



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS

770 L Street, Suite 700 • Sacramento, California 95814-3393
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

KATHLEEN T. HOWARD
Director, Office of Governmental Affairs

January 5, 2006

Honorable Joseph Dunn, Chair
Senate Judiciary Committee
State Capitol, Room 2080
Sacramento, California 95814

Subject: SB 544 (Battin), as amended January 4, 2006 - Oppose
Hearing: Senate Judiciary Committee – January 17, 2006

Dear Senator Dunn:

I regret to inform you that the Judicial Council continues to oppose SB 544, which would prohibit the court in a child custody matter from allowing unsupervised access to a child if the person seeking custody or visitation has been convicted of specified crimes against children and the child is under 14 years of age.

The Judicial Council opposes SB 544 because it would inappropriately and unnecessarily limit the discretion of the court to make custody orders in the best interest of the children at issue. As currently drafted, SB 544 would not allow a child under 14 to have unsupervised time with a parent who has been convicted of the offenses listed, some of which may be misdemeanor convictions. While the recent amendments have eliminated the unworkable standard of "no risk" that would have applied to children 14 and over, the remaining prohibition on any unsupervised contact unduly limits the authority of the court to protect the child's best interests.

Last year the Legislature amended section 3030 of the Family Code to expand its application and to strengthen and clarify the standard that the court is to apply when determining whether a parent convicted of one of the enumerated offenses poses a significant risk to the child (see Chapter 483, Statutes of 2005 – SB 594, Torlakson). These changes place a higher burden on the parent seeking unsupervised access to the child than under the previous statute, while still preserving the court's underlying authority to make determinations regarding the best interests of each child on a case by case basis. SB 544 goes beyond those changes to foreclose all discretion for the court based on the age of the child, and without regard to the actual risk posed by the parent, or the risks that the other parent may present. As a result, the court could be placed in

Hon. Joseph Dunn

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the untenable position of having to award sole custody to a parent that it determines is less able to care for the child. Such a result is at odds with the core statutory purpose of the court in child custody matters under the Family Code.

For these reasons, the Judicial Council opposes SB 544.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy E. Kenny". The signature is fluid and cursive, with the first name "Tracy" being more prominent.

Tracy Kenny
Legislative Advocate

TK/yt

cc: Members, Senate Judiciary Committee
Hon. Jim Battin
Member of the Senate
Mr. Benjamin Palmer, Counsel
Senate Judiciary Committee
Ms. Karen Pank, Deputy Legislative Secretary
Office of the Governor
Mr. Mike Petersen, Consultant
Senate Republican Office of Policy
Ms. Sue Blake, Assistant Director of Legislation
Office of Planning and Research



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April 21, 2005

Hon. Jim Battin
Member of the Senate
State Capitol, Room 3067
Sacramento, California 95814

Subject: SB 544 (Battin), as amended March 29, 2005 - Oppose
Hearing: Senate Judiciary Committee – April 26, 2005

Dear Senator Battin:

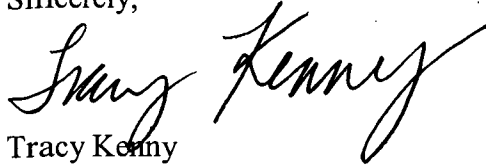
I regret to inform you that the Judicial Council opposes SB 544, which prohibits the court in a child custody matter from allowing unsupervised access to a child if the person seeking custody or visitation has been convicted of specified crimes against children and the child is under 14, and requires that the court find that there is no risk to the child before granting unsupervised access to a child 14 or older.

The Judicial Council opposes SB 544 because it would inappropriately and unnecessarily limit the discretion of the court to make custody orders in the best interest of the children at issue. As currently drafted, SB 544 would make it virtually impossible for a court to allow a child to have unsupervised time with a parent who has been convicted of the offenses listed, some of which may be misdemeanor convictions. The bill explicitly disallows such orders where a child is under 14, and imposes a standard of risk finding that would be very difficult for a parent to meet when the child is 14 or over. As a result, the court would be unable to allow a child access to a parent even when the court finds there is no significant risk to the child from that parent, and the court believes that such contact would be in the child's best interest. Such a result is at odds with the core statutory purpose of the court in child custody matters under the Family Code.

Hon. Jim Battin
April 21, 2005
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For these reasons, the Judicial Council opposes SB 544.

Sincerely,

A handwritten signature in cursive script, reading "Tracy Kenny". The signature is written in dark ink and is positioned above the printed name and title.

Tracy Kenny
Legislative Advocate

TK/yt

cc: Karen Pank, Deputy Legislative Secretary, Office of the Governor
Sue Blake, Assistant Director of Legislation
Office of Planning and Research