Senate Bill 170

Giving Children a Voice Act
Senator Connie M. Leyva (D-Chino)

SUMMARY

Senate Bill 170 requires the family court to allow a child who is 10 years of age or older to address the court regarding custody or visitation, if the child wishes to do so. This bill lowers the current age threshold requirement from 14 to 10 years of age.

BACKGROUND

Parental child custody and visitation cases permanently impact their children's lives. Despite the direct impact of these decisions, children are not parties to these cases and are not always permitted to address the court about their wishes. In response to concerns that children's wishes were not being heard in the family court process, the Legislature in 2010 created a presumption that children 14 and over could, if they choose, testify in their parents' custody or visitation proceedings, unless the court determined that doing so was not in their best interest (AB 1050 – Ma, Chapter 187 Statutes of 2010).

Family Code Section 3042 requires the family court to consider, and give due weight to, the wishes of a child who is of sufficient age and capacity to make an informed preference as to custody or visitation. Existing law requires the court to allow a child 14 years of age or older to address the court regarding custody or visitation, if the child wishes to do so, unless the court determines that doing so is not in the child's best interests. In that case, the court is required to state its reason on the record for this finding. Nothing in the law requires a child to address the court unless he or she chooses.

Allowing teenagers to speak to the court has been extremely helpful to those who have requested it since the law went into effect in 2012. Rules of court are in place to allow for the questioning of a child in the judge's chambers, and these rules explain who should be present, in order to protect the best interests of the child. Judicial discretion also remains intact if a judge determines that it is not in a child's best interests to testify for any reason.

Other courts have been increasingly open to children's testimony and consider it a vital part of judicial decision making. California juvenile courts permit children as young as 10 to speak directly to the court, while children as young as 4 are able to testify in criminal court proceedings.

PROBLEM

According to a survey conducted by the California Protective Parents Association, which was analyzed in 2015, children who allege abuse are often being taken from a safe parent and placed with an abusive parent by family courts. SB 170 helps to keep these children safe by allowing them to speak directly to the court in critical situations. Although nothing in this Family Code section prevents a child who is less than 14 from addressing the court regarding custody or visitation, judges often do not allow these children to testify, or consider it in their best interests, even when they wish to do so. Children can contribute essential information on their wishes for custody and visitation and should be heard as relevant witnesses to the case.

For example, a 12-year-old Sacramento County girl was forced to try to reunify with her abusive father since she was not allowed to testify during court proceedings. Instead, her court appointed therapists told the court the opposite of what she said and did not share many of the young girl's concerns with the court.

SOLUTION

Requiring family courts to allow testimony from children who are 10 years of age or older about their custody and visitation wishes will be an important child safety measure that enables many more children – some of whom may be in life-threatening situations – to address the court and be protected from harm.

SUPPORT

California Protective Parents Association (Co-Sponsor)
Center for Judicial Excellence (Co-Sponsor)

STATUS

Introduced January 23, 2017

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