

Memorandum 92-12

Subject: Study F-1000 - Family Code (Explanatory Text for Recommendation)

Attached to this memorandum is a revised draft of the explanatory text of the Family Code. This draft incorporates Commission decisions made at the January meeting.

The explanatory text is not yet intended to be final, but it does help those reviewing the bill to get an overview of the project and its background. The staff intends to expand the draft to discuss some of the organizational issues the code has dealt with and expand the substantive discussion of the contents of the code. However, since the code is a recodification and not a substantive revision of the law, we do not anticipate that the discussion in the text will expand by much.

Respectfully submitted,

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Assistant Executive Secretary

## THE FAMILY CODE

In 1989 the Legislature directed the Law Revision Commission to review statutes relating to the adjudication of child and family civil proceedings and make recommendations to the Legislature regarding the establishment of a Family Code.<sup>1</sup> The major concern addressed by the resolution was the dispersion of family law in several codes, including the Civil Code, Code of Civil Procedure, Evidence Code, Probate Code, and Welfare and Institutions Code. A result of this dispersion and piecemeal legislation over the years has been a multiplication of procedures and inconsistent and overlapping substantive rules and procedures. This state of affairs makes the law difficult to determine and to understand. Individuals are confused as to their rights, and attorneys and judges must spend time inefficiently searching the law.<sup>2</sup>

This project, as undertaken by the Commission, is intended to reorganize the major family law statutes in a new code and resolve procedural and technical inconsistencies in existing law. Consistent with its legislative directive, the Commission has not attempted to make substantive revisions in the law. Moreover, the Commission has sought through its review process and the participation of interested persons and organizations to detect any inadvertent substantive changes and resolve them.<sup>3</sup> While the Commission is committed to working out

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1. 1989 Cal. Stat. res. ch. 70.

2. In a recent case concerning "gestational surrogacy," a court of appeal characterized a series of statutes in the Evidence Code and the Civil Code as "markers on a trail." *Anna J. v. Mark C.*, 234 Cal. App. 3d 1557, 1562 (1991) [time for grant or denial of review extended to Feb. 6, 1992]. The court also noted that "[f]inding the answer may be somewhat tedious -- a bit like trying to obtain a permit from a bureaucracy and continually being referred to another department -- but an answer can still be found." *Id.* at 1565.

3. Several correspondents have expressed the concern that the Family Code project is part of a plan to establish a new family court system. The Legislature has not requested the Commission to consider this issue and the Commission has not done so. The Commission takes no position on the matter and has prepared the Family Code independent of any considerations relative to such a proposal.

any problems in the code before it is enacted, it should be noted that there will be time after enactment to make any needed corrections since the code will be subject to a one-year deferred operative date.

In 1990, as the first step in carrying out the legislative directive, the Commission distributed a questionnaire to approximately 4000 individuals, mostly lawyers and judges. The questionnaire assessed whether a new Family Code (or act) was desirable and, if so, what subjects it should cover. More than 660 responses were received. The great majority (83%) of respondents favored preparation of a new code or act. Only 17 percent of respondents wanted neither a new code or act.

The Commission has prepared a Family Code that reorganizes the major relevant statutes<sup>4</sup> in a more logical and consistent structure. The bulk of the new code continues the substance of the first portion of the Civil Code, including the statutes on minors,<sup>5</sup> parent and child,<sup>6</sup> freedom from parental custody and control,<sup>7</sup> and adoption,<sup>8</sup> and the last portion of the Civil Code, including the Family Law Act<sup>9</sup> (marriage, dissolution, custody, support, property division, property rights during marriage, marital agreements) and the Uniform Parentage Act.<sup>10</sup> The new code also includes the Code of Civil Procedure

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4. The Juvenile Court Law (Welf. & Inst. Code § 200 *et seq.*) and the support enforcement provisions found in Welfare and Institutions Code Sections 11475-11492.1 have not been included in the proposed Family Code. The Commission plans to consider in the future whether and to what extent these statutes should be added to the Family Code.

