate or the presence of a particular support person disrupts the process of mediation. The presence of the support person does not waive the confidentiality of the process, and the support person is bound by the confidentiality of the process.

**(i) [Accessibility of services]** To effectively address domestic violence cases, the court must make reasonable efforts to ensure the availability of safe and accessible services that include, but are not limited to:

(1) (*Language accessibility*) Whenever possible, Family Court Services programs should be conducted in the languages of all participants, including those who are deaf. When the participants use only a language other than spoken English and the Family Court Services staff person does not speak their language, an interpreter-certified whenever possible-should be assigned to interpret at the session. A minor child of the parties must not be used as an interpreter. An adult family member may act as an interpreter only when appropriate interpreters are not available. When a family member is acting as an interpreter, Family Court Services staff should attempt to establish, away from the presence of the potential interpreter and the other party, whether the person alleging domestic violence is comfortable with having that family member interpret for the parties.

(2) (*Facilities design*) To minimize contact between the parties and promote safety in domestic violence cases, courts must give consideration to the design of facilities. Such considerations must include but are not limited to the following: separate and secure waiting areas, separate conference rooms for parent education and mediation, signs providing directions to Family Court Services, and secure parking for users of Family Court Services.

**(j) [Training and education]**

(1) *(Training, continuing education, and experience requirements for Family Court Services staff)* All Family Court Services staff must participate in programs of continuing instruction in issues related to domestic violence, including child abuse, as may be arranged for and provided to them, pursuant to Family Code section 1816(a).

(2) *(Advanced domestic violence training)* Family Court Services staff must complete 16 hours of advanced domestic violence training within the first 12 months of employment and 4 hours of domestic violence update training each year thereafter. The content of the 16 hours of advanced domestic violence training and 4 hours of domestic violence update training must be the same as that required for court-appointed child custody investigators and evaluators as stated in rule 1257.7. Those staff members employed by Family Court Services on January 1, 2002, who have not already fulfilled the requirements of rule 1257.7 must participate in the 16-hour training within one year of the rule's effective date.

(3) *(Support staff)* Family Court Services programs should, where possible, enable support staff, including but not limited to clerical staff, to participate in training on domestic violence and in handling domestic violence cases appropriately.

*Rule 1257.2 adopted effective January 1, 2002.*

**Drafter's Notes:**

**2002-**This new rule implements Family Code section 3170(b), which directs the judicial Council to provide a protocol for family court services programs' handling of domestic violence cases.

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**Rule 1257.3. Uniform standards of practice for court-ordered child custody evaluations**

**(a) [Authority]** This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211 and 3117.

**(b) [Purpose]** Courts order child custody evaluations, investigations, and assessments to assist them in determining the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues. This rule affects both court-connected and private child custody evaluators appointed under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032.

**(c) [Definitions]** For purposes of this rule:

(1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.

(2) The "best interest of the child" is as defined in Family Code section 3011.

(3) A "child custody evaluation" is an expert investigation and analysis of the health, safety, welfare, and best interest of children with regard to disputed custody and visitation issues.

(4) A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.

(5) A "partial evaluation, investigation, or assessment" is an examination of the health, safety, welfare, and best interest of the child that is limited by court order in either time or scope.

(6) "Evaluation," "investigation," and "assessment" are synonymous terms.

**(d) [Responsibility for evaluation services]**

(1) Each court shall:

(A) Adopt local rules within one year of this rule's effective date to:

(i) Implement this rule of court;

(ii) Determine whether a peremptory challenge to a court-appointed evaluator is allowed and when the challenge must be exercised.

The rule shall specify whether a family court services staff member, other county employee, a mental health professional, or all of them may be challenged;

(iii) Allow evaluators to petition the court to withdraw from a case;

(iv) Provide for acceptance of and response to complaints about an evaluator's performance; and

(v) Address ex parte communications.

