JUDICIAL COUNCIL OF CALIFORNIA

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TANI G. CANTIL-SAKAUYE
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MARTIN HOSHINO
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Director, Governmental Affairs

May 4, 2017

Hon. Connie M. Leyva
Member of the Senate
State Capitol, Room 4061
Sacramento, California 95814

Subject: Senate Bill 170 (Leyva), as introduced - Oppose

Dear Senator Leyva:

The Judicial Council regretfully opposes SB 170, which lowers the age, from 14 to 10, at which a court is required to allow a child to address the court regarding custody and visitation.

The council opposes SB 170 because it is unnecessary, can be detrimental to children, and, despite the bill not currently being tagged fiscal, could be costly to individual courts. The bill is unnecessary because, if a child under age 14 is able to present a statement to a court that would be helpful in a custody determination, courts are currently, on a case-by-case basis, allowing that child to speak unless it would harm the child. Mandating that courts allow younger children to speak denies the court the opportunity to protect these children, and could increase the costs associated with minor's counsel, as well as scheduling and calendaring issues should a younger child change their mind about wishing to address the court.

While the council understands the concerns and frustrations raised by parents who have not been awarded custody of their children, we do not believe that this proposal will further the best interests of the child that is the subject of a custody case. This proposal would instead place younger children at the heart of the conflict between two parents. The court must protect children

and have the appropriate discretion to determine whether it is in a specific child's best interest to testify.

For these reasons, the Judicial Council regretfully opposes SB 170.

Sincerely,

Mailed on May 4, 2017

Alan Herzfeld
Attorney

ANH/yc-s
cc: Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California

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January 3, 2018

Hon. Hannah-Beth Jackson, Chair
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

Subject: Senate Bill 170 (Leyva), as introduced – Oppose
Hearing: Senate Judiciary Committee – January 9, 2018

Dear Senator Jackson:

The Judicial Council opposes SB 170, which would lower the age from 14 to 10 at which a court is required to allow a child to address the court regarding custody and visitation, unless the court determines that doing so is not in the child's best interests.

The council opposes SB 170 because it is unnecessary. Additionally, despite the bill not being tagged fiscal, its enactment could lengthen and further complicate court hearings, thus delaying justice for families and increasing costs for the parties as well as the courts.

California Family Code section 3042 confers on children "of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation" a limited right to address the court in custody proceedings. If the child is 14 years of age or older and wishes to address the court, the child *must* be permitted to do so, unless the court determines that doing so is not in the child's best interests. (Section 3042(c).) In like manner, if a child is under the age of 14, the court *may* grant the child's request to address the court regarding custody or visitation "if the court determines that is appropriate pursuant to the child's best interests." (Section 3042(d).)

In addition, if any child is precluded from being called as a witness, the court shall provide "alternative means of obtaining input from the child and other information regarding the child's preferences." (Section 3042(e).)

California Rules of Court establish procedures for allowing child witnesses to participate in family law proceedings, and include guidelines on methods other than direct testimony for obtaining input from the child regarding custody or visitation, regardless of the child's age. Specifically, minor's counsel, custody evaluators, child custody investigators, and child custody counselors "must inform the court if they have information indicating that a child in a custody or visitation (parenting time) matter wishes to address the court." (Rule 5.250(b)(1).) In addition, a parent or parent's attorney "may inform the court if they have information indicating that a child in a custody or visitation matter wishes to address the court." (Rule 5.250 (b)(2).) And the judge "may inquire whether the child wishes to do so." (Rule 5.250(b)(3).)

Rule 5.250(c) further provides that when determining whether addressing the court is in the child's best interest, the judicial officer must consider several different factors, including:

(A) Whether the child is of sufficient age and capacity to reason to form an intelligent preference as to custody or visitation (parenting time);

(B) Whether the child is of sufficient age and capacity to understand the nature of testimony;

(C) Whether information has been presented indicating that the child may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the child may benefit from addressing the court;

(D) Whether the subject areas about which the child is anticipated to address the court are relevant to the court's decisionmaking process; and

(E) Whether any other factors weigh in favor of or against having the child address the court, taking into consideration the child's desire to do so.

The Family Code already requires that the court "consider" and "give due weight" to the child's preferences in making an order granting or modifying custody and visitation. Expanding the right to address the court to children as young as 10 is unnecessary. Moreover, reducing the age of testimony to a child as young as 10 will likely increase the costs associated with minor's counsel to determine whether the testimony of the child is, in fact, voluntary, and in preparing the child to testify and ensuring the child's wellbeing and rights are protected. The age-change proposed in SB 170 also is likely to complicate family court scheduling and calendaring because the testimony of younger children may require more time, continuances, delays, and delicate handling as well as additional challenges to rulings (and appeals) involving child testimony. This

change could disrupt the proceedings not only for the child her or himself, but also could delay access to the family court for other families in need who are waiting for their own day in court.

While the council understands the concerns raised by parents who have not been awarded custody, we do not believe that this proposal furthers the best interests of the child that is the subject of a custody case. Rather, this proposal would place younger children at the heart of a conflict that is between the parents. The current law already provides judicial officers the appropriate discretion and tools to determine whether it is in a young child's best interest to testify.

For these reasons, the Judicial Council opposes SB 170.

Sincerely,

Mailed on January 3, 2018

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s
cc: Members, Senate Judiciary Committee
Hon. Connie M. Leyva, Member of the Senate
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California