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SB-1182 Family law. (2021-2022)

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Senate Bill No. 1182

CHAPTER 385

An act to amend Section 3040 of, and to add Section 211.5 to, the Family Code, relating to family law.

[Approved by Governor September 17, 2022. Filed with Secretary of State September 17, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1182, Eggman. Family law.

Existing law provides for various proceedings under the Family Code, including, among others, dissolution of marriage, legal separation of the parties, paternity, and custody or support of a child. Existing law authorizes the Judicial Council to provide by rule for the practice and procedure in proceedings pursuant to those provisions.

This bill would require a court, in family law proceedings, to provide self-identified veterans with a list of resources for veterans, including information about how to contact the local office of the Department of Veterans Affairs. The bill would authorize a veteran to provide the information about their veteran status on a Judicial Council military service form, file the form with the court, and serve it on the other parties to the action. The bill would require the court to transmit a copy of the form to the Department of Veterans Affairs, and would require the department, within a reasonable time of receipt, to contact the person using the information provided on the form. The bill would authorize the Judicial Council to develop the rules and forms needed to implement those provisions on or before January 1, 2024.

Existing law governs the determination of child custody and visitation in contested proceedings. Under existing law, custody should be granted in a specified order of preference according to the best interest of the child.

This bill would, commencing January 1, 2024, require a court, in granting custody pursuant to the best interest of the child, to provide the parent, legal guardian, or relative with a list of local resources for mental health treatment and state its reasons for the finding in writing or on the record, if the court finds that the effects of a parent's, legal guardian's, or relative's history of or current mental illness are a factor in determining the best interest of the child. The bill would specify that these requirements do not relieve a court from ensuring that the health, safety, and welfare of the child is the court's primary concern in determining the best interests of children when making any order regarding the physical or legal custody, or visitation, of the child.

The bill would make related findings and declarations.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Nearly 1 in 5 adult Americans live with a mental illness.

- (b) Nearly 1 in 5 veterans lives with a service connected mental health disorder or cognitive disorder.
- (c) The rate of major depression among soldiers was five times as high as civilians and the rate of post-traumatic stress disorder was nearly 15 times higher than the general public.
- (d) Having a mental health disorder, including a service-linked disorder, does not inherently make you more violent.
- (e) A mental health disorder should not be used as a sole predictor of future violence.
- (f) Research indicates individuals with a mental illness are more likely to be victims of violence than perpetrators of it.
- (g) Navigating family court can be traumatizing and extraordinarily mentally, emotionally, and financially taxing to families. This is especially true for individuals with mental health disorders.
- (h) Service-linked mental health issues come with their own unique barriers, stigma, and complications.
- (i) There are existing services for veterans who have a criminal case pending.
- (j) Many veterans who find themselves involved in family court proceedings do not have a criminal case and are unable to access many of the wrap-around services provided to veterans that do.
- (k) Veterans should not have to break the law to be connected to services designed to support them.
- (l) Individuals with mental health issues are fully capable of being loving and supportive parents.
- (m) No parent should lose custody of their child due solely to a manageable mental health issue.

SEC. 2. Section 211.5 is added to the Family Code, to read:

211.5. (a) (1) Commencing January 1, 2024, in proceedings under this code, a court shall provide self-identified veterans with a list of resources for veterans, including information about how to contact the local office of the Department of Veterans Affairs.

(2) The veteran may, at their discretion, provide the information about their veteran status on the Judicial Council military service form, file the form with the court, and serve it on the other parties to the action.

(b) (1) When a person files a form identifying the person as a veteran pursuant to paragraph (2) of subdivision (a), the court shall transmit a copy of the form to the Department of Veterans Affairs.

(2) Upon receipt of a copy of the form, the Department of Veterans Affairs shall, within a reasonable time, contact the person using the information provided on the form.

(c) On or before January 1, 2024, the Judicial Council may amend or develop the rules and forms necessary to implement this section.

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) (1) Commencing January 1, 2024, if a court finds that the effects of a parent's, legal guardian's, or relative's history of or current mental illness are a factor in determining the best interest of the child under subdivision (a), the court shall do both of the following:

(A) Provide the parent, legal guardian, or relative with a list of local resources for mental health treatment.

(B) State its reasons for the finding in writing or on the record.

(2) This subdivision does not relieve a court from ensuring that the health, safety, and welfare of the child is the court's primary concern in determining the best interests of children when making any order regarding the physical or legal custody, or visitation, of the child.

(e) 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.

(f) 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.