

DEMONSTRATION SITE PROFILE

The Bay Area, California Santa Clara, Santa Cruz, & San Mateo Counties

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The California Demonstration Site Initiative is a partnership between Santa Clara, Santa Cruz, and San Mateo Counties in the South Bay Area. Three visitation centers are funded to enhance their supervised visitation and safe exchange programs.

GOALS

- Increase safe access for families with issues of domestic violence and child abuse;
- Expand the availability of services to indigent parents who are underserved; and,
- Train with professionals in the Bay Area regarding domestic violence and safe access.

OBJECTIVES

- Develop and implement safety policies and procedures of all services;
- Increase availability of services to indigent families;
- Implement a comprehensive training module for all of the agencies and make this training available to other providers in the Bay Area;
- Develop and implement security procedures for high risk families;
- Provide therapeutic and directed supervision;
- Increase bilingual staff; and,
- Collaborate with community groups to provide education programs on the needs of high-conflict families.

COLLABORATING PARTNERS

SANTA CLARA COUNTY

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SAN MATEO COUNTY

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LEGAL CONSIDERATIONS¹

COURT RULES

RULE 5.210: Court-connected child custody mediation

Sets forth the standards of practice and administration for court-connected child custody mediation services that are consistent with the requirements of FAM. CODE § 3161.

- Subsection (d) describes the responsibility for mediation services and provides that the mediation program must use a detailed intake process that screens for, and informs the mediator about, any restraining orders or safety related issues affecting any party or child named in the proceeding.
- Subsection (e) describes the mediation process and requires all court-connected mediation processes to include ... (4) assistance to parties, without undue influence or personal bias, in developing a parenting plan that protects the health, safety, welfare, and best interest of the child and that optimizes the child's relationship with each party by including, as appropriate, provisions for supervised visitation in high-risk cases...
- Subsection (f) addresses training and continuing education requirements and mandates that each mediation supervisor and family court service program director attend at least 32 hours of additional training, which can be satisfied in part by the domestic violence training required under FAM. CODE § 1816.

RULE 5.125: Domestic violence protocol for Family Court Services

Sets forth the protocol for Family Court Services' (FCS) handling of domestic violence cases consistent with the requirement of FAM. CODE § 3170(b). Subsection (d) addresses the description and duties of FCS, including:

- Local protocols
- FCS duties relative to domestic violence cases, including offering appropriate services as available such as child custody evaluation and supervised visitation
- No negotiation of violence
- Domestic violence restraining orders
- Providing information
- Separate sessions
- Referrals
- Community resources

The court rule also identifies the policy and procedure for intake, screening (identification of domestic violence, procedures for identification, and context for screening), safety issues (developing a safety plan, safety procedures, confidential addresses), support persons, accessibility of services (language accessibility, facility design to minimize contact), and training and education.

STANDARDS OF JUDICIAL ADMINISTRATION, § 26.2: Uniform standards of practice for providers of supervised visitation (Appendix to California Rules of Court)

- Subsection (c) identifies the qualifications, experience, and training of the provider and states

¹ This information is provided as an overview of how the legal systems vary at each of the demonstration sites. It is highly recommended that the reader review the actual statutes, case laws, and court rules before relying on this information. Additionally, this list may not be all-inclusive, may contain dated information, and is intended for educational and research purposes only.

Safe Havens: Supervised Visitation and Safe Exchange Grant Program – Demonstration Initiative

that professional and therapeutic providers of supervised visitation should receive training on such topics as cultural sensitivity and issues related to substance abuse, child abuse, sexual abuse, and domestic violence.

- Subsection (d) regarding safety and security procedures states that professional and therapeutic providers should obtain, during the intake process, reports of any written record of allegations of domestic violence or abuse.

LOCAL COURT RULES

San Mateo Superior Court Rule 5.13: *Family court services*

This rule provides for separate mediation in contested custody and visitation cases involving a restraining order or allegations of domestic violence. The protected party may have a support person in the mediation session.

Santa Clara Superior Court Fam. Rule 2: *Custody and visitation*

This court rule addresses many issues related to custody and visitation, including contested cases. According to this rule, “only under extraordinary circumstances will the Court deny access of one parent to the child(ren) or change any child(ren)’s principal place of residence.” See Subsection C(1)(a). Subsection (b) provides for an emergency screening, the purpose of which is to provide the Court with recommendations regarding the interim custody and visitation schedule and related conditions. The rule also includes provisions addressing separate meetings with parties when domestic violence is alleged, and provisions for domestic violence training for court-appointed assessors and evaluators.

