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SB-495 Child custody. (2019-2020)

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Senate Bill No. 495

CHAPTER 551

An act to amend Sections 3011, 3020, and 3040 of the Family Code, relating to child custody.

[Approved by Governor October 07, 2019. Filed with Secretary of State October 07, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 495, Durazo. Child custody.

Existing law governs the determination of child custody and visitation in contested proceedings. Existing law requires the court, for purposes of deciding custody, to determine the best interests of the child based on certain factors, including the nature and amount of contact with both parents, and consistent with specified findings, including that the court's primary concern must be to ensure the health, safety, and welfare of the child. Existing law further provides that custody should be granted in a specified order of preference, according to the best interests of the child. Existing law prohibits the court, in granting custody to either parent, from preferring a parent as custodian because of the parent's sex.

This bill would prohibit the court from considering the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interests of a child for the purpose of granting custody, and would make related findings.

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

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

SECTION 1. Section 3011 of the Family Code is amended to read:

3011. (a) In making a determination of the best interests of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant and consistent with Section 3020, consider all of the following:

(1) The health, safety, and welfare of the child.

(2) (A) A history of abuse by one parent or any other person seeking custody against any of the following:

(i) A child to whom the parent or person seeking custody is related by blood or affinity or with whom the parent or person seeking custody has had a caretaking relationship, no matter how temporary.

(ii) The other parent.

(iii) A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

(B) As a prerequisite to considering allegations of abuse, the court may require independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this paragraph, "abuse against a child" means "child abuse and neglect" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in clause (ii) or (iii) of subparagraph (A) means "abuse" as defined in Section 6203.

(3) The nature and amount of contact with both parents, except as provided in Section 3046.

(4) The habitual or continual illegal use of controlled substances, the habitual or continual abuse of alcohol, or the habitual or continual abuse of prescribed controlled substances by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies or nonprofit organizations providing drug and alcohol abuse services. As used in this paragraph, "controlled substances" has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(5) (A) When allegations about a parent pursuant to paragraphs (2) or (4) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Section 6323.

(B) This paragraph does not apply if the parties stipulate in writing or on the record regarding custody or visitation.

(b) Notwithstanding subdivision (a), the court shall not consider the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interests of the child.

SEC. 2. Section 3020 of the Family Code is amended to read:

3020. (a) The Legislature finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that children have the right to be safe and free from abuse, and that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the health, safety, and welfare of the child.

(b) The Legislature finds and declares that it is the public policy of this state to ensure that children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, or ended their relationship, and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except when the contact would not be in the best interests of the child, as provided in subdivisions (a) and (c) of this section and Section 3011.

(c) When the policies set forth in subdivisions (a) and (b) of this section are in conflict, a court's order regarding physical or legal custody or visitation shall be made in a manner that ensures the health, safety, and welfare of the child and the safety of all family members.

(d) The Legislature finds and declares that it is the public policy of this state to ensure that the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative is not considered in determining the best interests of the child.

SEC. 3. Section 3040 of the Family Code is amended to read:

3040. (a) Custody should be granted in the following order of preference according to the best interest of the child as provided in Sections 3011 and 3020:

(1) To both parents jointly pursuant to Chapter 4 (commencing with Section 3080) or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, consistent with Sections 3011 and 3020. The court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) If to neither parent, to the person or persons in whose home the child has been living in a wholesome and stable environment.

(3) To any other person or persons deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

(b) The immigration status of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from receiving custody under subdivision (a).

(c) The court shall not consider the sex, gender identity, gender expression, or sexual orientation of a parent, legal guardian, or relative in determining the best interest of the child under subdivision (a).

(d) This section establishes neither a preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child, consistent with this section.

(e) In cases where a child has more than two parents, the court shall allocate custody and visitation among the parents based on the best interest of the child, including, but not limited to, addressing the child's need for continuity and stability by preserving established patterns of care and emotional bonds. The court may order that not all parents share legal or physical custody of the child if the court finds that it would not be in the best interest of the child as provided in Sections 3011 and 3020.