5. Civ. Code §§ 25-42, 60-70.

6. Civ. Code §§ 193-213.

7. Civ. Code §§ 232-239.

8. Civ. Code §§ 220.10-230.20.

9. Civ. Code §§ 4000-5317.

10. Civ. Code §§ 7000-7021.

provisions on prevention of domestic violence,<sup>11</sup> conciliation courts,<sup>12</sup> and the Revised Uniform Enforcement of Support Act.<sup>13</sup> The new code includes the Uniform Act on Blood Tests to Determine Paternity from the Evidence Code.<sup>14</sup> Penal Code provisions, such as those pertaining to criminal penalties for abandonment and neglect of children,<sup>15</sup> have not been included in the new code.

The Family Code organizes the law into the following divisions: (1) preliminary provisions and definitions, (2) general provisions, (3) marriage, (4) husband and wife, (5) conciliation proceedings, (6) nullity, dissolution, and legal separation, (7) division of community estate, (8) custody of children, (9) support, (10) prevention of domestic violence, (11) minors, (12) parent and child, and (13) adoption.<sup>16</sup>

The Family Code generalizes definitions and procedural rules to the extent practicable, and uses consistent terminology where feasible. As conflicting rules are discovered, a reconciliation is attempted in the new code, but if that is not possible, the rule judged the better has been adopted. Some obsolete provisions have been omitted.<sup>17</sup>

Various sections of the existing family law statutes include sunset provisions. These provisions typically provide that a particular section remains in effect only until a specified date and then is repealed, unless a statute enacted before the repeal date, deletes or extends that date. Usually an earlier provision will spring

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11. Code Civ. Proc. §§ 537-553.

12. Code Civ. Proc. §§ 1730-1772.

13. Code Civ. Proc. §§ 1650-1699.4.

14. Evid. Code §§ 890-897.

15. See Penal Code §§ 270-273.7.

16. Division 20 is included at the end of the new code for pilot projects.

17. E.g., Civ. Code §§ 5114-5115 (provisions for a spouse to record an acknowledged inventory of separate property, with the effect of notice and prima facie evidence of title).

to life when the sunsetted provision expires. The new Family Code does not generally continue the sunset clauses in sections that are now subject to them, nor does the new code continue the prior section that would become operative on operation of a sunset clause. The comment to each Family Code section drawn from a statute subject to a sunset provision states its derivation and notes that the sunset provision is not continued.

In preparing the new code, the Commission has sought to find a consensus of opinion among interested persons and groups.<sup>18</sup> Drafts have been widely distributed for review. A number of workshop sessions were held to work through the comments of interested persons.

The Commission recognizes that much work remains to be done to improve the statutes and will continue to monitor the experience under the new code with a view toward correcting defects. The new structure should also make the statutes more accessible both for procedural and substantive improvements. In the course of reviewing California family law, the Commission has been compiling a list of substantive topics and more complicated procedural issues that merit further study.<sup>19</sup> At this time, however, the Commission is not proposing substantive revisions -- consistent with the Legislature's charge -- but plans to consider future substantive revisions as appropriate.

The Family Code is subject to a one-year delayed operative date. Thus, if the implementing legislation is enacted during the 1992 legislative session, the new code will become operative on January 1, 1994. This provides time for practitioners, judges, and other interested persons to become familiar with the new structure, and gives the Judicial Council time to revise family law forms. The delayed operative date also affords an opportunity to make any needed amendments to improve the code before it becomes operative.

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18. [At an appropriate time, we will acknowledge the individuals and groups who have participated in the project.]

19. For a compilation of many of these topics, see [we anticipate including an appendix, which will be an expanded and more polished form of the material set out in Exhibit 2 attached to Memorandum 92-14 relating to priorities and new topic suggestions].