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AB-1165 Child custody: supervised visitation. (2019-2020)

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Assembly Bill No. 1165

CHAPTER 823

An act to amend Section 3200.5 of the Family Code, and to amend Section 1596.60 of, and to add Section 1596.657 to, the Health and Safety Code, relating to child custody.

[Approved by Governor October 12, 2019. Filed with Secretary of State October 12, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1165, Bauer-Kahan. Child custody: supervised visitation.

Existing law requires a court to consider, when the court has determined that supervised visitation is necessary, whether to use a professional supervised visitation provider, as defined. Existing law requires the Judicial Council to develop standards for professional supervised visitation providers, including that the provider has not been convicted of child molestation or child abuse and that the provider has completed 24 hours of training in specified subjects, including conflicts of interest.

Existing law requires the State Department of Social Services to establish and continuously update a trustline registry of persons who provide childcare, supervision, or in-home educational or counseling services who are not required to be licensed and who have either not been convicted of a crime other than a minor traffic violation, or who have been granted an exemption by the department. Existing law prohibits the department from granting an exemption if a person has been convicted of certain crimes, including crimes that require the person to register as a sex offender. Existing law makes it a misdemeanor for a person to falsely represent themselves as a trustline applicant or a registered trustline child care provider.

This bill would require, beginning January 1, 2021, a professional supervised visitation provider to register as a trustline provider. The bill would require a professional provider to complete a Live Scan criminal background check before providing supervised visitation services. The bill would require a minimum number of the 24 hours of required training to be classroom instruction on specified subjects and further require, on and after January 1, 2021, a professional provider to complete training relating to child abuse reporting laws through an online training course required for mandated reporters that is provided by the department. The bill would make other related changes. By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3200.5 of the Family Code is amended to read:

3200.5. (a) Any standards for supervised visitation providers adopted by the Judicial Council pursuant to Section 3200 shall conform to this section. A provider, as described in Section 3200, shall be a professional provider or nonprofessional provider.

(b) In any case in which the court has determined that there is domestic violence or child abuse or neglect, as defined in Section 11165.6 of the Penal Code, and the court determines supervision is necessary, the court shall consider whether to use a professional or nonprofessional provider based upon the child's best interest.

(c) For the purposes of this section, the following definitions apply:

(1) "Nonprofessional provider" means any person who is not paid for providing supervised visitation services.

(2) "Professional provider" means any person paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency.

(d) Unless otherwise ordered by the court or stipulated by the parties, a nonprofessional provider shall:

(1) Have no record of a conviction for child molestation, child abuse, or other crimes against a person.

(2) Have proof of automobile insurance if transporting the child.

(3) Have no current or past court order in which the provider is the person being supervised.

(4) Agree to adhere to and enforce the court order regarding supervised visitation.

(e) A professional provider shall:

(1) Be at least 21 years of age.

(2) Have no record of a conviction for driving under the influence (DUI) within the last five years.

(3) Not have been on probation or parole for the last 10 years.

(4) Have no record of a conviction for child molestation, child abuse, or other crimes against a person.

(5) Have proof of automobile insurance if transporting the child.

(6) Have no civil, criminal, or juvenile restraining orders within the last 10 years.

(7) Have no current or past court order in which the provider is the person being supervised.

(8) Be able to speak the language of the party being supervised and of the child, or the provider must provide a neutral interpreter over 18 years of age who is able to do so.

(9) Agree to adhere to and enforce the court order regarding supervised visitation.

(10) (A) Complete 24 hours of training prior to providing visitation services, including at least 12 hours of classroom instruction in the following subjects:

(i) The role of a professional provider.

(ii) Child abuse reporting laws.

(iii) Recordkeeping procedures.

(iv) Screening, monitoring, and termination of visitation.

(v) Developmental needs of children.

(vi) Legal responsibilities and obligations of a provider.

(vii) Cultural sensitivity.

(viii) Conflicts of interest, including the acceptance of gifts.

(ix) Confidentiality.

(x) Issues relating to substance abuse, child abuse, sexual abuse, and domestic violence.

(xi) Basic knowledge of family and juvenile law.

(B) Of the 24 hours of training required pursuant to subparagraph (A), at a minimum, three hours shall be on the screening, monitoring, and termination of visitation, three hours shall be on the developmental needs of children, three hours shall be on issues relating to substance abuse, child abuse, sexual abuse, and domestic violence, and one hour shall be on basic knowledge of family law.

