



MEMORANDUM

DATE	August 7, 2014
TO	Psychology Board Members
FROM	Jonathan Burke Administrative Services Coordinator
SUBJECT	AB 1843 (Jones): Child Custody Evaluations

Background:

On June 17, 2014, the Board of Psychology took a “support” position on AB 1843.

Action Requested:

This item is for informational purposes as there have been no substantive changes to the bill. No action is requested.

Attachment A is the staff analysis of AB 1843.

Attachment B shows the current language proposed in AB 1843.

Attachment C is the “support” letter sent for AB 1843.

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 1843

VERSION: AMENDED JULY 1, 2014

AUTHOR: JONES

SPONSOR: BOARD OF BEHAVIORAL SCIENCES

BOARD 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) Board Position: Support

2) Support and Opposition.

Support:

Board of Psychology

Board of Behavioral Sciences

Executive Committee of the Family Law Section of the State Bar

Opposition:

None at this time

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

- Aug. 05 Read second time. Ordered to consent calendar.
- Aug. 04 From committee: Be placed on second reading file pursuant to Senate Rule 28.8 and ordered to consent calendar.
- Jul. 01 Read second time and amended. Re-referred to Com. on APPR.
- Jun. 30 From committee: Do pass as amended and re-refer to Com. on APPR. with recommendation: to consent calendar. (Ayes 7. Noes 0.) (June 24).
- Jun. 09 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
- May 15 Referred to Com. on JUD.
- 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.

AMENDED IN SENATE JULY 1, 2014
AMENDED IN SENATE JUNE 9, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1843

Introduced by Assembly Members Jones and Gordon

February 18, 2014

An act to amend Section 129 of the Business and Professions Code, and to amend Sections 3025.5 and 3111 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as amended, Jones. Child custody evaluations: confidentiality.

(1) Existing law authorizes a court, in any contested child custody or visitation rights proceeding, to appoint a child custody evaluator to conduct a child custody evaluation, as specified, if the court determines it is in the best interests of the child. Existing law requires the child custody evaluator, if directed by the court, to file a written confidential report on his or her evaluation at least 10 days before any hearing regarding the custody of the child with the clerk of the court, as specified. Existing law requires this report to be served on the parties or their attorneys, and any other counsel appointed for the child. Existing law otherwise prohibits the disclosure of the report, except in certain probate guardianship proceedings, as specified.

Existing law requires the information from a report containing psychological evaluations of a child or recommendations regarding custody or visitation submitted to the court in any proceeding involving

child custody or visitation rights to be contained in a document that is to be placed in the confidential portion of the court file. Existing law applies this requirement to, among other things, the written confidential report described above, child custody or visitation recommendations made to the court pursuant to mediation proceedings, and a written statement of issues and contentions put forth by a child's appointed counsel. Existing law prohibits these reports and recommendations from being disclosed, except to specified persons, including, among others, a party to the proceeding or his or her attorney, a federal or state law enforcement officer, a court employee acting within the scope of his or her duties, a child's appointed counsel, or any other person upon order of the court for good cause.

This bill would additionally authorize the disclosure of this confidential information to the licensing entity of a child custody evaluator and would prescribe the manner in which the licensing entity is authorized to use the confidential information disclosed to it, as specified.

This bill would make a clarifying change to authorize the disclosure of a child custody evaluator's written confidential report pursuant to the provisions described above and would specify that a disclosure to the licensing entity of a child custody evaluator is not an unwarranted disclosure, as specified: *above*. The bill would delete an obsolete provision relating to the written statement of issues and contentions put forth by a child's appointed counsel.

(2) Existing law requires a board, as defined, within the Department of Consumer Affairs, upon receipt of any complaint respecting a ~~licentiate~~ *licensee*, to notify the complainant of the initial and final action taken on his or her complaint, as specified. Existing law requires the board, when it deems appropriate, to notify the person against whom the complaint is made of the nature of the complaint and authorizes the board to request appropriate relief for the complainant and *to* meet and confer with the complainant and the ~~licentiate~~ *licensee* in order to mediate the complaint.

This bill would, notwithstanding any other law, require the board, upon receipt of a child custody evaluation report, as specified, to notify the noncomplaining party in the underlying child custody dispute, who is a subject of that report, of the pending investigation.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 129 of the Business and Professions Code
2 is amended to read:

3 129. (a) As used in this section, “board” means every board,
4 bureau, commission, committee, and similarly constituted agency
5 in the department ~~which~~ *that* issues licenses.

6 (b) Each board shall, upon receipt of any complaint respecting
7 ~~a licensee thereof~~ *an individual licensed by the board*, notify the
8 complainant of the initial administrative action taken on his *or her*
9 complaint within 10 days of receipt. Each board shall ~~thereafter~~
10 notify the complainant of the final action taken on his *or her*
11 complaint. There shall be a notification made in every case in
12 which the complainant is known. If the complaint is not within the
13 jurisdiction of the board or if the board is unable to dispose
14 satisfactorily of the complaint, the board shall transmit the
15 complaint together with any evidence or information it has
16 concerning the complaint to the agency, public or private, whose
17 authority in the opinion of the board will provide the most effective
18 means to secure the relief sought. The board shall notify the
19 complainant of ~~such~~ *this* action and of any other means ~~which~~ *that*
20 may be available to the complainant to secure relief.