(B) Give the evaluator, before the evaluation begins, a copy of the court order that specifies:

(i) The appointment of the evaluator under Evidence Code section 730, Family Code section 3110, or Code of Civil Procedure 2032; and

(ii) The purpose and scope of the evaluation.

(C) Require child custody evaluators to adhere to the requirements of this rule.

(D) Determine and allocate between the parties any fees or costs of the evaluation.

(2) The child custody evaluator shall:

(A) Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;

(B) Strive to minimize the potential for psychological trauma to children during the evaluation process; and

(C) Include in the initial meeting with each child an age-appropriate explanation of the evaluation process, including limitations on the confidentiality of the process.



**(e) [Scope of evaluations]** All evaluations shall include:

(1) A written explanation of the process that clearly describes the:

(A) Purpose of the evaluation;

(B) Procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(C) Scope and distribution of the evaluation report;

(D) Limitations on the confidentiality of the process; and

(E) Cost and payment responsibility for the evaluation.

(2) Data collection and analysis that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include but is not limited to:

(A) Reviewing pertinent documents related to custody, including local police records;

(B) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(C) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(i) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(ii) History of involvement in caring for the child;

(iii) Methods for working toward resolution of the child custody conflict;

(iv) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(v) Psychological and social functioning;

(D) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(E) Collecting relevant corroborating information or documents as permitted by law; and

(F) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(3) A written or oral presentation of findings that is consistent with Family Code section 3111 or Evidence Code section 730. In any presentation of findings, the evaluator shall:

(A) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(B) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(C) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and

(D) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan.

**(f) [Cooperation with professionals in another jurisdiction]** When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information. In order to ensure a thorough and comparably reliable out-of-jurisdiction evaluation, the evaluator shall:

(1) Make a written request that includes, as appropriate:

(A) A copy of all relevant court orders;

(B) An outline of issues to be explored;

(C) A list of the individuals who shall or may be contacted;

(D) A description of the necessary structure and setting for interviews;

(E) A statement as to whether a home visit is required;

(F) A request for relevant documents such as police records, school reports, or other document review; and

(G) A request that a written report be returned only to the evaluator and that no copies of the report be distributed to parties or attorneys;

(2) Provide instructions that limit the out-of-jurisdiction report to factual matters and behavioral observations rather than recommendations regarding the overall custody plan; and

(3) Attach and discuss the report provided by the professional in another jurisdiction in the evaluator's final report.

**(g) [Requirements for evaluator qualifications, training, continuing education, and experience]** All child custody evaluators shall meet the qualifications, training, and continuing education requirements specified in Family Code sections 1815, 1816, and 3111, and rule 1257.7.

*(Subd (g) amended effective July 1, 1999.)*

**(h) [Ethics]** In performing an evaluation, the child custody evaluator shall:

(1) Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

(2) Protect the confidentiality of the parties and children in collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

- (3) Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;
- (4) Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;
- (5) Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;
- (6) Operate within the limits of the evaluator's training and experience and disclose any limitations or bias that would affect the evaluator's ability to conduct the evaluation;
- (7) Not pressure children to state a custodial preference;
- (8) Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse and neglect and threats to harm one's self or another person;
- (9) Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;
- (10) Disclose to the court, parties, attorney for a party, and attorney for the child conflicts of interest or dual relationships; and not accept any appointment except by court order or the parties' stipulation; and
- (11) Be sensitive to the socioeconomic, gender, race, ethnicity, cultural values, religious, family structures, and developmental characteristics of the parties.

**(i) [Cost-effective procedures for cross-examination of evaluators]** Each local court shall develop procedures for expeditious and cost-effective cross-examination of evaluators, including, but not limited to, consideration of the following:

- (1) Videoconferences;
- (2) Telephone conferences;
- (3) Audio or video examination; and
- (4) Scheduling of appearances.

