

First Supplement to Memorandum 92-32

Subject: Study F-1000 - Family Code (Additional Amendments to Assembly Bill 2650)

Attached to this supplement are additional amendments to Assembly Bill 2650. The vast majority of these amendments are purely technical such as those needed to make references to dissolution, nullity, and legal separation consistent throughout the Family Code.

We have also included some amendments to make use of the term "community estate" more consistent in Division 7 (commencing with Section 2500) concerning division of property, and to conform other language to the definition. See Amendments 59, 61-63, 65-66, 68-70. The staff believes these statutes could benefit from additional changes, but we need to isolate the terminological issues and circulate them to interested persons for their comments before making additional changes. For example, "liabilities" is the preferred term in Family Code Sections 2501 and 2550-2556 (following the language in Civil Code Section 4800(a)), but "debts" is used almost exclusively in Family Code Sections 2620-2628 (following the language in Civil Code Section 4800(c)).

Amendment 114 restores language that was misplaced in the bill as introduced. (The language is stricken from Family Code Section 5652 as indicated on page 253 of AB 2650.)

Several amendments concerning the adoption statutes are offered in response to suggestions we recently received from the Department of Social Services (DSS). (See fax from Lenore Schmidt, Exhibit 1; note that the amendments suggested by DSS are keyed to the bill as introduced, so the page and line numbers do not match the bill as amended.) Revisions drafted in response to the DSS letter include Amendments 131-32, 134-43, 145-55.

Amendment 1 is offered in response to the concern expressed by DSS and others that, since "shall" is mandatory and "may" is permissive (as provided in Family Code Section 12), "may not" must be permissive as well. The staff's view is that the "not" plays a major role in this term, as one might expect. "May not" means that something is not permissive, is not permitted -- otherwise the word "not" would be rendered meaningless and "may" and "may

not" would mean exactly the same thing. The agrees with the following excerpt from the Constitution Revision Commission drafting rules, set forth in the Legislative Counsel Drafting Manual (1975): "In addition to meaning the permissive as opposed to 'shall,' 'may' when joined with the negative 'not' is used by the commission to mean the strongest inhibition, as in 'a person may not do something' rather than 'a person shall not.'" This is good drafting, the staff believes, although we have never insisted on this terminology. The drafting rules of the National Conference of Commissioners on Uniform State Laws direct the use of "may not" or "must not" to express prohibition, not "shall not."

The staff will continue to work with DSS and, consistent with our charge not to change the substance of existing law, we may need to accept additional amendments before the bill is heard in the Senate Judiciary Committee.

There will not be time for the Commission to consider additional technical amendments needed to satisfy DSS, and perhaps other technical amendments that come to our attention before the hearing. This is not a serious matter, in this case, because the bills will not become operative until January 1, 1994, thus giving the Commission the opportunity to reconsider any late amendments when we review the Family Code for purposes of preparing a clean-up bill for the 1993 legislative session.

Also attached is a letter from Frieda Gordon Daugherty on behalf of the board of the Association of Certified Family Law Specialists (ACFLS). This letter memorializes a number of issues that ACFLS believes should be considered on a priority basis for inclusion in the 1993 clean-up legislation. Once the Family Code bills are enacted, the staff will prepare a memorandum for Commission consideration that suggests priorities on future issues for study in this area. We believe that ACFLS has identified many issues that merit consideration and are confident that progress can be made in improving the technical operation of the Family Code, with the assistance of ACFLS and other interested groups.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

FG303
05/19/92

AMENDMENTS TO ASSEMBLY BILL 2650
AS AMENDED IN ASSEMBLY MARCH 23, 1992

§ 12 AMENDMENT 1

On page 6, line 19, after the period insert:
"Shall not" and "may not" are prohibitory.

§ 75(a) AMENDMENT 2

On page 7, line 31, strike out "nullity," and in line 32, after
the comma, insert:
nullity,

§ 75(b) AMENDMENT 3

On page 7, line 35, strike out "nullity," and after "dissolution,"
insert:
nullity,

§ 754 AMENDMENT 4

On page 39, lines 36 and 37, strike out "or legal separation or
for a judgment of nullity of the marriage" and insert:
, for nullity of the marriage, or for legal separation of the parties

§ 781 AMENDMENT 5

On page 43, line 10, strike out "a judgment of legal separation
or" and in line 11, after "marriage" insert:
or legal separation of the parties

§ 910(b) AMENDMENT 6

On page 47, line 3, strike out "for" and insert:
of

§ 910(b) AMENDMENT 7

On page 47, line 4, strike out "a judgment for legal separation" and insert:

legal separation of the parties

§ 1830(a) AMENDMENT 8

On page 65, line 32, after "of" insert:
the

§ 1830(a) AMENDMENT 9

On page 65, line 33, strike out "legal separation, or a judgment of"

