

Domestic Violence and Child Custody

If you are involved in a family law case involving children and there has been domestic violence, here is important information about a law that affects you.

What is “child custody”?

There are two types.

- *Physical custody*: Whom the child lives with
- *Legal custody*: Who makes important decisions regarding the child’s health care, education, and welfare

What is “domestic violence”?

It means to hit, kick, scare, throw things, pull hair, push, follow, harass, sexually assault, or threaten to do any of these things. It also includes other actions that make someone afraid of being hurt. Domestic violence can be spoken, written, or physical.

How does the judge decide if there is domestic violence in my case?

The judge will treat your case as a domestic violence case if, in the last 5 years,

- A parent was convicted of domestic violence against the other parent *or*
- Any court has decided that one parent committed domestic violence against the other parent or the children

Otherwise, the judge will decide based on all the evidence in your case. The judge cannot decide based only on the conclusions or recommendations of Family Court Services staff or a child custody evaluator.

What if the judge decides there is domestic violence in my case?

If a court decides there is domestic violence (now or in the past 5 years) against a parent or the children, the judge must follow special rules to decide custody of the children.

Usually, the judge *cannot* give custody to the person who committed domestic violence. But the judge can give that person visitation.

Are there exceptions?

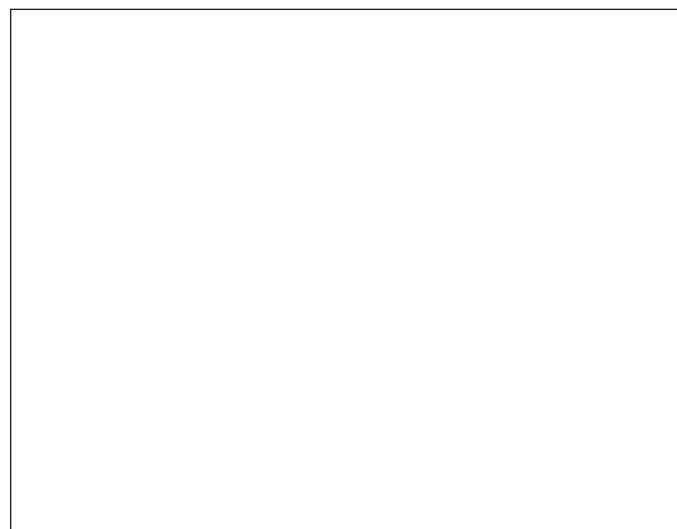
Yes. The judge can give custody to the person who committed the domestic violence. To do so, the judge must consider whether:

- It is best for the child
- The person has:
 - Completed a 52-week batterer’s program
 - Not committed any other domestic violence
- The person has obeyed court orders to:
 - Complete an alcohol or drug abuse program or a parenting class
 - Follow all terms of probation or parole or a protective or restraining order

This law applies to any person seeking custody, not only a parent. To read the law, see California Family Code section 3044 (attached). Other laws also apply.

Need Help?

For more information, contact:



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

California Courts Online Self-Help Center: www.courtinfo.ca.gov/selfhelp/

Family Code Section 3044

January 1, 2004

(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. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the non-custodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(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.

(5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.

(6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.

(7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of, the Penal Code.

(2) The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.