*Rule 1257.3 amended effective July 1, 1999; adopted effective January 1, 1999.*

**Drafter's Notes**

**January 1999**-Rule 1257 is repealed and new rule 1257.3 is adopted to comply with statutory requirements that the Judicial Council develop standards for full and partial court-ordered child custody evaluations, investigations, and assessments. **July 1999**-Technical amendments to rule 1257.3 correct drafting errors.

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**Rule 1257.4. Education, experience, and training standards for court-appointed child custody investigators and evaluators**

**(a) [Authority]** This rule is adopted under article VI, section 6 of the California Constitution and Family Code sections 211 and 3110.5.

**(b) [Purpose]** As required by Family Code section 3110.5, this rule establishes education, experience, and training requirements for child custody evaluators who are appointed only under Family Code section 3111, Evidence Code section 730, or Code of Civil Procedure section 2032. Additional training requirements for these child custody evaluators are contained in rule 1257.7.

**(c) [Definitions]** For purposes of this rule:

- (1) A "child custody evaluator" is a court-appointed investigator as defined in Family Code section 3110.
- (2) A "child custody evaluation" is an expert investigation and analysis of the health, safety, welfare, and best interest of a child with regard to disputed custody and visitation issues.
- (3) A "full evaluation, investigation, or assessment" is a comprehensive examination of the health, safety, welfare, and best interest of the child.
- (4) A "partial evaluation, investigation, or assessment" is an examination of the health, safety, welfare, and best interest of the child that is limited by court order in either time or scope.
- (5) The terms "evaluation," "investigation," and "assessment" are synonymous.
- (6) "Best interest of the child" is described in Family Code section 3011.

**(d) [Requirements for evaluators' qualifications: education, experience, and training]** Persons appointed as child custody evaluators must:

- (1) Effective January 1, 2004, complete a total of 40 hours of initial training and education as described in subdivision (e). At least 20 of the 40 hours of education and training required by this rule must be completed by January 1, 2003;
- (2) Comply with the training requirements described in rule 1257.7;
- (3) Fulfill the experience requirements described in subdivision (f); and
- (4) Meet the continuing education, experience, and training requirements described in subdivision (g).

**(e) [Education and training requirements]** Only education acquired after January 1, 2000 that meets the requirements for training and education providers described in subdivision (n) meets the requirements of this rule. Ten of the hours required by this rule may be earned through self-study that is supervised by a training provider who meets the requirements described in subdivision (n). Serving as the instructor in a course meeting the requirements described in subdivision (n) in one or more of the subjects listed in paragraphs (1) through (21) below can be substituted for completion of the requisite number of hours specified in subdivision (d) on an hour-per-hour

basis, but each subject taught may be counted only once. The hours required by this rule must include, but are not limited to, all of the following subjects:

- (1) The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and visitation;
- (2) Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;
- (3) The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults;
- (4) The assessment of child sexual abuse issues required by Family Code section 3110.5(b)(2)(A)-(F) and Family Code section 3118; local procedures for handling child sexual abuse cases; and the effect that court procedures may have on the evaluation process when there are allegations of child sexual abuse;
- (5) The significance of culture and religion in the lives of the parties;
- (6) Safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;
- (7) When and how to interview or assess adults, infants, and children; gather information from collateral sources; collect and assess relevant data; and recognize the limits of data sources' reliability and validity;
- (8) The importance of addressing issues such as general mental health, medication use, and learning or physical disabilities;
- (9) The importance of staying current with relevant literature and research;
- (10) How to apply comparable interview, assessment, and testing procedures that meet generally accepted clinical, forensic, scientific, diagnostic, or medical standards to all parties;
- (11) When to consult with or involve additional experts or other appropriate persons;
- (12) How to inform each adult party of the purpose, nature, and method of the evaluation;
- (13) How to assess parenting capacity and construct effective parenting plans;
- (14) Ethical requirements associated with the child custody evaluator's professional license and rule 1257.3;
- (15) The legal context within which child custody and visitation issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;
- (16) The importance of understanding relevant distinctions among the roles of evaluator, mediator, and therapist;
- (17) How to write reports and recommendations, where appropriate;
- (18) Mandatory reporting requirements and limitations on confidentiality;
- (19) How to prepare for and give court testimony;
- (20) How to maintain professional neutrality and objectivity when conducting child custody evaluations;
- (21) The importance of assessing the health, safety, welfare, and best interest of the child or children involved in the proceedings.

