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SB-599 Visitation rights. (2023-2024)

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Senate Bill No. 599

CHAPTER 493

An act to amend Sections 3011, 3100, and 3200 of the Family Code, relating to child custody.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

SB 599, Caballero. Visitation rights.

Existing law governs the determination of child custody and visitation in contested proceedings. Existing law requires the court, for purposes of deciding custody or visitation, to determine the best interests of the child based on certain factors, including the health, safety, and welfare of the child, and the nature and amount of contact with both parents, except as specified. Existing law also requires the court to determine, under designated circumstances, whether to require that visitation to be supervised, suspended, limited, or denied. Under existing law, if the court finds that a party is staying in a domestic violence shelter or other confidential location, the court is required to design a visitation order to prevent disclosure of the location of the shelter or other confidential location.

This bill, among other things, would require the court, in determining whether to require the above-described limitations on visitation, to consider virtual visitation, as defined. The bill would require a court, if it finds that a party is staying at one of the above-described locations due to domestic violence or fear of domestic violence from the other parent, to order in-person visitation only if the court finds that in-person visitation is in the best interest of the child and taking into consideration, among other things, the potential for disclosure of the confidential location.

Existing law requires the Judicial Council to develop standards for supervised visitation providers in accordance with specified guidelines. When developing standards, existing law requires the Judicial Council to consider, among other things, the provider's qualifications, experience, and education. Under existing law, the term "provider" includes any individual who functions as a visitation monitor, as well as supervised visitation centers.

This bill would authorize superior court locations to serve as supervised visitation and exchange locations, and would also authorize the court to designate employees and contractors to provide supervised visitation and exchange services or assistance with those services.

This bill would incorporate additional changes to Section 3011 of the Family Code proposed by AB 957 to be operative only if this bill and AB 957 are enacted and this bill is enacted last.

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) Approximately 1 in 15 children in the United States are exposed to domestic violence each year.
- (b) Most child abuse in the United States is perpetrated in the family and by a parent. Intimate partner violence and child abuse overlap in the same families at rates between 30 and 60 percent. A child's risk of abuse increases after a perpetrator of intimate partner violence separates from a domestic partner, even when the perpetrator has not previously directly abused the child. Children in the United States who have witnessed intimate partner violence are approximately four times more likely to experience direct child maltreatment than children who have not witnessed intimate partner violence.
- (c) According to the California Office of Emergency Services, in 2020–21, domestic violence survivors and their children were sheltered for 608,658 nights in domestic violence programs.
- (d) Nearly 60 percent of intimate partner violence-related homicides involve firearms, often involving children as well. When perpetrators of intimate partner violence, including physical violence, sexual abuse, stalking, and psychological aggression of a current or former intimate partner, have access to firearms, women and children are especially at risk of serious or deadly harm.
- (e) The Center for Judicial Excellence has found that between 2008 and 2022, 887 children have been killed by a parent as described in news accounts that also mention divorce, separation, custody, and visitation being an issue in those matters.
- (f) Professionally supervised visitation centers are not available in most counties in the state thereby preventing safe, secure options for families where such supervision can reduce risks of violence and lethality in domestic violence cases and provide security to reduce the likelihood that firearms will be present during a child custody visit or exchange.
- (g) Children have the right to be safe and free from domestic violence, and virtual visitation options can provide opportunities to decrease the risk associated with in-person visitation and exchange in child custody matters involving domestic violence, especially when parents and children are living in confidential locations.

SEC. 2. 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 other person 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, including as provided in Sections 3046 and 3100.

(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 paragraph (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 or unsupervised visitation to that parent, the court shall state its reasons in writing or on the record that the order is in the best interest of the child and protects the safety of the

parties and the child. 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) Nothing in this paragraph eliminates the requirement that the contents of the stipulation be in the best interest of the child and be specific as to time, day, place, and manner of transfer of the child if the parties do 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. 2.5. 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) (A) The health, safety, and welfare of the child.

(B) As used in this paragraph, the health, safety, and welfare of the child includes, among other comprehensive factors, a parent's affirmation of the child's gender identity or gender expression. Affirmation includes a range of actions and will be unique for each child, but in every case must promote the child's overall health and well-being.

(2) (A) A history of abuse by one parent or another 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) (i) 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.

(ii) As used in this paragraph, "abuse against a child" means "child abuse or neglect" as defined in Section 11165.6 of the Penal Code.

(iii) Abuse against another person, as 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, including as provided in Sections 3046 and 3100.

(4) (A) The habitual or continual illegal use of controlled substances or the habitual or continual abuse of alcohol or 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.