Santa Clara Superior Court Fam. Rule 8: *Default on uncontested judgment*

- Subsection C(1)(c) states that where the judgment is taken by default and there is no attached written agreement of the parties concerning custody and visitation, an attached factual declaration must be submitted with the judgment and must set forth several things, including: ...
 - c. Where the party is seeking supervised visitation between the children and the defaulting party:
 - i. the reasons why such visitation should be supervised;
 - ii. when and where such supervised visitation is to take place;
 - iii. the person or agency who shall supervise;
 - iv. in the alternative to (ii) and (iii), a request that the matter be referred to Family Court Services for mediation.
- Subsection F(1)(a) requires the Family, Juvenile, and Probate Court to examine appropriate available databases for existing restraining or protective orders involving the same restrained and protected parties before issuing permanent CLETS Civil Restraining Order. Subsection F(1)(b) adds that any such order that permits contact between a defendant/restrained person and his or her children must contain specific language setting forth the time, day, place, and manner of transfer of the children, including the safe exchange of the children in accordance with Section 3100 of the Family Code. Such an order must not conflict with a criminal protective order; and the safety of all parties is to be the Court’s paramount concern.

Santa Clara Super Court Fam. Rule 10: Court communication regarding restraining orders

- Subsection A (1) addresses criminal court procedure and provides that when a criminal court issues a criminal protective order, the criminal court must inquire of the defendant/restrained person whether there are any children of the relationship between the defendant/restrained person and the victim/protected person, and whether there are any court orders for custody/visitation for those children. If there are children, the criminal court must consider whether peaceful contact with the victim/protected person should be allowed for the purpose of allowing defendant/restrained person to visit the children.
- Subsection B (1) provides that any court responsible for issuing custody or visitation orders involving minor children of a defendant/restrained person subject to a criminal protective order may modify the order under certain circumstances.

Santa Cruz Superior Court Rule 3.1.01: Co-parent workshop program

This rule provides that parties filing under the Domestic Violence Prevention Act may be ordered by the Court to attend the program.

STATUTES

The following statutes are all under the California Family Code:

§ 3011: Best interest of child; considerations

This is California's best interest of the child statute. Under this statute the court shall consider, among other factor it finds relevant, any history of abuse by one parent or any other person seeking custody against any of the following:

- Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.
- The other parent.
- A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration. In addition, this statute provides that where allegations about a parent pursuant to this statute have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

§ 3030: Sex offenders; murderers; custody and visitation; child support; disclosure of information relating to custodial parent

In addition to the restrictions on custody, the statute prohibits visitation with a child if the person was convicted of rape and the child was conceived as a result.

§ 3031: Protective or restraining orders; findings; transfer of children; detail specific custody or visitation orders; required presence of third party

- Subsection (b) provides that whenever custody or visitation is granted to a parent in which domestic violence is alleged and an emergency, protective or other restraining order has been issued, the court must specify the time, day, place, and manner of transfer of the child to

limit the child’s exposure to potential domestic conflict or violence and to ensure the safety of all family members. This subsection also provides that where a party is staying at a shelter or other confidential location, the court’s order must be designed to prevent disclosure of the location.

- Subsection (c) provides that when making an order for custody or visitation in a case in which domestic violence is alleged and an emergency, protective or other restraining order is in place, the court must consider whether the best interest of the child requires that any custody or visitation arrangement take place in the presence of a third party as specified by the court or whether custody or visitation should be suspended or denied.

§ 3044: *Presumption against persons perpetrating domestic violence*

This statute states that 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.

§ 3046: *Party absence or relocation from residence; consideration; interference with contact; application*

This statute provides in part that if a party is absent or relocates from the family residence, the court shall not consider the absence or relocation as a factor in determining custody or visitation under certain circumstances, including whether the party is absent or relocates because of an act or acts of actual or threatened domestic or family violence by the other party.

§ 3048: *Required contents for custody or visitation orders; risk of child abduction; risk factors and preventative measures; notation of preventative conditions on minute order of court proceedings; Child Abduction Unit; child custody order forms*

Under this statute, if the court finds that there is a need for preventive measures after considering whether there is a risk of abduction of a child, the court must consider taking one or more of the listed measures to prevent the abduction such as ordering supervised visitation.

§ 3100: *Joint custody orders; visitation rights; domestic violence prevention orders; transfer of children; detail specific orders; confidentiality of shelter locations*

- Subsection (b) provides that if a protective order has been directed to a parent, the court must consider whether the best interest of the child requires that any visitation by that parent be limited to situations in which a third person is present, or whether visitation should be suspended or denied.
- Subsection (c) provides that whenever visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order must specify the time, day, place, and manner of transfer of the child in order to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members.

§ 3200: *Supervised visitation provider standards; guidelines; report*

This statute requires the Judicial Council to develop standards for supervised visitation providers in accordance with the guidelines set forth in this section.

- Subsection (a) provides that when developing standards, the Judicial Council must consider orientation to and guidelines for cases in which there are allegations of domestic violence,

child abuse, substance abuse, or special circumstances.

