



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

- CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101, (619) 844-2888
- EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020, (619) 456-4100
- NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081, (760) 201-8300
- SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910, (619) 746-6097

### FAMILY COURT SERVICES CHILD CUSTODY RECOMMENDING COUNSELING INFORMATION SHEET

**IMPORTANT: This information sheet is not and should not be considered or construed as legal advice. Child custody recommending counselors do not give legal advice. If you need legal advice, you should consult an attorney.**

#### **What is Child Custody Recommending Counseling?**

Child custody recommending counseling (formerly called "mediation") is a process in which parties are given the opportunity to work together, with the assistance of an experienced Family Court Services (FCS) counselor, towards a goal of reaching an agreement regarding a parenting plan for the child(ren). Parties participate in child custody recommending counseling by attending an FCS telephone session. The FCS telephone session is an opportunity for parties to discuss custody and visitation and make their own decisions about what is in the best interest of the child(ren). The parenting plan that is developed details when the children are to be with each party and specifies other parental responsibilities. Information shared by parents during the FCS telephone session is not confidential to the court. The counselor will notify the court of areas of agreement. If no agreement is reached, the counselor will make a written recommendation to the court as to what is believed to be in the best interest of the child(ren). The recommendation will be provided to the parties prior to the court hearing. If you disagree with the counselor's recommendation, during your court hearing, you or your attorney will have the opportunity to tell the judicial officer your position regarding a child sharing plan. Only a judicial officer can make a court order for child custody or visitation.

Telephone calls to a counselor after the FCS telephone session will not be accepted unless the counselor has requested specific information. All information that you want the counselor to know should be discussed during the FCS session.

#### **What are the limitations of child custody recommending counseling?**

Child custody recommending counseling does NOT deal with issues related to money, child or spousal support, or property. Family Court Services cannot monitor or enforce court orders.

#### **What will happen at the FCS telephone session?**

During the session, you will be asked about your home, relationships, and other aspects of your life related to parenting. Your proposal for a child sharing schedule and any parenting concerns will also be discussed. The FCS telephone session will last 1½ to 2 hours.

#### **Are the parties always interviewed together during the FCS telephone session?**

If you are being protected by a restraining order against the other parent or if you allege domestic violence has occurred, you may be interviewed separately from the other parent. Also, if a restraining order for your protection is in effect at the time of the appointment, you may have a support person on the call with you during your FCS telephone session. Please advise the FCS clerk of these requests when you check in by phone. For additional information re how to request the presence of a support person and/or a separate session, refer to Instructions for Family Court Services Telephonic Participation below.

### **IMPORTANT**

**If you do not need the Family Court Services child custody recommending counseling session, you must cancel it at least one court day prior to the scheduled date. If you do not cancel the session and/or fail to appear for the session you may be ordered by the court to pay a monetary sanction of up to \$1,500 pursuant to Code Civ. Proc. § 177.5.**

## Instructions for Family Court Services Telephone Session Participation

### Prior to FCS Telephone Session:

- View the FCS orientation video on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov). To locate the video, select Custody and Visitation under the Family drop-down menu on the court's homepage.
- Review Domestic Violence and Child Custody (pages 3 and 4 of this form) for additional information including domestic violence procedures and Family Code § 3044.
- Complete and submit the Family Court Services Data Sheet (SDSC Form #FCS-002) found on the Forms page under the Family tab on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov). Mail the completed form to the address on the top of this form where your case is assigned **OR** email it to Family Court Services at the court division where your case is assigned:
  - Central Division: [FCSCentral@sdcourt.ca.gov](mailto:FCSCentral@sdcourt.ca.gov)
  - East County Division: [FCSEast@sdcourt.ca.gov](mailto:FCSEast@sdcourt.ca.gov)
  - North County Division: [FCSNorth@sdcourt.ca.gov](mailto:FCSNorth@sdcourt.ca.gov)
  - South County Division: [FCSSouth@sdcourt.ca.gov](mailto:FCSSouth@sdcourt.ca.gov)

This form must be submitted in advance for the counselor to review prior to conducting the telephone session.

- If you are being protected by a restraining order against the other parent, you may request the presence of a support person by completing the Family Court Services Domestic Violence Support Person Agreement (SDSC Form #FCS-038) prior to your session. Mail or email the form with your Family Court Services Data Sheet (SDSC Form #FCS-002) as indicated above. All forms can be found on the Forms page under the Family tab on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).
- If you are being protected by a restraining order against the other parent or if you allege domestic violence has occurred, you may be interviewed separately from the other parent. When there is no current restraining order, to request a separate session, complete the Declaration Alleging Domestic Violence for Separate Family Court Services Session (SDSC Form #FCS-017) prior to your session. Mail or email the form with your Family Court Services Data Sheet (SDSC Form #FCS-002) as indicated above. All forms can be found on the Forms page under the Family tab on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

