

Debate Hot Over Child Custody Bill

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SACRAMENTO — Supporters of child custody legislation that only scraped through the Legislature maintain that their bill does little more than clarify existing law, but some say it is designed to reverse excesses of the 1970s when joint custody arrangements were preferred.

Gov. George Deukmejian has until Sept. 30 to sign or veto the hotly debated measure, SB 1306, by Sen. Rebecca Morgan, R-Los Altos Hills, and his office will not comment on legislation pending for signature.

The bill's author is optimistic that the governor will sign the measure, said Morgan consultant Marge Chisholm, "as long as he understands that it really doesn't make major changes in the law."

The bill amends Civil Code § 4600 by adding a fourth subsection that "establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody." It would allow the court and the family wide discretion in choosing a custody/parenting plan which is in the "best interest" of the child or children.

Chisholm said current law — passed in the late 1970s during a general trend to-

ward joint custody — states that custody be awarded "to both parents jointly . . . or either parent," and often has been presumed to establish preference for joint custody. "The pendulum swung and maybe it went too far, granting joint custody whether or not it was warranted," she said.

The measure was amended heavily in the Assembly Judiciary Committee, which removed a list of factors to be used by courts in determining preferred custody arrangements.

The Assembly on Aug. 11 approved the amended bill by the bare 41 votes necessary to pass, with 29 legislators voting against it. On Aug. 22, Assemblyman Steve Peace, D-Chula Vista, made a motion for reconsideration of the bill in an unsuccessful attempt to scuttle the measure, which then went back to the Senate for concurrence on amendments.

Peace opposed the measure based on his personal experience as the child of divorced parents.

"When his parents went through the divorce, he was junior high school age and was largely cut off from his dad," said David Takashima, chief of staff for Peace. "He lost contact with his father until recently. Based on his own personal experience, he felt there should be a

preference for joint custody."

The measure also was strongly opposed by numerous "fathers' rights" organizations, which are expected to register their objections with the governor's office in an attempt to convince him to veto the bill.

Susan Wilkinson, a legislative assistant to Assemblywoman Jackie Speier, D-South San Francisco, who carried the bill for Morgan on the Assembly floor, acknowledged that the bill is widely perceived as "anti-joint custody."

"We tried to stress that it established neither a preference nor a presumption," she said. "What it stresses is the best interest of the child."

The measure is supported by many judges, by a wide variety of women's groups, by the family law section of the State Bar and by the California chapter of the Association of Family and Conciliation Courts.

Hugh McIsaac, director of family court services for the Los Angeles County Superior Court, said existing law prompted some confusion in the awarding of custody.

"People were confused by it, assumed there was a presumption [for joint custody]," he said. "People didn't read

the law or didn't understand it."

"There are some cases — where families have entered into joint custody not being aware of [their] ability to cooperate or work together — that have placed kids under a lot of continuing conflict," said McIsaac, who helped write amendments to the Morgan bill.

"It's a little like running a marathon," he added. "It might be good for all of us physically, but if we don't condition ourselves or think it through carefully we could end up with a coronary."

Generally, McIsaac said, current law is "working well" and joint custody is "an excellent plan," if it is developed carefully with all factors considered.

McIsaac, former chair of the California chapter of the family court association and its current legislative chair, said the association opposed the bill in its original form because it established that custody should be awarded to the parent determined to be "the primary caretaker." He also opposed the original inclusion of specific factors to be used by courts in awarding custody.

"When you start putting factors in they become tools in litigation," he said. "In the adversary system, people are looking for legal clubs."