

**PROPOSED LANGUAGE
(New Amendments Shown in Green)**

SECTION 1.

Section 3025.5 of the Family Code is amended to read:

3025.5.

(a) In ~~any a~~ proceeding involving child custody or visitation rights, if a report containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child is submitted to the court, including, but not limited to, a report created pursuant to Chapter 6 (commencing with Section 3110) of this ~~part,~~ *part and* a recommendation made to the court pursuant to Section 3183, ~~and a written statement of issues and contentions pursuant to subdivision (b) of Section 3151,~~ that information shall be contained in a document that shall be placed in the confidential portion of the court file of the proceeding, and may not be disclosed, except to the following persons:

~~(a)~~ (1) A party to the proceeding and his or her attorney.

~~(b)~~ (2) A federal or state law enforcement officer, *the licensing entity of a child custody evaluator,* judicial officer, court employee, or family court facilitator of the superior court of the county in which the action was filed, or an employee or agent of that facilitator, acting within the scope of his or her duties.

~~(c)~~ (3) Counsel appointed for the child pursuant to Section 3150.

~~(d)~~ (4) Any other person upon order of the court for good cause.

(b) Confidential information contained in the report prepared pursuant to Section 3111 shall remain confidential and the licensing entity may only use it for purposes of investigating allegations of unprofessional conduct of the child custody evaluator, or a criminal, civil, or administrative proceeding in relation thereto. All confidential information including but not limited to the identity of any minors shall retain their confidential nature in any criminal, civil, or administrative proceeding resulting from the investigation of unprofessional conduct and shall be sealed at the conclusion of the proceeding and may not subsequently be released. Names that are confidential shall be listed in attachments separate from the general pleadings. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the licensing board decides that no further action will be taken in the matter of suspected licensing violations.

SEC. 2.

Section 3111 of the Family Code is amended to read:

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. If 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, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision ~~(a), or~~ (a) of [Section 3025.5](#), or as described in Section 204 of the Welfare and Institutions Code or Section 1514.5 of the Probate Code. Any information obtained from access to a juvenile court case file, as defined in subdivision (e) of Section 827 of the Welfare and Institutions Code, is confidential and shall only be disseminated as provided by paragraph (4) of subdivision (a) of Section 827 of the Welfare and Institutions Code.

(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.

(d) If the court determines that an unwarranted disclosure of a written confidential report has been made, the court may impose a monetary sanction against the disclosing party. The sanction shall be in an amount sufficient to deter repetition of the conduct, and may include reasonable attorney's fees, costs incurred, or both, unless the court finds that the disclosing party acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The court shall not impose a sanction pursuant to this subdivision that imposes an unreasonable financial burden on the party against whom the sanction is imposed. This subdivision shall become operative on January 1, 2010.

(e) The Judicial Council shall, by January 1, 2010, do the following:

(1) Adopt a form to be served with every child custody evaluation report that informs the report recipient of the confidentiality of the report and the potential consequences for the unwarranted disclosure of the report.

(2) Adopt a rule of court to require that, when a court-ordered child custody evaluation report is served on the parties, the form specified in paragraph (1) shall be included with the report.

(f) For purposes of this section, a disclosure is unwarranted if it is done either recklessly or maliciously, and is not in the best interests of the child.

(g) For purposes of this section, a disclosure of the confidential written report to the licensing entity of the child custody evaluator shall not be considered an unwarranted disclosure.

Business and Professions Code §129.

(a) As used in this section, “board” means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.

(b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.

(c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint. Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.

(d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board’s functions and responsibilities under this section.

(e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

(f) Notwithstanding any other provision of law, upon receipt of a child custody evaluation report submitted to the court pursuant to Chapter 6 (commencing with Section 3110) of Part 2 of Division 8 of the Family Code, the board shall notify the noncomplaining party in the underlying custody dispute who is a subject of that report, of the pending investigation.

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 1843

VERSION: AMENDED JUNE 6TH, 2014

AUTHOR: JONES

SPONSOR: BOARD OF BEHAVIORAL SCIENCES

RECOMMENDED POSITION: SUPPORT

SUBJECT: CHILD CUSTODY EVALUATIONS: CONFIDENTIALITY

Summary

This bill would amend the Family Code to give the licensing entity of a child custody evaluator the ability to access the child custody report in order to investigate the alleged unprofessional conduct of one of its licensees. It would also require the licensing entity to take certain steps to ensure the confidentiality of the information contained in the report is upheld.