### Day of FCS Telephone Session:

- Call the telephone number indicated at the top of this form promptly on the day and time of your session to check in and receive instructions.
- If using a cellphone, ensure in advance that the phone is charged and will allow you to participate in the session for up to two hours.
- While participating in the session, you must be in a quiet, private, uninterrupted, distraction-free location and not in a public environment, nor distracted by driving, working, childcare, or other activities.
- The issues discussed in child custody recommending counseling sessions are confidential and the contents may not be discussed with others. The session cannot be recorded.
- To ensure confidentiality, plan to participate from a private location and avoid using a speaker phone. Do not allow anyone to be in the room with you or use a cellphone in public. Non-participants are not allowed to listen to any part of your session on an extension phone line.
- Children do not participate in the FCS session and should not be in the room with you, listening in, or able to hear the conversation from another room. If the FCS counselor needs to interview the child(ren), a separate telephone interview will be arranged for another time.
- Not abiding by the above instructions could delay resolution of your court case. The FCS counselor may terminate any telephone session if a party is not abiding by these instructions.

Additional information about child custody recommending counseling can be found at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) and [www.courts.ca.gov](http://www.courts.ca.gov).

# Domestic Violence and Child Custody

If there has been domestic violence in your family, here is important information about a law that may affect you.

## 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.

## What is “child custody”?

There are two types:

- **Physical custody:** The person that the child lives with on a regular basis.
- **Legal custody:** The right for a person to make important decisions about the child’s health care, education, and welfare.

## When does domestic violence affect who gets custody of my child?

In the last 5 years, has a parent in this case committed domestic violence that resulted in a:

(1) **conviction** in criminal court for domestic violence against one of the following people:

- the other parent in the custody case,
- any of your children or your children’s siblings,
- current spouse, someone they are currently dating, engaged to or currently lives with or
- their parent?

OR

(2) **“finding”** of domestic violence by a judge against any of the people listed above (*example: a judge granted a restraining order for 1 or more years*)?

If you answered “yes” to (1) or (2), a special law applies to your case. Judges, attorneys, and court professionals refer to this special law as “3044”—the exact law that applies to your case (see page 2). Even if this law does not apply to your case, you should give the judge any information about domestic violence or abuse that you want the judge to consider when making a decision about child custody.

If someone that is not your child’s parent is asking the court for custody, this law applies to them as well.

## What happens when the special law (3044) applies to my case?

Under the special law, the judge can only give custody to the person who has a domestic violence conviction/finding if the judge believes that it is in the child’s best interest to do so. The judge must look at 7 factors, including the child’s best interest, in making this decision. The 7 factors that the judge must look at are:

1. What is in the child’s best interest?
2. Has the person committed any other domestic violence?
3. Has the person followed all the terms and conditions of any restraining order?
4. Has the person finished a 1 year batterer intervention program?
5. Has the person finished an alcohol/drug program, if required by the court?
6. Has the person finished a parenting class, if required by the court?
7. If on probation or parole, has the person followed all terms of probation or parole?

The judge must go through this 7-factor test in every case that it applies to, even if a court professional or evaluator makes a recommendation in your case. To learn more about the custody process in family court, visit <http://www.courts.ca.gov/selfhelp-custody.htm/>.



## Family Code 3044

(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the child or the child's siblings, or against any person in subparagraph (C) of paragraph (1) of subdivision (b) of Section 3011 with whom the party has a relationship, 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 interests of the child, pursuant to Sections 3011 and 3020. This presumption may only be rebutted by a preponderance of the evidence.

(b) To overcome the presumption set forth in subdivision (a), the court shall find that paragraph (1) is satisfied and shall find that the factors in paragraph (2), on balance, support the legislative findings in Section 3020.

(1) 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 interests of the child pursuant to Sections 3011 and 3020. In determining the best interests 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 noncustodial 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) Additional factors:

(A) 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.

(B) The perpetrator has successfully completed a program of alcohol or drug abuse counseling, if the court determines that counseling is appropriate.

(C) The perpetrator has successfully completed a parenting class, if the court determines the class to be appropriate.

(D) The perpetrator is on probation or parole, and he or she has or has not complied with the terms and conditions of probation or parole.

(E) The perpetrator is restrained by a protective order or restraining order, and he or she has or has not complied with its terms and conditions.

(F) 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 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 a 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 a 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) (1) It is the intent of the Legislature that this subdivision be interpreted consistently with the decision in *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, which requires that the court, in determining that the presumption in subdivision (a) has been overcome, make specific findings on each of the factors in subdivision (b).

(2) If the court determines that the presumption in subdivision (a) has been overcome, the court shall state its reasons in writing or on the record as to why paragraph (1) of subdivision (b) is satisfied and why the factors in paragraph (2) of subdivision (b), on balance, support the legislative findings in Section 3020.

(g) In an evidentiary hearing or trial in which custody orders are sought and where there has been an allegation of domestic violence, the court shall make a determination as to whether this section applies prior to issuing a custody order, unless the court finds that a continuance is necessary to determine whether this section applies, in which case the court may issue a temporary custody order for a reasonable period of time, provided the order complies with Section 3011, including, but not limited to, subdivision (e), and Section 3020.

(h) In a 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.