

AMENDED IN ASSEMBLY MARCH 26, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1050

Introduced by Assembly Member Ma

February 27, 2009

An act to amend Section 3042 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1050, as amended, Ma. Child custody: preferences of child.

Existing law requires the family court, if a child is of sufficient age and capacity to form an intelligent preference as to custody, to consider and give due weight to the wishes of the child in making an order granting or modifying custody. ~~The court is required to control the examination of a child witness to protect the best interests of the child, and may preclude the calling of the child as a witness if it is in the best interest of the child.~~

This bill would ~~make technical, nonsubstantive changes to those provisions~~ require the family court to consider and give due weight to the wishes of a child in making an order granting or modifying custody, if the child is of sufficient age and capacity to form an intelligent preference as to custody or visitation. The bill would provide, for purposes of this provision, that a child shall be presumed to be of sufficient age and capacity to form an intelligent preference if the child is 10 years of age or older.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3042 of the Family Code is amended to
2 read:
3 3042. (a) If a child is of sufficient age and capacity to reason
4 so as to form an intelligent preference as to custody *or visitation*,
5 the court shall consider, and give due weight to, the wishes of the
6 child in making an order granting or modifying custody,
7 *particularly if the health, safety, or welfare of the child is at issue.*
8 *A child shall be presumed to be of sufficient age and capacity to*
9 *reason so as to form an intelligent preference if the child is 10*
10 *years of age or older.*
11 (b) In addition to the requirements of subdivision (b) of Section
12 765 of the Evidence Code, the court shall control the examination
13 of a child witness so as to protect the best interests of the child.
14 The court may preclude the calling of the child as a witness if the
15 best interests of the child so dictate and may provide alternative
16 means of obtaining information regarding the child's preferences.

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