

Proposed Amendment to Family Code §1234:

(a) In all cases in which the custody of any child is at issue, the biological parents are entitled to joint legal and physical custody of said child, which includes equal parenting time.

(b)(1) The court shall consider a request by either parent for sole legal custody and/or a request to establish a non-split parenting arrangement, if an allegation is made that joint legal and physical custody is not in the best interest of the child.

(2) In determining such a request, the court may consider any relevant factors, including, but not limited to:

- (A) The bonds and emotional ties between the child and his or her siblings, including half siblings and step-siblings, and the residence of such other children;
- (B) The home environment of each parent, as it relates to the safety of the child;
- (C) The mental and physical health of each parent;
- (D) Each parent's involvement, or lack thereof, in the child's educational, social, and extracurricular activities;
- (E) Each parent's employment schedule and the related flexibility or limitations of a parent to care for the child;
- (F) The health or educational special needs of the child;
- (G) Any evidence of family violence or sexual, mental, or physical child abuse;
- (H) Each parent's criminal history;
- (I) Any evidence of substance abuse by either parent.

(3) Any claims raised under subsection (b)(2) of this code section must be supported by evidence that leaves the court with a firm belief or conviction that the factual contentions of the claim are true, so as to clearly convince the court that joint legal and physical custody is not in the best interest of the minor child.

Brief in Support of Proposed Amendment to Family Code §1234

The proposed amendment to Family Code §1234 purports a change in the entitlements of biological parents during a custody action. Under the revised code, each parent is automatically guaranteed an equal and viable interest the life of their child. This presumption is the preferred standard as most parents desire to be in their child's life. With each parent having equal custody rights, the amended code will eliminate the lengthy custody battles that have burdened our court system. It will also reduce the amount of "absent" parents, by requiring parents to take an active role in their child's life. It has always been a presumption that it is in the child's best interest to have both parents in his or her life. The amended code ensures that this will happen.

However, if a parent feels that joint legal and physical custody is not in the best interest of the child, there is a means to bring such a claim to the attention of the court. With that in mind, the petitioning parent must prove their claim under the clear and convincing evidentiary standard. By using a higher evidentiary standard, it will deter parents from making false claims of unsatisfactory parenting. In addition, once a right such as equal custody has been granted, a higher standard of proof is required to deprive a parent of that right, so not to violate a parents' due process rights.

A review of the relevant factors that the court may consider in determining whether or not to deviate from the standard of joint legal and physical custody include claims that effect the safety, health, welfare, and enrichment of the child. If a petitioning parent has a valid claim, these are the types of factors that are easily supported by documentary evidence or credible testimony. Therefore, while the burden of proof may be on the petitioning parent, the evidence should be easily ascertained if the allegations have merit. The court, as a neutral entity, must balance the interests of both parents. It has an obligation to ensure that parental rights are not easily deprived with frivolous allegations coupled with a lower burden of evidentiary proof. The amended code considers the interests of both parents and protects that interest to the highest extent.

Brief in Opposition of the Proposed Amendment to Family Code §1234

The proposed amendment to Family Code §1234 is not in the best interest of the minor child and should not be ratified. The proposed amendment is operating under the assumption that both parents are equally vital in a child's life. While a child may benefit with interaction from both parents, it is not essentially vital that the child have equal parenting time with each parent. Realistically, a split parenting plan may actually cause undue burden and stress on the child and the parents. For instance, if the parents live a considerable distance apart, split parenting may not be feasible. If the child is expected to live in the mother's home for six months out of the year and then the father's house for the other six months, that child is subjected to a possible change in school, which would mean loss of friends, a difference in classes, and an interruption of extra-curricular

activities. Essentially, we are “punishing” the child because his or her parents couldn’t work out their own personal issues and stay together.

Family Code §1234 as currently stated provides the flexibility of the court and the parents to work together to determine a parenting schedule that effectively meets the needs of the parents and the child. It is important to realize that no two family situations are the same and it would be an injustice to the interests of both parents to make that assumption. The proposed amendment to Family Code §1234 purports to protect the interests of both parents, but it does so under speculation that all families are the same. The proposed amendment fails to recognize that a child may have a mother and a father, but that doesn’t mean that a child has two parents. Parental rights cannot be assumed and cannot be automatically guaranteed just because someone contributed to the birth of a child. Parental rights are earned by providing for, nurturing, and caring for a child. These are the rights that should be protected. The current Family Code §1234 gives the court the discretion to evaluate whether or not a parent has earned any rights and by doing so, provides adequate protection in any vested interest a parent might have and needs no revision.