**(f) [Experience requirements]** Persons appointed as child custody evaluators must satisfy initial experience requirements by:

- (1) Completing or supervising three court-appointed partial or full child custody evaluations including a written or an oral report between January 1, 2000, and July 1, 2003; or
- (2) Conducting six child custody evaluations in consultation with another professional who meets the education, experience, and training requirements of this rule.

**(g) [Continuing education and training]** Effective January 1, 2004, persons appointed as child custody evaluators must annually attend 8 hours of update training covering subjects described in subdivision (e) after completing the initial 40 hours of training. This requirement is in addition to the annual update training described in rule 1257.7.

**(h) [Ongoing clinical consultation]** When conducting evaluations, persons appointed as child custody evaluators should, where appropriate, seek guidance from professionals who meet the requirements of this rule.

**(i) [Court employees]** Effective January 1, 2004, court-connected evaluators may conduct evaluations if they have already completed at least 20 hours of the training required in subdivision (d) of this rule and meet all of the qualifications established by this rule within 12 months after completing the 20-hour requirement. During the period in which a court-connected evaluator does not yet meet the requirements of this rule, a court-connected professional who meets the requirements of the rule must supervise the court-connected evaluator's work.

**(j) [Alternative appointment criteria]** If the court appoints a child custody evaluator under Family Code section 3110.5(d), the court must require that the evaluator:

- (1) Possess a master's or doctoral degree in psychology, social work, marriage and family counseling, or another behavioral science substantially related to working with families; and
- (2) Have completed the education, experience, and training requirements in subdivisions (e) and (g) of this rule.

**(k) [Licensing requirements]** On or after January 1, 2005, persons appointed as child custody evaluators must meet the criteria set forth in Family Code section 3110.5(c)(1)-(5).

**(l) [Responsibility of the courts]** Each court:

- (1) On or before January 1, 2004, must develop local court rules to implement this rule that:
  - (A) Provide for acceptance of and response to complaints about an evaluator's performance, and
  - (B) Establish a process for informing the public about how to find qualified evaluators in that jurisdiction;
- (2) Effective January 1, 2004, must use the Judicial Council form *Order Appointing Child Custody Evaluator* (FL-327) to appoint a private child custody evaluator or a court-connected evaluation service. Form FL-327 may be supplemented with local court forms;
- (3) Must provide the Judicial Council with a copy of any local court forms used to implement this rule; and,

(4) As feasible and appropriate, may confer with education and training providers to develop and deliver curricula of comparable quality and relevance to child custody evaluations for both court-connected and private child custody evaluators.

**(m) [Child custody evaluator]** A person appointed as a child custody evaluator must:

(1) Effective January 1, 2004, complete and file with the court Judicial Council form *Declaration of Child Custody Evaluator Regarding Qualifications* (FL-326). This form must be filed no later than 10 court days after receipt of notification of the appointment and before any work on the child custody evaluation has begun, unless the person is a court-connected employee who must file annually with the court Judicial Council form *Declaration of Child Custody Evaluator Regarding Qualifications* (FL-326);

(2) At the beginning of the child custody evaluation, inform each adult party of the purpose, nature, and method of the evaluation, and provide information about the evaluator's education, experience, and training;

(3) Use interview, assessment, and testing procedures that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards;

(4) Have a license in good standing if licensed at the time of appointment, except as described in Family Code section 3110.5(d);

(5) Be knowledgeable about relevant resources and service providers; and

(6) Prior to undertaking the evaluation or at the first practical moment, inform the court, counsel, and parties of possible or actual multiple roles or conflicts of interest.