(B) 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 paragraph (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 or unsupervised visitation to that parent, the court shall state its reasons in writing or on the record that the order is in the best interest of the child and protects the safety of the parties and the child. In these circumstances, the court shall ensure that an 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) Nothing in this paragraph eliminates the requirement that the contents of the stipulation be in the best interest of the child and be specific as to time, day, place, and manner of transfer of the child if the parties do 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. 3. Section 3100 of the Family Code is amended to read:

3100. (a) In making an order pursuant to Chapter 4 (commencing with Section 3080), the court shall grant reasonable visitation rights to a parent when it is shown that the visitation would be in the best interest of the child, as defined in Section 3011, and consistent with Section 3020. In the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child.

(b) (1) If a protective order, as defined in Section 6218 of this code or Section 136.2 of the Penal Code, has been issued restraining a parent, the court shall consider whether the best interest of the child requires that any visitation by that parent be suspended, denied, or limited to situations in which a third person, specified by the court, is present, including virtual visitation. A parent may submit to the court the name of a person that the parent deems suitable to be present during visitation. The court may order supervised visitation with the person whose name was submitted, but the submission of a name does not require the court to order supervised visitation if it is not in the best interest of the child, nor does a parent's submission of a name constitute agreement or stipulation to supervised visitation.

(2) In determining what type of visitation with the restrained party, if any, is in the best interest of the child pursuant to paragraph (1), the court shall consider the nature of the acts that led to the protective order, the period of time that has elapsed since that order, and whether the restrained party has committed further acts of abuse.

(c) If visitation is ordered in a case in which domestic violence is alleged and an emergency protective order, protective order, or other restraining order has been issued, the visitation order shall specify the time, day, place, and manner of the visitation, including virtual visitation, or any transfer of the child, so as to limit the child's exposure to potential domestic conflict or abuse, to ensure the safety of all family members, and to minimize any opportunity for the use of abuse, including coercive control. If a criminal protective order has been issued pursuant to Section 136.2 of the Penal Code, the visitation order shall make reference to, and, unless there is an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c) of Section 136.2 of the Penal Code or a no-contact order, as described in Section 6320, acknowledge the precedence of enforcement of, an appropriate criminal protective order.

(d) (1) If the court finds a party is staying in a place designated as a shelter for victims of domestic violence or other confidential location, the court's order shall be designed to prevent disclosure of the location of the shelter or other confidential location and to protect all adults and children living in that location.

(2) If a court finds that a parent is residing in a confidential shelter due to domestic violence or fear of domestic violence from the other parent, the court shall order in-person visitation with the other parent only if the court finds that in-person visitation is in the best interest of the child, taking into account all of the following:

(A) The other parent's access to firearms and ammunition, including, but not limited to, whether the other parent is prohibited from having firearms and ammunition.

(B) If a parent is the subject of an emergency protective order, protective order, or other restraining order, whether that parent has violated that order, and the nature of any violation.

(C) Information obtained pursuant to Section 6306, the requirements of this section, and the information obtained pursuant to Section 3011.

(D) The potential for disclosure of the confidential location.

(3) A court shall make its findings pursuant to paragraphs (1) and (2) in writing or on the record.

(e) For purposes of this section, "virtual visitation" means use of audiovisual electronic communication tools to provide contact between a parent and their children as part of a parenting plan or custody order. Virtual visitation may be supervised or unsupervised, based on the court's determination of what is in the best interest of the child.

SEC. 4. Section 3200 of the Family Code is amended to read:

3200. The Judicial Council shall develop standards for supervised visitation providers in accordance with the guidelines set forth in this section. For the purposes of the development of these standards, the term "provider" shall include any individual who functions as a visitation monitor, as well as supervised visitation centers, including those housed in superior court locations. Provisions shall be made within the standards to allow for the diversity of supervised visitation providers.

(a) When developing standards, the Judicial Council shall consider all of the following issues:

(1) The provider's qualifications, experience, and education.

(2) Safety and security procedures, including ratios of children per supervisor.

(3) Any conflict of interest.

(4) Maintenance and disclosure of records, including confidentiality policies.

(5) Procedures for screening, delineation of terms and conditions, and termination of supervised visitation services.

(6) Procedures for emergency or extenuating situations.

(7) Orientation to and guidelines for cases in which there are allegations of domestic violence, child abuse, substance abuse, or special circumstances.

(8) The legal obligations and responsibilities of supervisors.

(b) The Judicial Council shall consult with visitation centers, mothers' groups, fathers' groups, judges, the State Bar of California, children's advocacy groups, domestic violence prevention groups, Family Court Services, and other groups it regards as necessary in connection with these standards.

(c) It is the intent of the Legislature that the safety of children, adults, and visitation supervisors be a precondition to providing visitation services. Once safety is assured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is provided.

(d) Superior court locations may serve as supervised visitation and exchange locations. Superior courts may designate employees and contractors to provide supervised visitation and exchange services or assistance with those services.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 3011 of the Family Code proposed by both this bill and Assembly Bill 957. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 3011 of the Family Code, and (3) this bill is enacted after Assembly Bill 957, in which case Section 2 of this bill shall not become operative.