

**SENATE JUDICIARY COMMITTEE**  
**Senator Ellen M. Corbett, Chair**  
**2007-2008 Regular Session**

AB 612	A
Assemblymember Ruskin	B
As Amended June 14, 2007	
Hearing Date: July 10, 2007	6
Family Code	1
KB:rm	2

**SUBJECT**

Child custody evaluations

**DESCRIPTION**

This bill would:

- provide that, in the context of child custody evaluations, nonscientific labels and diagnoses that are not consistent with standards generally accepted by the medical, psychiatric, and psychological communities shall be specifically excluded as allowable diagnoses for court use; and
- provide that nothing in the section precludes a child custody evaluator from freely interviewing parents and children, observing a parent-child interaction, speaking to collateral sources, consulting over psychological data, or using his or her professional expertise to integrate data, assess and evaluate psychological issues, or communicate the results of those analyses to the court consistent with ethical and professional standards.

(This analysis reflects author's amendments to be offered in committee.)

**BACKGROUND**

In 1999, AB 433 (Johnson, Ch. 932, Statutes of 1999) substantially increased the general education and training requirements for child custody evaluators. AB 433 also required the Judicial Council to formulate rules establishing education, training, and licensure requirements for child custody evaluators, and for certifying child custody evaluators. AB 433 was introduced in response to concerns that many private child custody evaluators were not licensed professionals in the field, and were incompetently handling cases which wreaked havoc in the lives of families who utilized them.

(more)

This bill has been introduced to address additional concerns in the context of child custody evaluations. Specifically, proponents of this bill assert that child custody evaluators often conduct mental and psychological testing and examinations on parties that many times are unnecessary, intrusive, and expensive. In addition, proponents assert that, in cases where a child discloses abuse by a parent, child custody evaluators have used the nonscientific label of "parental alienation syndrome" to dismiss the allegations of abuse. Proponents contend that this has resulted in children being placed with batterers and child abusers.

This bill seeks to prevent the use of nonscientific labels, such as "parental alienation syndrome" in the context of child custody evaluations to prevent children from being placed with abusive or violent parents.

### CHANGES TO EXISTING LAW

Existing law states that health, safety, and welfare of children is the court's primary concern when determining the best interests of children in child custody and visitation orders. (Family Code § 3020.)

Existing law permits the court, in a contested custody or visitation proceeding where the court determines it is in the best interests of the child, to appoint a child custody evaluator to conduct a child custody evaluation. (Family Code § 3111.)

Existing law provides that where the court determines there is a serious allegation of child sexual abuse, as defined, the child custody evaluation shall be conducted under specified rules. (Family Code § 3118.)

Existing law requires court-connected and private child custody evaluators to complete a described domestic violence and child abuse training program and to comply with other requirements. (Family Code §§ 1816, 3110.5.)

Existing law requires the Judicial Council to adopt standards for child custody evaluations. The court rules specify qualifications for evaluators and specify the scope of the evaluation. For the purposes of these provisions, court rules provide that a "child custody evaluator" is a "court-appointed investigator." (Family Code § 3117; Rules of Court 5.220, 5.225.)

This bill would codify those court rules to provide that a "child custody evaluator" is a "court-appointed investigator."

This bill would provide that nonscientific labels and diagnoses that are not consistent with standards generally accepted by the medical, psychiatric, and

psychological communities shall be specifically excluded as allowable diagnoses for court use.

This bill would provide that nothing in the section precludes a child custody evaluator from freely interviewing parents and children, observing a parent-child interaction, speaking to collateral sources, consulting over psychological data, or using his or her professional expertise to integrate data, assess and evaluate psychological issues, or communicate the results of those analyses to the court consistent with ethical and professional standards.

### COMMENT

#### 1. Stated need for the bill

The author states:

“Often, psychological tests are used to examine a parent’s mental state during a custody battle. While these tests have never been validated for use in family court nor have they ever been proven to have the ability to determine one’s capacity to parent, the tests have been used incorrectly in some custody cases.

There have been several documented cases where a child accuses a parent of abuse that results in the child being placed in the sole custody of the alleged perpetrator. In those cases, it is determined by evaluators that the child is suffering from ‘Parental Alienation Syndrome’ (or some other similar label), a pseudoscientific theory that professes that a child may be estranged and/or alienated from a parent by false suggestions of abuse from the other parent. Often, this results from psychological tests and evaluations being used as evidence to come to this conclusion.”

“This bill limits psychological testing, and ensures that unrecognized syndromes are not used as factors in a custody dispute.”

#### 2. Child custody evaluations and rules of court

In a contested child custody or visitation proceeding, the court may appoint a child custody evaluator to conduct a child custody evaluation if the court determines it is in the best interests of the child to do so. The evaluation must comply with standards adopted by the Judicial Council, which specify the qualifications of the evaluator, as well as the scope of the evaluation.

Rule of Court 5.225 establishes qualifications that include general education and training requirements, including training on domestic violence. Evaluators must comply with annual continuing education and training

requirements. In addition, an evaluator must have participated in at least four partial or full court-appointed child custody evaluations within the past three years, except as specified. Each court must adopt local rules to accept and respond to complaints about an evaluator's performance.