**(n) [Training and education providers]** Eligible providers may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, court-connected groups, and the Administrative Office of the Courts. Eligible providers must:

(1) Ensure that the training instructors or consultants delivering the training and education programs either meet the requirements of this rule or are experts in the subject matter;

(2) Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;

(3) Emphasize the importance of focusing the child custody evaluation on the health, safety, welfare, and best interest of the child;

(4) Distribute a certificate of completion to each person who has attended the training. The certificate will document the number of hours of training offered, the number of hours the person attended, the dates of the training, and the name of the training provider; and

(5) Meet the approval requirements described in subdivision (o).

**(o) [Eligible training]** Effective July 1, 2003, eligible training and education programs must be approved by the Administrative Director of the Courts. Training and education taken between January 1, 2000, and July 1, 2003, may be applied toward the requirements of this rule if it addresses the subjects listed in subdivision (e), and is either certified for continuing education credit by a professional provider group or offered as part of a related postgraduate degree or licensing program.

*Rule 1257.4 adopted effective January 1, 2002.*

**Drafter's Notes:**

New rule 1257.4 implements Family Code section 3110.5(b)(1), which mandates development of a statewide rule of court that establishes education, experience, and training requirements for child custody evaluators appointed under that section, as well as Evidence Code Section 730, and Code of Civil Procedure Section 2032. The rule establishes criteria that will help ensure that existing and future professionals acquire a broad background in critical issues and factors affecting the health, safety, and welfare of children in the context of custody and visitation disputes before serving as court-appointed child custody evaluators. The forms (FL-326, *Declaration of Child Custody Evaluator Regarding Qualifications*, and FL-327, *Order Appointing Child Custody Evaluator*) will facilitate uniform statewide implementation of rule 1257.4.

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**Rule 1257.7. Domestic violence training standards for court-appointed child custody investigators and evaluators**

**(a) [Authority]** This rule of court is adopted under article VI, section 6 of the California Constitution and Family Code sections 211 and 3111(d) and (e).

**(b) [Purpose]** Consistent with Family Code sections 3020 and 3111, the purposes of this rule are to require domestic violence training for all court-appointed persons who evaluate or investigate child custody matters and to ensure that this training reflect current research and consensus about best practices for conducting child custody evaluations by prescribing standards that training in domestic violence shall meet. Effective January 1, 1998, no person shall be a court-appointed investigator under Family Code section 3111(d) or Evidence Code section 730 unless the person has completed domestic violence training described here and in Family Code section 1816.

**(c) [Definitions]** For purposes of this rule, "court-appointed investigator" is considered to be synonymous with "court-appointed evaluator" as defined in Family Code section 3110.

**(d) [Mandatory Training]** Persons appointed as child custody investigators under Family Code section 3110 or Evidence Code section 730, and persons who are professional staff or trainees in a child custody or visitation evaluation or investigation, must complete basic training in domestic violence issues as described in Family Code section 1816 and in addition:

(1) (*Advanced Training*) Sixteen hours of advanced training shall be completed within a 12-month period. These 16 hours shall consist of:

(A) Twelve hours of instruction, as approved by the Administrative Director of the Courts, in:

(i) The appropriate structuring of the child custody evaluation process, including, but not limited to, maximizing safety for clients, evaluators, and court personnel; maintaining objectivity; providing and gathering balanced information from both parties and

controlling for bias; providing for separate sessions at separate times (as specified in Family Code section 3113); and considering the impact of the evaluation report and recommendations with particular attention to the dynamics of domestic violence;

(ii) The relevant sections of local, state, and federal law or rules;

(iii) The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, battered women's shelters, specialized counseling, drug and alcohol counseling, legal advocacy, job training, parenting classes, battered immigrant victims, and welfare exceptions for domestic violence victims;

