

ASSEMBLY BILL

No. 2098

Introduced by Assembly Member Maienschein
(Principal coauthor: Senator Anderson)
(Coauthor: Assembly Member Waldron)
(Coauthors: Senators Beall, Cannella, and Fuller)

February 17, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as introduced, Maienschein. Child custody: preferences of child.

Existing law requires the court to consider and give due weight to the wishes of a child in making an order granting or modifying custody or visitation, if the child is of sufficient age and capacity to form an intelligent preference as to custody or visitation. Existing law also requires the court to permit a child who is 14 years of age or older to address the court regarding custody or visitation, unless the court determines that doing so is not in the child's best interests.

This bill would instead require the court to permit a child who is 7 years of age or older to address the court regarding custody or visitation, unless the court determines that doing so is not in the child's best interests.

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 or
7 visitation.

8 (b) In addition to the requirements of subdivision (b) of Section
9 765 of the Evidence Code, the court shall control the examination
10 of a child witness so as to protect the best interests of the child.

11 (c) If the child is ~~14~~ *seven* years of age or older and wishes to
12 address the court regarding custody or visitation, the child shall
13 be permitted to do so, unless the court determines that doing so is
14 not in the child’s best interests. In that case, the court shall state
15 its reasons for that finding on the record.

16 (d) Nothing in this section shall be interpreted to prevent a child
17 who is less than ~~14~~ *seven* years of age from addressing the court
18 regarding custody or visitation, if the court determines that is
19 appropriate pursuant to the child’s best interests.

20 (e) If the court precludes the calling of any child as a witness,
21 the court shall provide alternative means of obtaining input from
22 the child and other information regarding the child’s preferences.

23 (f) To assist the court in determining whether the child wishes
24 to express his or her preference or to provide other input regarding
25 custody or visitation to the court, a minor’s counsel, an evaluator,
26 an investigator, or a mediator who provides recommendations to
27 the judge pursuant to Section 3183 shall indicate to the judge that
28 the child wishes to address the court, or the judge may make that
29 inquiry in the absence of that request. A party or a party’s attorney
30 may also indicate to the judge that the child wishes to address the
31 court or judge.

32 (g) Nothing in this section shall be construed to require the child
33 to express to the court his or her preference or to provide other
34 input regarding custody or visitation.

35 (h) The Judicial Council shall, no later than January 1, 2012,
36 promulgate a rule of court establishing procedures for the
37 examination of a child witness, and include guidelines on methods

- 1 other than direct testimony for obtaining information or other input
- 2 from the child regarding custody or visitation.
- 3 (i) The changes made to subdivisions (a) to (g), inclusive, by
- 4 the act adding this subdivision shall become operative on January
- 5 1, 2012.

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