

3-30-2017

## Child Custody Determinations. Jury Trial. Initiative Statute.

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RECEIVED

JAN 04 2017

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICEAttn: Ashley Johansson  
Initiative Coordinator  
Attorney General's Office  
P O Box 944255  
Sacramento, CA 94244-2550

Proposed Title: JURY TRIAL. INITIATIVE STATUTE. IMPLEMENTED FOR CHILD CUSTODY

Proposed:

Update California Family Code §3022 as follows "This section shall be known as Luke's Law. The court may, during the pendency of a proceeding or any time thereafter, make an order for the custody of a child during minority that seems necessary or proper; or a party may demand a trial by jury. The court may not contravene a jury verdict on the appointment of joint legal and joint physical custody."

Update the first sentence of California Code of Civil Procedures §592 as follows "In actions for the recovery of specific, real, or personal property, with or without damages, or for money claimed as due upon contract, or as damages for breach of contract, or for injuries, or for a party to retain legal rights to their child(ren), an issue of fact must be tried by a jury, unless a jury trial is waived, or a reference is ordered, as provided in this Code."

The proposed summary is "Gives parties to matters involving child custody the right to summarily demand that a jury, rather than a judge, determines whether or not they shall retain legal and physical custody of their child."

Please prepare a circulating title and summary of the chief purpose and points of this proposed amendments to California Family Code §3022 and California Code of Civil Procedures §592.

I, declare under penalty of perjury that I am a citizen of the United States, 18 years of age or older, and a resident of San Luis Obispo County of California. Further, I, Wylmira Hettinga, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of this measure for the ballot.

Dated:



Name: Wylmira Hettinga

Contact address:

630 Quintana Rd #145  
Morro Bay, CA 93442

Contact Phone #:

805-439-4197

Please include all additional proponents of the petition presented here (or sent in separately) on this initiative. Thank you,  
*Wylmira Hettinga*

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JAN 23 2017

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Attn: Ashley Johansson  
Initiative Coordinator  
Attorney General's Office  
P O Box 944255  
Sacramento, CA 94244-2550

Initiative: 17-0001 "Jury Trial. Initiative Statute. Implemented for Child Custody"

I authorize Jaime Lewis to be the main proponent on this initiative.  
*-7 listed, named, etc.*



Signed: Wylmina Hettinga  
Dated January 19, 2017

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FEB 28 2017

Attn: Ashley Johansson or Emily  
Initiative Coordinator  
Attorney General's Office  
P O Box 944255  
Sacramento, CA 94244-2550

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Initiative: 17-0001 "Jury Trial. Initiative Statute. Implemented for Child Custody"

I authorize Jaslynn Ball to be a proponent on this initiative.



Signed: Wylmina Hettinga  
Dated February 4, 2017



Signed: Jaime Lewis

Dated: Feb 7<sup>th</sup>, 2017



**ALEX PADILLA**  
California Secretary of State

**AP16:018**

**FOR IMMEDIATE RELEASE**

**March 13, 2017**

**CONTACT:**

**Sam Mahood or Jesse Melgar**

**(916) 653-6575**

## **Proposed Initiative Enters Circulation** ***Child Custody Determinations. Jury Trial. Initiative Statute.***

**SACRAMENTO** – Secretary of State Alex Padilla announced the proponents of a new initiative were cleared to begin collecting petition signatures this past Friday, March 10, 2017.

The Attorney General prepares the legal title and summary that is required to appear on initiative petitions. When the official language is complete, the Attorney General forwards it to the proponent and to the Secretary of State, and the initiative may be circulated for signatures. The Secretary of State then provides calendar deadlines to the proponent and to county elections officials. The Attorney General's official title and summary for the measure is as follows:

**CHILD CUSTODY DETERMINATIONS. JURY TRIAL. INITIATIVE STATUTE.** Gives parties in child custody matters the right to demand that a jury, rather than judge, determine who receives the physical and legal custody of the child. Prohibits the judge from rejecting a jury's child custody decision. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Unknown ongoing net fiscal impact on state courts that would depend significantly on (1) how the measure is interpreted and implemented by the courts and (2) how individuals respond to the ability to demand a jury trial in child custody cases.** (17-0001.)

The Secretary of State's tracking number for this measure is 1797 and the Attorney General's tracking number is 17-0001.

The proponents of the measure, Wylmina Hettinga, Jaime Lewis, and Jaslynn Ball, must collect the signatures of 365,880 registered voters (five percent of the total votes cast for Governor in the November 2014 general election) in order to qualify it for the ballot. The proponents have 180 days to circulate petitions for the measure, meaning the signatures must be submitted to county elections officials no later than September 6, 2017. The proponents can be reached at (805) 439-4197.

###

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FEB 23 2017

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

February 23, 2017

Hon. Xavier Becerra  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Ashley Johansson  
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding child custody (A.G. File No. 17-0001).

### Background

**Jury Trials.** Both the U.S. Constitution and the California Constitution state that individuals possess the right to a jury trial in criminal cases and certain civil cases. Under current law, civil cases where individuals are pursuing the recovery of property or compensation for damages issues of fact must be tried by a jury, unless the jury trial is waived. The California Constitution specifies that juries in criminal and civil cases will typically consist of 12 individuals. Jury decisions in criminal cases must be unanimous, while jury decisions in civil cases can be made with the agreement of 75 percent of the jurors. Currently, jury trials are not used in California for family law cases, including child custody proceedings.