(iv) The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, arrest, incarceration, probation, applicable Penal Code sections (including Penal Code section 1203.097, which describes certified treatment programs for batterers), drug and alcohol counseling, legal advocacy, job training, and parenting classes; and

(v) The unique issues in family and psychological assessment in domestic violence cases, including the following concepts:

a. The effects of exposure to domestic violence and psychological trauma on children; the relationship between child physical abuse, child sexual abuse, and domestic violence; the differential family dynamics related to parent-child attachments in families with domestic violence; intergenerational transmission of familial violence; and manifestations of post-traumatic stress disorders in children;

b. The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence;

c. Current legal, psychosocial, public policy, and mental health research related to the dynamics of family violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships;

d. The assessment of family history based on the type, severity, and frequency of violence;

e. The impact on parenting abilities of being a victim or perpetrator of domestic violence;

f. The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases;

g. The influence of alcohol and drug use and abuse on the incidence of domestic violence;

h. Understanding the dynamics of high-conflict relationships and abuser/victim relationships;

i. The importance of, and procedures for, obtaining collateral information from probation departments, children's protective services, police incident reports, restraining order pleadings, medical records, schools, and other relevant sources;

j. Accepted methods for structuring safe and enforceable child custody and parenting plans that assure the health, safety, welfare, and best interest of the child, and safeguards for the parties; and

k. The importance of discouraging participants in child custody matters from blaming victims of domestic violence for the violence and from minimizing allegations of domestic violence, child abuse, or abuse against any family member.

(B) Four hours of community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the families being evaluated may reside.

(2) *(Annual update training)* Four hours of update training are required each year after the year in which the advanced training is completed. These four hours will consist of in-person classroom instruction focused on, but not limited to, an update of changes or modifications in local court practices, case law, and state and federal legislation related to domestic violence, and an update of current social science research and theory, particularly in regard to the impact on children of exposure to domestic violence.

*(Subd (d) amended effective January 1, 2002.)*

**(e) [Domestic violence training providers]** Eligible providers may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups.

**(f) [Certificate of course completion]** Domestic violence training providers shall distribute a certificate of completion to each person who has attended the initial 12-hour in-person classroom instruction and to each person who has attended the annual 4-hour update training in domestic violence for child custody evaluators. The certificate of completion will document the number of hours of training offered, the number of hours the person attended, the date(s) of the training, and the name of the training provider.

**(g) [Local court rules]** Within a year of the Judicial Council's adoption of this statewide rule of court, each local court may adopt rules regarding the procedures by which child custody evaluators that may have completed the training in domestic violence as mandated by this rule will notify the local court. In the absence of such a local rule of court, child custody evaluators shall attach copies of their certificates of completion of the initial 12 hours of advanced in-person classroom instruction and of the most recent annual 4-hour update training in domestic violence to each child custody evaluation report.

**(h) [Previous training accepted]** Persons attending training programs offered after January 1, 1996, that meet all of the requirements set forth in subdivision (d)(1)(A) of this rule, are deemed to have met the minimum standards set forth in subdivision (d)(1)(A) of this rule, but they must still meet the minimum standards listed in subdivisions (d)(1)(B) and (d)(2) of this rule.

*Rule 1257.7 amended effective January 1, 2002; adopted effective January 1, 1999.*

#### **Drafter's Notes**

**1999-**New rule 1257.7 complies with recent statutory changes requiring all court-appointed child custody evaluators and investigators to complete domestic violence training. The rule also establishes training standards.

**2002-**The rule has been amended to eliminate the requirement that the 12-hour advanced training be limited to "in-person classroom instruction"; to require Administrative Director of the Courts approval of training that fulfills the 12-hour requirement; and to add an additional content component to the 12-hour advanced training that gives evaluators information about the importance of discouraging participants in child custody evaluations from blaming victims of domestic violence or minimizing allegations of violence or child abuse.