

Fam. Code § 3044 – Rebuttal Checklist

Applicability

- DV finding within last 5 years → presumption applies.
- Burden = on perpetrating parent (preponderance of evidence).

Factors Court MUST Consider (§ 3044(b)(2))


- Best Interest of Child (health, safety, welfare). Note: Best interest alone insufficient.
- Batterer’s Program – 52-week course (Pen. Code § 1203.097).
- Substance Abuse Counseling – if DV involved substance abuse.
- Parenting Classes – if court finds appropriate.
- Compliance with Probation/Parole – if applicable.
- Compliance with Protective Orders – no violations.
- No Further DV – since initial incident.

Required Judicial Findings

- Court must make specific findings on EACH factor.
- Missing findings = reversible error (In re Marriage of Fajota).

Argument Framing

- If all boxes checked → presumption may be rebutted.
- If any factor not met → presumption remains; custody cannot be awarded.

 Key Reminder: Court cannot rebut solely on “best interest.” Must weigh and find on every statutory factor.