Rule of Court 5.220 requires that all evaluations include a written explanation of the purpose of the evaluation, the procedures used, and the scope of the report. Data collection and analysis must allow the evaluator to observe each party in comparable ways and "to substantiate interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and the reactions the separation, divorce, or parental conflict." The evaluator must consider the health, safety, welfare, and best interest of the child and strive to minimize the potential for psychological trauma to children during the evaluation process.

The report of the findings may be oral or, if required by the court, written.

The evaluator must:

- (1) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusion reached;
- (2) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;
- (3) 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
- (4) Provide a 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. (Rule of Court 5.220(e)(3).)

3. Author's amendments would remove controversial provisions pertaining to psychological testing from this bill

The current version of this bill would permit a court to order psychological testing of a parent or child only for good cause shown pursuant to Code of Civil Procedure § 2032.310. This section requires that a motion seeking the mental examination of a party must specify the time, place, manner, conditions, scope and nature of the examination, as well as the specialty of that person, if any.

The majority of the opposition received in this committee was in response to this specific provision of the bill, which opponents perceived as overly broad and problematic.

The author has offered amendments to remove the provisions pertaining to psychological testing from this bill. These provisions include those that would have imposed specific education and training requirements on persons conducting the psychological testing. The provisions which would have codified Rule of Court 5.220(e)(3)(A), and required child custody evaluators to summarize the sources and procedures used in the psychological testing would also be removed. Thus, the only substantive provisions that remain are those pertaining to nonscientific labels and diagnoses. It is anticipated that these amendments will remove most of the opposition, particularly that of the California Psychological Association, and the Family Law Section of the State Bar.

The author's proposed amendments are as follows:

On page 5, line 5, strike "The court shall grant a motion for the psychological"

On page 5, strike lines 6-27, inclusive

On page 5, line 28, strike "conclusions reached."

4. Exclusion of nonscientific labels and diagnoses

The remaining substantive provisions of this bill would specifically exclude evaluators from using nonscientific labels or diagnoses that are not consistent with generally accepted diagnostic or medical standards of the medical, psychiatric, and psychological communities. This is consistent with the basic California rule for admission of scientific evidence - that the scientific basis and reliability must be generally accepted by recognized authorities in the relevant scientific field. (People v. Kelly, 17 Cal.3d 24, 31 (1976).; *see also* Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993) (holding that the general acceptance test applies to federal courts as well.)

4. Opposition

The California Psychological Association (CPA) and numerous individual psychologists oppose the bill because they are concerned it will limit psychological testing and evaluations done as part of child custody evaluations, which could endanger the best interests of children and families. Psychological testing, they argue, is used as a tool "to assist in identifying possible personality patterns or mental health issues, which may be relevant to parenting or family function but must always be integrated with other

information,” and which aid “the evaluator in identifying mental health issues and making appropriate recommendations to the Court.”

The psychologists are also concerned that the bill requires them to break relevant professional standards. They argue that those standards, some of which are included in the Rules of Court, as detailed above, could be considered part of a psychological examination. As a result, unless the court orders psychological testing of a parent, they might not be able to either conduct all the necessary procedures or make any kind of recommendations in the absence of such testing. “AB 612 would, essentially, remove all of the permission to use psychological techniques when performing psychological evaluations, while still holding a psychologist liable for those issues.” Finally, they believe that the complaint process established by the California Board of Psychology should be able to handle any complaint parents may have against child custody evaluators.

The Family Law Section of the State Bar (Flexcom) also opposes the bill. Flexcom believes that current laws and regulations already provide sufficient protections for parties and their children, and make clear that evaluators cannot “merely rely upon psychological testing, or on any single method or source of information, to reach custody recommendations or the kinds of recommendations commonly requested in a child custody evaluation.” Flexcom also argues that this bill could, absent a court order for psychological testing, prevent an evaluator from performing the functions necessary for an evaluation. Further, Flexcom believes that obtaining a court order for psychological testing will add delays and costs to the evaluation process, which could place children at risk. It could also make it more difficult for courts to get information to decide difficult cases, such as move-away cases. Flexcom believes it is preferable to require judges to take necessary education classes “so that they can become better consumers of the evaluations they receive.”

As previously discussed, the author’s proposed amendments will likely address the CPA’s and Flexcom’s concerns, and remove the majority of the opposition to this bill.

Support: CA Chapter of the National Organization of Women; California Commission on the Status of Women; California Protective Parents Association; American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO; Partnership to End Domestic Violence; Calmetrics Company; Children’s Civil Rights Union; Coalition for Family Equity; Courageous Kids Network; Incest Survivors’ Speakers Bureau of Yolo County; Kid Helps Intercession; Mothers of Lost Children; National Alliance for Family Court Justice; Statewide Advocacy Association; William

Kelly Foundation; Hearts Home Foundation; Advocators & Mentors for Children; numerous individuals

Opposition: California Psychological Association; Family Law Section of the State Bar; Association of Family Conciliation Courts; numerous individuals

### HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: AB 2853 (Salinas), Ch. 130, Statutes of 2006, codified a Rule of Court requiring initial and continuing domestic violence education for court counselors, evaluators, investigators and mediators in child custody matters.

Prior Vote: Asm. Judiciary Committee (8 Ayes, 1 Noes)  
Asm. Floor (55 Ayes, 16 Noes)

\*\*\*\*\*