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

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

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

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

10 SEC. 2. Section 3025.5 of the Family Code is amended to read:

11 3025.5. (a) In a proceeding involving child custody or
12 visitation rights, if a report containing psychological evaluations
13 of a child or recommendations regarding custody of, or visitation
14 with, a child is submitted to the court, including, but not limited
15 to, a report created pursuant to Chapter 6 (commencing with
16 Section 3110) of this part and a recommendation made to the court
17 pursuant to Section 3183, that information shall be contained in a
18 document that shall be placed in the confidential portion of the
19 court file of the proceeding, and may not be disclosed, except to
20 the following persons:

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

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

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

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

29 (b) Confidential information contained in a report prepared
30 pursuant to Section 3111 that is disclosed to the licensing entity
31 of a child custody evaluator pursuant to subdivision (a) shall remain
32 confidential and shall only be used for purposes of investigating
33 allegations of unprofessional conduct by the child custody
34 evaluator, or in a criminal, civil, or administrative proceeding
35 involving the child custody evaluator. All confidential information,
36 including, but not limited to, the identity of any minors, shall retain
37 their confidential nature in any criminal, civil, or administrative
38 proceeding resulting from the investigation of unprofessional
39 conduct and shall be sealed at the conclusion of the proceeding
40 and shall not subsequently be released. Names that are confidential

1 shall be listed in attachments separate from the general pleadings.
2 If the confidential information does not result in a criminal, civil,
3 or administrative proceeding, it shall be sealed after the licensing
4 entity decides that no further action will be taken in the matter of
5 suspected licensing violations.

6 SEC. 3. Section 3111 of the Family Code is amended to read:

7 3111. (a) In any contested proceeding involving child custody
8 or visitation rights, the court may appoint a child custody evaluator
9 to conduct a child custody evaluation in cases where the court
10 determines it is in the best interests of the child. The child custody
11 evaluation shall be conducted in accordance with the standards
12 adopted by the Judicial Council pursuant to Section 3117, and all
13 other standards adopted by the Judicial Council regarding child
14 custody evaluations. If directed by the court, the court-appointed
15 child custody evaluator shall file a written confidential report on
16 his or her evaluation. At least 10 days before any hearing regarding
17 custody of the child, the report shall be filed with the clerk of the
18 court in which the custody hearing will be conducted and served
19 on the parties or their attorneys, and any other counsel appointed
20 for the child pursuant to Section 3150. The report may be
21 considered by the court.

22 (b) The report shall not be made available other than as provided
23 in subdivision (a) or Section 3025.5, or as described in Section
24 204 of the Welfare and Institutions Code or Section 1514.5 of the
25 Probate Code. Any information obtained from access to a juvenile
26 court case file, as defined in subdivision (e) of Section 827 of the
27 Welfare and Institutions Code, is confidential and shall only be
28 disseminated as provided by paragraph (4) of subdivision (a) of
29 Section 827 of the Welfare and Institutions Code.

30 (c) The report may be received in evidence on stipulation of all
31 interested parties and is competent evidence as to all matters
32 contained in the report.

33 (d) If the court determines that an unwarranted disclosure of a
34 written confidential report has been made, the court may impose
35 a monetary sanction against the disclosing party. The sanction
36 shall be in an amount sufficient to deter repetition of the conduct,
37 and may include reasonable attorney's fees, costs incurred, or both,
38 unless the court finds that the disclosing party acted with substantial
39 justification or that other circumstances make the imposition of
40 the sanction unjust. The court shall not impose a sanction pursuant

1 to this subdivision that imposes an unreasonable financial burden
2 on the party against whom the sanction is imposed. This
3 subdivision shall become operative on January 1, 2010.

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

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

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

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

16 ~~(g) For purposes of this section, a disclosure of the confidential~~
17 ~~written report to the licensing entity of a child custody evaluator~~
18 ~~is not an unwarranted disclosure.~~



June 18, 2014

The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Room 2187
Sacramento, CA 95814

RE: AB 1843 – **Support**

Dear Senator Jackson:

At its June 17, 2014 meeting, the Board of Psychology (Board) took a **support** position on AB 1843 (Jones/ Gordon).

The Board's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

The Board 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. AB 1843 will allow the Board to investigate these complaints in a more timely and cost effective manner.

Specifically the Board supports the bill for the following reasons;

- The bill grants 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. Currently the Board does not have access to the report.
- 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.
- 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.
- Upon an investigation being launched, the Board shall notify the non-complaining party in the underlying custody dispute of the investigation.

The Board respectfully requests your support for this important legislation. If you have any questions or concerns, please feel free to contact the Board's Administrative Services Coordinator, Jonathan Burke, at (916) 574-7137. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Erickson".

MICHAEL ERICKSON, PH.D.
President, Board of Psychology

cc: Senator Joel Anderson (Vice Chair)
Senator Ellen M. Corbett
Senator Ricardo Lara
Senator Mark Leno
Senator Bill Monning
Senator Andy Vidak
Assembly Member Brian W. Jones
Assembly Member Richard S. Gordon
Board Members
Tracy Rhine, Deputy Director, Legislative and Policy Review, Department of Consumer Affairs