**Child Custody.** Child custody broadly refers to an individual's rights and responsibilities related to children. There are two types of child custody:

- **Legal Custody.** Legal custody refers to who has the authority to make decisions related to the child's health, education, and welfare. This can include decisions about where the child lives and goes to school, as well as decisions about certain activities, such as those related to religion or travel. If two people (such as the child's parents) have joint legal custody, then both are able to make the above decisions either separately or together. An individual with sole legal custody is the only one who can make such decisions.
- **Physical Custody.** Physical custody refers to who the child lives with. If two people have joint physical custody, then the child lives with both individuals. An individual with sole physical custody lives with the child all or most of the time. Often, individuals who do not have physical custody of the child have specified visitation rights with the child instead.

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***Child Custody Proceedings.*** Child custody proceedings can arise as part of other legal proceedings (such as divorce or legal separation proceedings) or as separate legal proceedings (such as when a parent without custody of a child seeks to obtain it from someone who has custody). Decisions about child custody can be reached in an uncontested or contested manner. In uncontested cases, individuals negotiate a contractual agreement between themselves on custody and visitation and choose to submit it to the courts. A judge will then issue a court order formally documenting the agreement. This allows the agreement to be enforced if it is violated in the future.

In contested cases, state law authorizes trial courts to make decisions about child custody based on the “best interest of the child.” The court considers various factors, such as the age of the child and the ability of the individuals seeking custody to care for the child. State law directs courts to consider the health, safety, and welfare of the child as the primary factor in its decision. In cases involving parents, the court is to ensure that the child has frequent contact with both parents and to encourage parents to share responsibility for the child, unless contact with one or both of the parents is not in the best interest of the child. Accordingly, parents in contested cases are generally first required by the court to go to mediation to reach agreement. The court may also appoint (1) a specially trained mental health professional to conduct a custody evaluation or (2) an attorney to represent the child in court proceedings. State law authorizes the court to make temporary custody decisions at any time while such activities are in progress. Under certain circumstances, custody may also be granted to individuals other than the parents. Upon completion of contested legal proceedings, the court has the authority to modify custody decisions until the child turns age 18.

### **Proposal**

Under this measure, an individual may demand a jury trial during any child custody proceedings. The measure also specifies that the court may not contradict a jury’s verdict on the issue of “the appointment of joint legal and joint physical custody.” In addition, the measure states that in civil cases where individuals are seeking “to retain legal rights to their child(ren)” issues of fact must be tried by a jury, unless a jury trial is waived.

### **Fiscal Effects**

This measure could result in both one-time and ongoing fiscal impacts on the state courts. As discussed below, the fiscal impacts would depend on how this measure is interpreted and implemented by the courts, as well as how frequently individuals demand jury trials.

Since jury trials are currently not available in child custody proceedings, the courts would incur minor one-time costs to develop regulations and procedures to allow for such jury trials. It is also possible that some courts could incur one-time costs to modify some existing courtrooms that currently hear child custody cases, but are not constructed to accommodate a jury. The ongoing fiscal effect of this measure is less certain as it would significantly depend on how the measure is interpreted and implemented by the courts, as well as how individuals respond to its provisions. For example, the measure does not specify whether there is a limit on the number of times a single individual may demand a jury trial.

On the one hand, the measure would increase state court costs to the extent that proceedings that currently are decided by a judge are instead decided by a jury. This is because courts would incur additional workload to select and instruct the jury, as well as to rule on what information may be presented to the jury. In addition, the measure could also potentially result in individuals who otherwise would have reached agreement in an uncontested case now choosing to go to court. The costs of such jury trials could be partially offset by fees courts are currently authorized to charge when there is a jury. To the extent that the measure results in a substantial number of jury trials for custody cases, the various costs above could potentially reach the tens of millions of dollars annually.

On the other hand, the measure could reduce court costs to the extent that the ability to demand a jury trial serves as an incentive for individuals to (1) resolve child custody disputes outside of court or (2) reach agreement on custody decisions more quickly—thereby reducing court involvement and workload.

In view of the above, the ongoing net fiscal impact of this measure on state courts is uncertain.

*Summary of Fiscal Effects.* This measure would have the following major fiscal effect:

- Unknown ongoing net fiscal impact on state courts that would depend significantly on (1) how the measure is interpreted and implemented by the courts and (2) how individuals respond to the ability to demand a jury trial in child custody cases.

Sincerely,

for   
\_\_\_\_\_  
Mac Taylor  
Legislative Analyst

for   
\_\_\_\_\_  
Michael Cohen  
Director of Finance

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**CHILD CUSTODY DETERMINATIONS. JURY TRIAL. INITIATIVE STATUTE.**

Gives parties in child custody matters the right to demand that a jury, rather than judge, determine who receives the physical and legal custody of the child. Prohibits the judge from rejecting a jury's child custody decision. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Unknown ongoing net fiscal impact on state courts that would depend significantly on (1) how the measure is interpreted and implemented by the courts and (2) how individuals respond to the ability to demand a jury trial in child custody cases. (17-0001.)**