



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) 456-4181
- ☐ 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). The child custody recommending counseling conference 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 children are to be with each party and specifies other parental responsibilities. Information shared by parties during the child custody recommending counseling 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, you or your attorney will have the opportunity during your court hearing 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 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 will happen at your Family Court Services appointment?

You will view an orientation video before seeing a counselor. The video can also be viewed on the court's website at www.sdcourt.ca.gov. Under the Divisions heading, select Family, then select Custody and Visitation.

In advance of your appointment, complete and submit the Family Court Services Data Sheet (SDSC Form #FCS-002). The form is located on the court's website: www.sdcourt.ca.gov. Under the Divisions heading, select Family, select Custody and Visitation, then select Forms. Mail the completed form to the address on the top of this form where your FCS appointment is located **OR** email it to Family Court Services at the court division where your FCS appointment is located:

- o Central Division: FCSCentral@sdcourt.ca.gov
- o East County Division: FCSEast@sdcourt.ca.gov
- o North County Division: FCSNorth@sdcourt.ca.gov
- o South County Division: FCSSouth@sdcourt.ca.gov

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

During the FCS 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 conference will last 1½ to 2 hours.

Are the parties always seen together in the child custody recommending counseling session?

Parties are seen together unless there is a restraining order or allegations of domestic violence.

If you are being protected by a restraining order against the other party, 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 with you during your FCS session. To arrange for either of these requests, please submit the appropriate forms as explained below prior to your appointment and advise the FCS clerk of these requests when you check in for your appointment.

If you do not have a restraining order against the other party, you may request a separate session by completing a 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. The form is located on the court's website: www.sdcourt.ca.gov. Under the Divisions heading, select Family, select Custody and Visitation, then select Forms.

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). The form is located on the court's website: www.sdcourt.ca.gov. Under the Divisions heading, select Family, select Custody and Visitation, then select Forms.

Arrangements can also be made for a remote appearance for a party out of the county. Please call the FCS office where your session will take place to arrange for participation remotely.

Should I bring the child(ren) to the Family Court Services appointment?

Do NOT bring the child(ren) with you for the FCS appointment unless ordered to do so by the court. If an interview with the child(ren) is needed, the FCS counselor will make arrangements for another time.

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.

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, per San Diego Superior Court Local Rules, Division V, Chapter 11, Child and Custody Visitation. 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.

Additional information about child custody recommending counseling can be found at www.sdcourt.ca.gov and www.courts.ca.gov.

Domestic Violence and Child Custody

If there has been domestic violence (domestic abuse or partner abuse) in your family, a special law may apply to your case.

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, isolated or unable to get to basic things, like food. Domestic violence can be spoken, written, or physical. For more information on what domestic violence is, read [form DV-500-INFO](#), *Can a Domestic Violence Restraining Order Help Me?*

What is “child custody”?

There are two kinds:

- A person with **physical custody** lives with the child on a regular basis.
- A person with **legal custody** makes important decisions about the child’s health care, education, and welfare.

When does domestic violence affect my case?

In the last 5 years, has a parent in this case:

1. Had a **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;
- Their current spouse, or someone they are currently dating, engaged to, or living with; or
- Their parent (your child’s grandparent)?

2. Had a **judge decide** that they committed domestic violence against any of the people listed above? (Example: a judge granted a restraining order against the parent after people testified and gave evidence.)

If you answered yes to 1 or 2, a special law applies to your case.

This special law is sometimes called “3044” (see page 2 for the entire law). If someone is not your child’s parent and is asking the court for custody, this law applies to them, too. Even if “3044” does not apply to your case, you should give the judge any information about domestic violence or abuse that you think can help the judge decide who gets custody.

How “3044” affects your case

The judge can give custody to a person who has a domestic violence **conviction or decision** against them only if the judge believes that it is in the child’s best interest to do so. The judge must look at 8 factors:

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 or drug program, if ordered by the judge?
6. Has the person finished a parenting class, if ordered by the judge?
7. If on probation or parole, has the person followed all terms of probation or parole?
8. Does the person still have a firearm (gun) or ammunition, in violation of a restraining order?

The judge must go through this 8-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 <https://selfhelp.courts.ca.gov/what-to-know-about-child-custody-parenting-time>.



Family Code section 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 a person in subparagraph (A) of paragraph (2) of subdivision (a) 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 interest 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 interest of the child pursuant to Sections 3011 and 3020. In determining the best interest 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 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 has or has not complied with its terms and conditions.

(F) The perpetrator of domestic violence has committed further acts of domestic violence.

(G) The court has determined, pursuant to Section 6322.5, that the perpetrator is a restrained person in possession or control of a firearm or ammunition in violation of Section 6389.

(c) For purposes of this section, a person has "perpetrated domestic violence" when the person 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, 273.5, 422, or 646.9 of, or former Section 262 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 Sections 3011 and 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 custody mediation in the case.