Existing Law:

The Board of Psychology is mandated by law (Family Code Section 3110.5(e)), to investigate complaints against its licensees for unprofessional conduct occurring while that licensee served as a child custody evaluator.

Child custody evaluators are required by law to be licensed by the Board of Psychology, the Board of Behavioral Sciences (BBS), or the Medical Board (as a psychiatrist). In contentious divorce cases, they prepare a child custody evaluation report which the court uses to help determine custody of the children.

This Bill:

The bill would grant statutory authority to the Board to access a child custody evaluation report for the purpose of investigating allegations that one of its licensees, while serving as a child custody evaluator, engaged in unprofessional conduct in the creation of the report. (Family Code Section 3025.5 (a) (2)).

The bill contains detailed confidentiality provisions concerning the parties mentioned in the report. Information in reports that do not result to civil, criminal, or administrative proceedings will be sealed. (Family Code Section 3025.5 (b)).

The bill protects complaining parties and adds specific language that the release of a child custody evaluation to a licensing board will not be considered an unwarranted disclosure. (Family Code Section 3111 (g)).

Upon an investigation being launched, the Board shall notify the non-complaining party in the underlying custody dispute of the investigation. (Business and Professions Code Section 129 (f)).

Comment:

Background.

The Board attended a series of stakeholder meetings in March and May 2014 to discuss this issue. These meetings consisted of representatives from the Assembly Judiciary Committee, the Senate Judiciary Committee, the professional associations of the Board's licensees, representatives from the Board of Behavioral Sciences and their professional association, associations representing family law attorneys, and representatives from the Administrative Office of the Courts.

At these meetings, there was general consensus that licensees acting unprofessionally or unethically should be subject to discipline, and that the confidentiality of the child custody evaluation reports is essential. There were differing opinions on the conditions under which the report should be made available.

At the stakeholder meetings in March, two legal questions were raised that BBS staff consulted with the Attorney General's office to answer. BBS reconvened the stakeholder meetings in May once an answer was received from the Attorney General's office. The questions, and Attorney General's responses, were as follows:

Family Code section 3025.5(b) states a federal or state law enforcement office is one of the parties the report may be disclosed to. The stakeholders inquired if a Division of Investigation (DOI) investigator could be used to obtain the report for the boards. DOI is a unit within DCA that employs peace officers for investigative purposes.

The Attorney General (AG's) office prepared an informal legal opinion evaluating the situation for BBS. The opinion stated the following:

The law is uncertain regarding whether a child custody evaluation may lawfully be obtained by a DOI investigator. The AG's office writes that while there is uncertainty as to whether the Legislature intended to include DOI investigators as state law enforcement officers in FC §3025.5, it appears that it intended to limit the definition to those law enforcement officers who are actively participating in the custody or visitation proceeding (i.e. closely involved in the proceedings).

The AG's office recommended that "In light of the uncertainty in the law regarding whether DOI investigators are considered law enforcement officers under this code section (3025.5), and in the interest of saving the Board (BBS) the time, expense, and uncertainty of petitioning the court for court orders permitting the disclosure of 730 reports in each and every case..." FC §3025.5 should be amended to specifically identify licensing boards and their agents/investigators as parties the report may be disclosed to. They also recommended that the law should specify certain safeguards, including that the report may only be used to pursue disciplinary action against licensees, as well as confidentiality provisions.

While BBS was advised by the Administrative Office of the Courts that it may not legally have access to the report, the Board of Psychology has been advised by their

DAG that if a party provides the report, they may use it in their investigation. The Board of Psychology is required to use a different unit within the AG's office, called the Health Quality Enforcement Unit (HQEU).

In May, the Board voted to submit a similar request for clarification to the AG's office. The Executive Officer submitted the informal request on May 28, 2014.

Board Practice.