§ 1830(a) AMENDMENT 10

On page 65, line 34, after "marriage" insert:
, or legal separation of the parties,

§ 1831 AMENDMENT 11

On page 66, line 6, after the comma insert:
for

§ 1831 AMENDMENT 12

On page 66, line 7, strike out "legal separation, or judgment of" and insert:
for

§ 1831 AMENDMENT 13

On page 66, line 8, after "marriage," insert:
or for legal separation of the parties,

§ 1840(a) AMENDMENT 14

On page 69, line 17, strike out "legal separation, or judgment of" and insert:
for

§ 1840(a) AMENDMENT 15

On page 69, line 18, after "marriage" insert:
, or for legal separation of the parties

§ 1840(b) AMENDMENT 16

On page 69, line 23, strike out "legal separation, or a judgment of" and insert:

for

§ 1840(b) AMENDMENT 17

On page 69, line 24, after "marriage," insert:
or for legal separation of the parties,

§ 1840(c) AMENDMENT 18

On page 69, line 27, after "marriage," insert:

for

§ 1840(c) AMENDMENT 19

On page 69, line 27, after "or" insert:

for

§ 1841 AMENDMENT 20

On page 69, line 32, after the comma insert:

for

§ 1841 AMENDMENT 21

On page 69, line 33, after "or" insert:

for

§ 1842(a) AMENDMENT 22

On page 70, lines 8 and 9, strike out "legal separation, or judgment of" and insert:

for

§ 1842(a) AMENDMENT 23

On page 70, line 9, after the comma insert:
or for legal separation of the parties,

§ 2000 AMENDMENT 24

On page 72, lines 20 and 21, strike out "under this division"

§ 2010 AMENDMENT 25

On page 72, line 26, after the comma insert:
for

§ 2010 AMENDMENT 26

On page 72, line 27, after "or" insert:
for

§ 2011 AMENDMENT 27

On page 73, line 2, strike out "thereof"

§ 2011 AMENDMENT 28

On page 73, lines 8 and 9, strike out "in such a proceeding"

§ 2011 AMENDMENT 29

On page 73, lines 13 and 14, strike out "in such a proceeding"

§ 2024 AMENDMENT 30

On page 74, line 15, strike out "declaring a marriage a" and
insert:
for dissolution of marriage or for

§ 2024 AMENDMENT 31

On page 74, line 16, strike out "or dissolving a" and insert:
of

§ 2038 AMENDMENT 32

On page 78, line 9, strike out "chapter" and insert:
article

§ 2201 AMENDMENT 33

On page 86, line 38, strike out "declared" and insert:
adjudged

§ 2210 AMENDMENT 34

On page 87, line 28, strike out the comma

§ 2212 AMENDMENT 35

On page 88, line 38, after "nullity" insert:
of marriage

§ 2212 AMENDMENT 36

On page 88, line 40, after "nullity" insert:
of marriage

§ 2253 AMENDMENT 37

On page 89, line 35, strike out "Section 3020 to", strike out
lines 36 and 37, and insert:
Division 8 (commencing with Section 3000).

§ 2254 AMENDMENT 38

On page 89, line 39, strike out "to have a marriage adjudged a
nullity" and insert:
for nullity of marriage

§ 2254 AMENDMENT 39

On page 89, line 40, after "judgment" insert:
of nullity of marriage

§ 2300pt AMENDMENT 40

On page 90, line 15, after "MARRIAGE" insert:
AND LEGAL SEPARATION

§ 2313 AMENDMENT 41

On page 91, line 1, after "dissolution" insert:
of marriage

§ 2321 AMENDMENT 42

On page 91, line 15, after "separation" insert:
of the parties

§ 2330(a) AMENDMENT 43

On page 92, line 6, after "separation" insert:
of the parties

§ 2330(b) AMENDMENT 44

On page 92, line 11, after "separation" insert:
of the parties

§ 2331 AMENDMENT 45

On page 92, line 34, after "summons" insert a comma

§ 2331 AMENDMENT 46

On page 92, line 35, strike out the comma

§ 2333 AMENDMENT 47

On page 93, line 28, after "separation" insert:
of the parties

§ 2334 AMENDMENT 48

On page 93, line 32, after "separation" insert:
of the parties

§ 2334 AMENDMENT 49

On page 93, line 40, after "separation" insert:
of the parties

§ 2334 AMENDMENT 50

On page 94, line 2, after "separation" insert:
of the parties

§ 2335 AMENDMENT 51

On page 94, line 4, after "separation" insert:
of the parties

§ 2336 AMENDMENT 52

On page 94, line 14, after "separation" insert:
of the parties

§ 2336 AMENDMENT 53

On page 94, line 25, strike out "interests" and insert:
interest

§ 2338 AMENDMENT 54

On page 96, line 35, after "separation" insert:
of the parties

§ 2338 AMENDMENT 55

On page 97, line 1, after "dissolution" insert:
of marriage

§ 2340 AMENDMENT 56

On page 97, line 13, after "dissolution" insert:
of marriage

§ 2344 AMENDMENT 57

On page 98, line 14, strike out "if the" and strike out line 15
and insert a comma