- Subsection (b) requires the Judicial Council to consult with domestic violence prevention programs and other groups it regards as necessary in developing these standards.
- Subsection (c) provides that it is the intent of the Legislature that the safety of children, adults, and visitation supervisors be a precondition to providing visitation services. Once safety is assured, the best interest of the child is then the paramount consideration at all stages.

§ 3202: Uniform Standards of Practice for Providers of Supervised Visitation; eligible providers

- Subsection (a) requires all supervised visitation and exchange programs to comply with all requirements of the Uniform Standards of Practice for Providers of Supervised Visitation set forth in Section 26.2 of the Standards of Judicial Administration as amended. (See <http://www.courtinfo.ca.gov/rules/appendix/divistandard-69.htm>).
- Subsection (b)(3) states that ‘eligible providers’ means for providers of education, a professional with a bachelor's or master's degree in human behavior, child development, psychology, counseling, family-life education, or a related field, having specific training in issues relating to child and family development, substance abuse, child abuse, domestic violence, effective parenting, and the impact of divorce and inter-parental conflict on children; or an intern working under the supervision of that professional.

§ 3203: Establishment and administration of programs by family law division of county superior court

This statute provides that the family law division of the superior court in each county may establish and administer a supervised visitation and exchange program. The statute further requires programs to allow parties and children to participate in supervised visitation between a custodial party and a noncustodial party or joint custodians, and to participate in the education and group counseling programs, irrespective of whether the parties are or are not married to each other or are currently living separately and apart on a permanent or temporary basis.

App. § 4788 (Santa Clara County Pilot Project): Custody or visitation dispute; mediation orientation; request for mediation; resolution conference; extended evaluation

This statute requires that mediation orientation be conducted by the Family Court Services and include general information on the effect of exposure to domestic violence and extreme conflict on children and parents, among other topic areas.

§ 6323: Ex parte orders regarding temporary custody and visitation of minor children

- Subsection (a)(2)(A) provides that in making a best interest of the child determination and in order to limit the child's exposure to potential domestic violence and to ensure the safety of all family members, if the protected party has established a parent-child relationship and the other party has not established that relationship, the court may award temporary sole legal and physical custody to the protected party and may make an order of no visitation to the other party pending the establishment of a parent-child relationship between the child and the other party.
- Subsection (c) states that when making an order for custody or visitation under this statute, the court must specify the time, day, place, and manner of transfer of the child for custody or visitation to limit the child's exposure to potential domestic conflict or violence and to ensure the safety of all family members. If a party is staying at a shelter or other confidential

location, the order must be designed to prevent disclosure of the location of the shelter or other confidential location.

- Subsection (d) provides that when making an order for custody or visitation, the court must consider whether the best interest of the child requires that any visitation or custody arrangement shall be limited to situations in which a third person is present, or whether visitation or custody shall be suspended or denied.

CASE LAW

In re the Marriage of LaMusga, 12 Cal. Rptr. 3d 356 (2004)

The Court held that the non-custodial parent does not have the burden of establishing that a change of custody was essential to prevent detriment to the children from the planned move. The Court stated that in a move-away case, a change of custody is not justified simply because the custodial parent has made a good-faith decision to relocate, but only if, as a result of relocation with that parent, the child will suffer detriment rendering it essential or expedient for the welfare of the child that there be a change of custody. The facts of the case indicate that the mother never violated a court order and frequently stipulated to increases in the father's visitation time with the children. Although this case did not involve allegations of domestic violence, its holding will potentially have a great impact on how relocation cases are handled across the nation. In a dissenting opinion, Justice Kennard pointed out that the "effect of the relocation on the children's relationship with the father was not the *issue* before the court. Rather, it was just one of the potential detriments shown by the evidence that the trial court was required to consider. Equally important was the potential detriment from disrupting the existing custodial arrangement by transferring custody from the mother to the father."

NOT OFFICIALLY PUBLISHED CASES – *See California Rules of Court, Rule 977(a), which prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by Rule 977(b).*

Palacios v. Ortiz, 2004 WL 585651 (Cal.App. 5 Dist.)

The trial court followed recommendations of the children's court-appointed attorney and granted full physical custody of the children to the mother, with the father having supervised visits. On appeal, the father sought full custody of his oldest son, and unsupervised visitation with the other children. The trial court found that the mother had testified without contradiction about the father's history and pattern of assaultive conduct and emotional abuse. The mother also testified that she did not mention father's assaultive behavior at an earlier hearing and agreed to unsupervised visitation because she was terrified and afraid of the father and hoped he would not cause any more problems. The Court of Appeal upheld the trial court's decision concluding that the trial court did not abuse its discretion in giving mother full physical custody of all children and ordering supervised visits with the father.