(C) Notwithstanding the requirement for classroom instruction in subparagraph (A), on and after January 1, 2021, a professional provider shall complete the training required pursuant to clause (ii) of subparagraph (A), relating to child abuse reporting laws, by completing an online training course required for mandated reporters that is provided by the State Department of Social Services. This online training requirement is not intended to increase the total number of training hours required by this paragraph.

(11) Complete a Live Scan criminal background check, at the expense of the provider or the supervised visitation center or agency, prior to providing visitation services.

(12) Sign the Judicial Council Declaration of Supervised Visitation Provider form that the person meets the training and qualifications of a provider. A professional provider shall sign a separate, updated form each time the professional provider submits a report to the court.

(13) (A) Beginning January 1, 2021, be registered as a trustline provider pursuant to Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code.

(B) Notwithstanding any other law, if a person is denied trustline registration by the State Department of Social Services pursuant to Section 1596.605 or 1596.607 of the Health and Safety Code, or if the State Department of Social Services revokes a person's trustline registration pursuant to Section 1596.608 of the Health and Safety Code, that person shall be ineligible to be a professional provider.

(f) The ratio of children to a professional provider shall be contingent on:

- (1) The degree of risk factors present in each case.
- (2) The nature of supervision required in each case.
- (3) The number and ages of the children to be supervised during a visit.
- (4) The number of people visiting the child during the visit.
- (5) The duration and location of the visit.
- (6) The experience of the provider.

(g) Professional providers of supervised visitation shall:

- (1) Advise the parties before commencement of supervised visitation that no confidential privilege exists.
- (2) Report suspected child abuse to the appropriate agency, as provided by law, and inform the parties of the provider's obligation to make those reports.
- (3) Suspend or terminate visitation under subdivision (h).

(h) Professional providers shall:

- (1) Prepare a written contract to be signed by the parties before commencement of the supervised visitation. The contract should inform each party of the terms and conditions of supervised visitation.
- (2) Review custody and visitation orders relevant to the supervised visitation.
- (3) Keep a record for each case, including, at least, all of the following:
 - (A) A written record of each contact and visit.
 - (B) Who attended the visit.
 - (C) Any failure to comply with the terms and conditions of the visitation.
 - (D) Any incidence of abuse, as required by law.

(i) (1) Each provider shall make every reasonable effort to provide a safe visit for the child and the noncustodial party.

(2) If a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or terminated.

(3) All interruptions or terminations of visits shall be recorded in the case file.

(4) All providers shall advise both parties of the reasons for the interruption or termination of a visit.

(j) A professional provider shall state the reasons for temporary suspension or termination of supervised visitation in writing and shall provide the written statement to both parties, their attorneys, the attorney for the child, and the court.

SEC. 2. Section 1596.60 of the Health and Safety Code is amended to read:

1596.60. For the purposes of this chapter, the following definitions shall apply:

(a) "Ancillary day care center" means a day care center, as defined in Section 1596.76, that is associated with an athletic club, grocery store, or other business or group of businesses that is not required to be licensed pursuant to subdivision (k) of Section 1596.792 that provides a day care center that is ancillary to its principal business activity and that provides day care services, with or without a fee, for the children of the clients or customers of that business or group of businesses while the clients or customers are engaged in shopping for, or purchasing, goods or services from that business or group of businesses.

(b) "Department" means the State Department of Social Services.

(c) "Director" means the Director of Social Services.

(d) "Professional supervised visitation monitor" means a person paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer who is providing supervised visitation services and operating independently or through a supervised visitation center or agency.

(e) "Trustline provider," "license exempt child care provider," or "provider" means a person 18 years of age or older who provides child care, supervision, or any person providing in-home educational or counseling services to a minor, and who is not required to be licensed pursuant to Section 1596.792. "Provider" also means a person who provides care or childcare supervision in an ancillary day care center other than the parent or guardian of the child receiving the care. "Trustline provider" or "provider" also means a professional supervised visitation provider, as described in Section 3200.5 of the Family Code.

SEC. 3. Section 1596.657 is added to the Health and Safety Code, to read:

1596.657. Pursuant to Section 3200.5 of the Family Code, a professional supervised visitation provider, as described in that section, shall, beginning January 1, 2021, be registered pursuant to Sections 1596.603 and 1596.605.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.