The Board receives approximately 80 complaints of unprofessional conduct per year related to licensees serving as child custody evaluators. Reviewing the child custody evaluation report is an essential first step a Board investigator must take in order to determine if there is any basis for the unprofessional conduct complaint. The Board typically receives the report from the complainant, the licensee, or both, and proceeds with the investigation if warranted. The most recent figures for the 2012/2013 are that The Board received 78 complaints regarding CCEv's, 13 were sent to investigations and 4 resulted in disciplinary action.

Fiscal.

The AG rate has been \$170 for the last three years. The rate increased from \$158 to \$170 per hour in the fiscal year 2008/2009. The Board receives very detailed billing reports that enable us to track the work that is done on our cases. An example of the time and costs associated with pursuing a case is below.

In one case, the Board was provided the evaluation and the complaint was investigated. Following a thorough investigation and expert review, extreme departures were established. In July 2013, the DAG assigned to the case filed a subpoena/petition with the family court requesting permission to access the evaluation. A hearing was held on September 23, 2013, where the court ordered that opposing counsel re-serve the parent in the matter by personal service to ensure proper notice and the hearing was continued to October 29, 2013 and then continued until December 2013. On January 17, 2014, the court issued an order allowing the parties to use the report in the administrative matter. The AG's cost for this process was \$5075.00. The process to obtain the evaluation via subpoena added approximately seven months to our processing time for this case.

1) Recommended Position: Support

2) Support and Opposition.

Support:

American Federation of State, County and Municipal Employees
California Police Chiefs Association
County Welfare Directors Association of California
California Teachers Association
California Dental Association; Crime Victims Alliance;
Child Abuse Prevention Center

Opposition:

California Public Defenders Association
California Association of Marriage and Family Therapists

Concerns from stakeholders meetings and reasons for opposition:

- **Confidentiality** – The opposition cites the child custody evaluation report as confidential, with multiple parties involved. However, boards handle confidential information on a daily basis (patient notes, psychological evaluations, etc.) and their investigators are trained to handle highly sensitive information. DCA Boards are already mandated by law (Family Code Section 3110.5(e)), to investigate complaints against their licensees for unprofessional conduct occurring while that licensee served as a child custody evaluator. They cannot conduct an investigation without evidence, and in these cases, any evidence of unprofessional conduct would be found in the child custody evaluation report.

In response to these concerns extensive language has been added to Family Code Section 3025.5 to ensure the confidentiality of the report is upheld. Additionally, there is proposed language in the Business and Professions Code to require the licensing entity, upon receipt of the report, to notify the non-complaining party in the custody dispute of the pending investigation (BPC Section 129 (f))

- **Processes Already in Place to Obtain the Report – Some stakeholders have** argued that a board may subpoena the court in order to obtain the report. However, approximately 80 complaints are received per year, so it is very costly to do this in each case. In addition, the report is needed upon receipt of a complaint to determine if there is enough evidence of unprofessional conduct to move forward with an investigation. However, the court is not always willing to release the report, and this leaves the Board with no means to investigate. The Attorney General’s office recommended, in its informal opinion to BBS, that Family Code Section 3025 be amended to specifically identify professional licensing boards as entities to which a report may be disclosed.
- **Courts Already Have a Process to Discipline Evaluators/Courts Should be the Ones to Discipline Evaluators** – Concern has been cited that this is an issue that the courts should be addressing, and that allowing complaints to the licensing Boards gives the complainants “another bite of the apple” in hearing their case. It was stated that court issues/deficiencies should be addressed by the courts, not accounted for in licensing board proceedings.

The Administrative Office of the Courts (AOC) stated it is typically not the case that courts handle these types of complaints. The courts do not have the technical expertise to determine unprofessional conduct and how a psychotherapist should be ethically practicing. In addition, Family Code Section 3110.5(e) specifically requires the licensing board to investigate these complaints.

3) History

2014

- May 15 Referred to Com. on JUD.
- May 5 In Senate. Read first time. To Com. on RLS. for assignment.
- May 5 Read third time. Passed. Ordered to the Senate. (Ayes 75. Noes 0. Page 4765.)
- April 30 Read second time. Ordered to consent calendar.
- April 29 From committee: Do pass. To consent calendar. (Ayes 10. Noes 0.) (April 29).
- April 22 In committee: Hearing postponed by committee.