In re the Marriage of Jaks, 2003 WL 257918 (Cal.App. 5 Dist.)

This case involved the founder of the California-based Alliance for Non-Custodial Parent's Rights (ANCPR), a fathers' rights group. The Court of Appeal held that substantial evidence supported the order awarding mother sole physical custody of the child based on a finding that father had perpetrated specific acts of domestic violence and had engaged in emotional intimidation during the marriage. Visitation was unsupervised. Father, Lowell Jaks, abducted his son a year later and took

him to the Dominican Republic. The child was returned to the mother a month after being taken; father was charged with felony child abduction.

The court pointed out that the focus of California’s statutory scheme governing child custody is the best interest of the child. The court further stated that the “‘changed circumstance’ test does not supplant the ‘best interest of the child’ test but, rather, is an adjunct to it... After it has been established that a particular custodial arrangement is in the best interest of the child, the court need not reexamine that question. Instead, the court should preserve the custody plan unless some significant change in circumstances indicates that a different arrangement would be in the child’s best interest.”

In re the Marriage of Riedel, 2002 WL 2013461 (Cal.App. 3 Dist.)

The Court of Appeal (Court) held that ex-husband demonstrated awarding him sole or joint physical custody and legal custody of the child was in the child’s best interest, for purposes of rebutting the statutory presumption that an award of custody to a perpetrator of domestic violence is detrimental to the child’s best interest. The Court also held that the father rebutted the statutory presumption that an award of custody to a perpetrator of domestic violence is detrimental to the child’s best interest, by demonstrating that he successfully completed a batterer’s treatment program; and an order changing physical custody of the child from the mother to the father was based on proper application of the friendly parent provision.

The trial court based its finding of changed circumstances primarily upon the mother’s conduct that “made co-parenting impossible.” In addition to other behavior by the mother, the court found a “continuing and abusive pattern of unfounded or unsubstantiated reports by [the mother] to Child Protective Services of child abuse by [the father].” Mother originally was given sole physical custody of the child, father had unsupervised visits, but the parties were ordered to use a third party to carry out visitation. Mother sought to limit father’s visitation. During the pendency of the case, father pled guilty to felony spousal abuse and was placed on probation.

On appeal, the mother claimed the trial court inappropriately applied the friendly parent provision in a domestic violence rebuttable presumption case. The Court disagreed, stating that where the presumption of Fam. Code § 3044 is rebutted, there is no further statutory bar against an award of joint or sole custody to a parent who has perpetrated domestic violence. “Once the burden has been met and the presumption is rebutted, it has no further operative effect.” The Court focused on the best interest of the child factor regarding parental contact in its decision.

OTHER ANALYSIS

Privilege

The following information is research that was gathered in response to examining a specific aspect of privilege. That is, does an advocate-victim privilege exist in the state and, if so, does it extend to visitation centers.²

² This question was of interest as some of the centers are located in other organizations, like domestic violence agencies, hospitals, mental health providers, etc., and whether that fact can affect the privilege.

General:

California Evidence Code § 1037.5 sets forth that there is a victim-domestic counselor privilege for confidential communications. California Evidence Code § 1037.2 defines confidential communications as information transmitted between the counselor in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonable necessary for the transmission of the information or an accomplishment of the purposes for which the domestic violence counselor is consulted. Confidential communications include all information regarding the facts and circumstances involving all incidents of domestic violence, as well as all information about the children of the victim or abuser and the relationship of the victim with the abuser.

California Evidence Code § 1037.1 defines domestic violence counselor as a person employed by a [domestic violence shelter] for the purpose of rendering advice or assistance to victims of domestic violence, who has received specialized training in the counseling of domestic violence victims, and who meets at least one of the following requirements: (1) has a master’s degree in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of domestic violence victims; or (2) has at least 40 hours of training as specified within this paragraph and is supervised by an individual who qualifies as a counselor under paragraph (1).

Specific to Supervised Visitation Centers:

The Standards of Judicial Administration § 26.2 sets forth the Uniform Standards of Practice for Providers of Supervised Visitation. It explicitly states that “*communications between parties and providers of supervised visitation are NOT protected by ANY privilege of confidentiality.*” (emphasis added). Moreover, it explicitly states that “*the psychotherapist privilege DOES NOT apply during therapeutic supervision.*” (emphasis added). This rule defines therapeutic provider as a licensed mental health professional paid for providing supervised visitation services, including but not limited to the following: a psychiatrist, psychologist, clinical social worker, marriage and family counselor, or intern working under direct supervision. Moreover, the rule states that the professional and therapeutic provider should, whenever possible, maintain confidentiality regarding the case, except when ordered by the court, subpoenaed to produce records or testify in court, requested by a mediator or evaluator in conjunction with a court ordered mediation, investigation, or evaluation, required by CPS, or requested by law enforcement.