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# Family

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## Family

### Family; child custody and visitation—restrictions

Family Code § 3030 (amended).  
SBX 25 (Lockyer); 1994 STAT. Ch. 5X

Prior law prohibited a court from granting a parent custody of, or unsupervised visitation with, a child if the parent had been convicted of child abuse,<sup>1</sup> felony child abuse,<sup>2</sup> or child molestation<sup>3</sup>, unless the court found that there was no significant risk to the child.<sup>4</sup> Under Chapter 5X, this prohibition is extended to any person convicted of the specified crimes.<sup>5</sup> Chapter 5X also extends the prohibition to apply to any person required to be registered as a sex offender.<sup>6</sup>

#### INTERPRETIVE COMMENT

Chapter 5X was enacted to clarify the author's intention of protecting children from unfit parents by extending application of California Family Code section 3030 to all persons who are convicted of sex crimes.<sup>7</sup> Prior to the enactment of Chapter 5X, not all child molestation offenses were covered by California Family

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1. See CAL. PENAL CODE § 273a(a)(2) (West Supp. 1994) (defining child abuse under circumstances likely to cause death or great bodily harm).

2. See *id.* § 273d (West Supp. 1994) (defining felony child abuse).

3. See CAL. FAM. CODE § 647.6 (West 1988 & Supp. 1994) (defining child molestation).

4. 1993 Cal. Legis. Serv. ch. 219, sec. 116.20, at 1361 (enacting CAL. FAM. CODE § 3030). See generally 32 CAL. JUR. 3D *Family Law* §§ 229-246 (1977 & Supp. 1994) (providing an overview of determinations of child custody in custody proceedings); *id.* §§ 229-230 (1977 & Supp. 1994) (providing a general overview of factors to be considered in determining child custody); *id.* §§ 231-234 (1977 & Supp. 1994) (discussing individual factors to consider in a child custody proceeding); *id.* §§ 235-236.5 (1977 & Supp. 1994) (discussing the order of preference for awarding custody); *id.* §§ 237-239 (1977 & Supp. 1994) (discussing the procedure for determining child custody); *id.* §§ 240-241 (1977 & Supp. 1994) (discussing the effect of a custody and visitation determination on the persons involved); *id.* §§ 242-246 (1977 & Supp. 1994) (discussing the duration and modification of a child custody award); Mary J. Cavins, Annotation, *Sexual Abuse of Child by Parent as Ground for Termination of Parent's Right to Child*, 58 A.L.R.3D 1074 (1974 & Supp. 1994) (analyzing cases involving the propriety of terminating the parental rights of parents who have sexually abused their children); Mary J. Cavins, Annotation, *Physical Abuse of Child by Parent as Ground for Termination of Parent's Right to Child*, 53 A.L.R. 3D 605 (1973 & Supp. 1994) (discussing cases involving the propriety of terminating the parental rights of parents who have physically abused their children); Christopher Vaeth, Annotation, *Denial or Restriction of Visitation Rights to Parent Charged with Sexually Abusing Child*, 1 A.L.R.5TH 776 (1992 & Supp. 1993) (discussing cases involving the denial or restriction of visitation rights based on an allegation that the parent has sexually abused his or her child).

5. CAL. FAM. CODE § 3030 (amended by Chapter 5X).

6. *Id.*; see CAL. PENAL CODE § 290 (West Supp. 1994) (requiring registration of sex offenders).

7. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SBX 25, at 2 (Mar. 1, 1994); see *id.* (stating that the author's purpose is to include all sex crimes within the scope of this section).

Code section 3030.<sup>8</sup> At least one situation has occurred, in Nevada County, where a father convicted of felony lewd and lascivious conduct was granted joint custody and unsupervised visits with his son because the father's crime was not included within California Family Code section 3030, and the judge did not believe that the father was a danger to his child.<sup>9</sup>

However, California Family Code section 3030 may not extend as far as the author intended.<sup>10</sup> If the court finds no significant risk to the child, then custody or unsupervised visitation may be awarded.<sup>11</sup>

In addition, the sex offender registration statute<sup>12</sup> applies differently to adults than it does to offenders discharged from the Department of the Youth Authority.<sup>13</sup> Specifically, there are more crimes requiring adults to register as sex offenders than there are requiring minors to register.<sup>14</sup> Additionally, persons paroled or discharged from the Youth Authority are no longer required to register after the age of twenty-five years for their earlier offenses.<sup>15</sup>

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8. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SBX 25, at 1 (May 17, 1994); *see id.* (noting that a loophole in the law existed prior to enactment of SBX 25, where child molestation, a misdemeanor, was covered under former California Family Code § 3030, while lewd and lascivious conduct with a child, a felony under California Penal Code § 288, was not); *see also* 1993 Cal. Legis. Serv. ch. 219, sec. 116.20, at 1361 (enacting CAL. FAM. CODE § 3030) (referring to California Penal Code §§ 273a, 273d, and 647.6). *Compare* CAL. PENAL CODE § 647.6 (West 1988) (governing child molestation) *with id.* § 288 (West Supp. 1994) (defining lewd and lascivious conduct).

9. Kevin Fagan, *When Parents Have Been Molesters: Custody Case Tests Restrictions*, S.F. CHRON., Jan. 10, 1994, at A1.

10. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SBX 25, at 3 (Mar. 1, 1994); *see id.* (noting that the amendments made by SBX 25 do not remove the discretionary language which allows a judge to grant custody or unsupervised visitation if no significant risk to the child is found).

11. CAL. FAM. CODE § 3030 (amended by Chapter 5X); *see* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SBX 25, at 3 (Mar. 1, 1994) (noting the discretionary language of SBX 25, and referring to the Nevada County case where the judge believed that a father convicted of molesting a young niece did not pose a danger to his son); Fagan, *supra* note 9 (referring to the Nevada County case).

12. *See* CAL. PENAL CODE § 290 (West Supp. 1994) (requiring registration of persons convicted of specified sex crimes).

13. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SBX 25, at 2 (Mar. 1, 1994).

14. CAL. PENAL CODE § 290(a) (West Supp. 1994). *Compare id.* (enumerating sex crimes which necessitate registration of adults, including enticement or abduction into prostitution, seduction, exposing one's private parts, and contributing to the delinquency of children under 18 years of age) *with id.* § 290(d)(1)(A)-(C) (West Supp. 1994) (enumerating sex crimes which necessitate registration of those discharged or paroled from the Department of the Youth Authority).

15. *Id.* § 290(d)(4) (West Supp. 1994).