April 1 Re-referred to Com. on JUD.
Mar 28 From committee chair, with author's amendments: Amend, and re-refer to Com.
on JUD. Read second time and amended.
Mar 28 Referred to Com. on JUD.
Feb 19 From printer. May be heard in committee March 21.
Feb 18 Read first time. To print.


Board of Psychology Child Custody Complaints			
	FY 2010/2011	FY 2011/2012	FY 2012/2013
Complaints Received	89	72	78
Referred for Formal Investigation	16	11	13
Discipline Action	8	3	4

Top five child custody related allegations:

- Evaluator prepared an unfair/biased evaluation
- Evaluator was unprofessional during evaluation
- Evaluator failed to consider all pertinent information/documentation provided
- Evaluator prepared an inaccurate evaluation
- Evaluator had a conflict of interest with one of the parties



MEMORANDUM

DATE	June 13, 2014
TO	Psychology Board Members
FROM	 Jonathan Burke Administrative Services Coordinator
SUBJECT	AB 1843 (Jones): Child Custody Evaluations

Background:

Please see attached analysis for detail on this proposed legislation.

Action Requested:

Motion: Staff recommends the Board make a motion to support AB 1843.

Attachment A is the staff analysis of AB 1843.

Attachment B shows the current language proposed in AB 1843.

Staff Responses to Questions on this topic by Dr. Phillips 3/19/14

1. Based on the most recent data, how many complaints a year do we receive regarding custodial evaluations?

Please see attached document titled Child Custody Stats. The most recent figures for the 2012/2013 are that The Board received 78 complaints regarding CCEv's, 13 were sent to investigations and 4 resulted in disciplinary action.

2. In how many of those cases do we not receive the actual custodial evaluation because of the language in the statute as currently written?

The Board does track these cases by type, but not by the particulars of the case. The only available and relevant data is contained in the answer to question 1.

3. In how many of the cases where we cannot get the report have we opted to enlist the aid of the Attorney General's office?

We have no definite statistics but after discussions with enforcement staff it was determined that two cases involved the AG's office. The AG refused to hear one of the cases. The other case was taken up and an outline is provided in the answer to Question 4.

4. What is the average cost of such assistance?

The AG rate has been \$170 for the last three years. The rate increased from \$158 to \$170 per hour in the fiscal year 2008/2009. The Board receives very detailed billing reports that enable us to track the work that is done on our cases.

The complainant referenced in Question 3 originally provided the evaluation to us and the complaint was investigated. Following a thorough investigation and expert review, extreme departures were established. In July 2013, the DAG assigned to the case filed a subpoena/petition with the family court requesting permission to access the evaluation. A hearing was held on September 23, 2013, where the court ordered that opposing counsel re-serve the parent in the matter by personal service to ensure proper notice and the hearing was continued to October 29, 2013 and then continued until December 2013. On January 17, 2014, the court issued an order allowing the parties to use the report in the administrative matter. The AG's cost for this process was \$5075.00. The process to obtain the evaluation via subpoena added approximately 7 months to our processing time for this case.

5. In the cases where we have used the AG to obtain the report, in what proportion of the cases are we still unable to obtain the report?

This is not something The Board's staff has been tracking as we monitor by complaint type.

6. Do we have an opinion from DCA legal counsel that the BOP risks some liability should we accept a report from the complaining parent where they do not have the court's approval to release the report?

The BOP has not received an opinion from DCA legal counsel that the BOP risks some liability should we accept a report. The Board would seek such an opinion from the AG's office, not DCA legal counsel. However, BBS did receive advice from AOC that an Administrative Law Judge could rule the CCEv as inadmissible. The Executive Officer of the BBS determined not to expend time and money on the pursuit of these cases as there is a definite possibility the cases could be dismissed as the foundation of the case would be deemed inadmissible.

7. Has board staff adopted a policy we don't accept the report should the parent not have court approval?

The Board of Psychology does accept and attempt to utilize the report if it is released to us by one of the parties mentioned in Family Code Section 3025.5. The Board of Behavioral Sciences received advice from AOC that they should not use the CCEv because the disclosure of the confidential document places the disclosing individual under sanction (Family Code Section 3111).