

September 21, 2005

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative, which is titled the Shared Parenting Ballot Initiative (File No. SA2005RF0094).

PROPOSAL

Currently, in court cases involving child custody, the court can choose a number of possible custody arrangements depending on what is in the best interest of the child. Most often these cases result in awarding custody either to both parents (joint custody) or to one parent (sole custody). Current law provides that joint legal custody is presumptively in the best interest of the child, if both parents have agreed to it. However, under current law, joint legal custody may be different from physical custody. Additionally, under current law the court is required to state on the record its reasons for granting or denying joint custody if requested by a party involved in the case.

The proposed initiative amends current law to establish the concept of "equal custody," in which the child's time would be equally split between the parents. The initiative further amends current law to state that equal custody is in the best interest of the child, and should be provided to the greatest degree practicable. Under the measure, in cases where one parent disagrees with equal custody, the burden of proof is on the objecting parent to show that equal custody would not be in the best interest of the child. The initiative also eliminates the provision requiring the court to state its reasons for granting a joint custody request. However, in cases that result in a denial of joint custody, it requires the court to include in the record the specific "findings of fact" it relied upon in making its custody decision. Findings of fact would not be required in cases where joint custody is granted.

FISCAL EFFECT

The initiative could result in unknown state costs of possibly up to a few million dollars annually. The actual cost would depend on a number of factors. For example, if the equal custody provision of the measure were to cause a significant net increase in the number of individuals seeking modifications to existing custody orders, there could be state costs for additional court staff. The extent to which the measure would actually increase filings for such modifications is unknown. Additionally, the provision requiring the court to include in the record its findings of fact in all cases in which joint custody is denied would result in additional court workload. The number of staff required to handle the workload would depend on the number of joint custody denials.

SUMMARY OF FISCAL EFFECT

In summary, the initiative would have the following fiscal effect:

- Unknown state court costs of possibly up to a few million dollars annually, depending on the number of child custody cases affected by the measure.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Acting Director, Department of Finance