§ 2550 AMENDMENT 58

On page 103, line 37, after "separation" insert:
of the parties

§ 2552 AMENDMENT 59

On page 104, line 9, strike out "property" and insert:
the community estate

§ 2552 AMENDMENT 60

On page 104, line 10, after "separation" insert:
of the parties

§ 2554 AMENDMENT 61

On page 104, line 26, strike out "property and quasi-community
property" and insert:
estate

§ 2554 AMENDMENT 62

On page 104, line 28, strike out "property" and insert:
community estate

§ 2555 AMENDMENT 63

On page 105, lines 1 and 2, strike out "and quasi-community property" and insert:
estate

§ 2556 AMENDMENT 64

On page 105, line 6, strike out "a judgment of" and after "separation" insert:
of the parties

§ 2556 AMENDMENT 65

On page 105, line 8, strike out "property" and insert:
assets

§ 2556 AMENDMENT 66

On page 105, line 8, strike out "debts" and insert:
liabilities

§ 2556 AMENDMENT 67

On page 105, line 10, strike out "therein" and insert:
in the proceeding

§ 2556 AMENDMENT 68

On page 105, line 12, strike out "debt" and insert:
liability

§ 2556 AMENDMENT 69

On page 105, line 15, strike out "debt" and insert:
liability

§ 2556 AMENDMENT 70

On page 105, line 17, strike out "debt" and insert:
liability

§ 2580 AMENDMENT 71

On page 105, line 23, after "separation" insert:
of the parties

§ 2603 AMENDMENT 72

On page 106, line 39, strike out "property" and insert:
estate

§ 2604 AMENDMENT 73

On page 107, line 11, after "separation" insert:
of the parties

§ 2623 AMENDMENT 74

On page 108, line 22, after "dissolution" insert:
of marriage

§ 2623 AMENDMENT 75

On page 108, line 22, after "separation" insert:
of the parties

§ 2624 AMENDMENT 76

On page 108, line 36, after "dissolution" insert:
of marriage

§ 2624 AMENDMENT 77

On page 108, line 38, after "separation" insert:
of the parties

§ 2628 AMENDMENT 78

On page 109, line 16, after "separation" insert:
of the parties

§ 2641 AMENDMENT 79

On page 110, line 11, after "separation" insert:
of the parties

§ 3020 AMENDMENT 80

On page 114, line 40, after "child" insert:
, as set forth in Section 3022

§ 3060 AMENDMENT 81

On page 119, line 15, strike out "a judgment of"

§ 3060 AMENDMENT 82

On page 119, line 16, after "separation" insert:
of the parties

§ 3101 AMENDMENT 83

On page 122, line 36, strike out "under Section 2250 or 2330" and
insert:
for dissolution of marriage, for nullity of marriage, or for legal
separation of the parties

§ 3102 AMENDMENT 84

On page 123, line 23, strike out "unmarried" and insert:
unemancipated

§ 3110 AMENDMENT 85

On page 124, line 3, after the comma insert:
for

§ 3110 AMENDMENT 86

On page 124, line 4, after "or" insert:
for

§ 3120 AMENDMENT 87

On page 125, line 18, after "dissolution" insert:
of marriage

§ 3120 AMENDMENT 88

On page 125, line 19, after "separation" insert:
of the parties

§ 3120 AMENDMENT 89

On page 125, line 28, strike out "interests" and insert:
interest

§ 3133 AMENDMENT 90

On page 126, lines 29 and 30, strike out "one of the persons" and insert:

the parent or person recommended by the district attorney

§ 3183 AMENDMENT 91

On page 134, lines 14 and 15, strike out "under Section 2250 or 2330 with regard to their marriage" and insert:

for dissolution of marriage, for nullity of marriage, or for legal separation of the parties

§ 3402 AMENDMENT 92

On page 136, line 39, after "or" insert:

for

§ 3402 AMENDMENT 93

On page 136, line 40, after "separation" insert:
of the parties

§ 3600 AMENDMENT 94

On page 152, line 16, strike out "under", strike out line 17, and in line 18, strike out "(dissolution of marriage) or" and insert:

for dissolution of marriage or for legal separation of the parties or under

§ 3664 AMENDMENT 95

On page 158, line 2, after "separation" insert:
of the parties

§ 3800 AMENDMENT 96

On page 171, line 14, after "dissolution" insert:
of marriage

§ 3800 AMENDMENT 97

On page 171, line 14, after "separation" insert:
of the parties

§ 3802 AMENDMENT 98

On page 172, line 9, after "dissolution" insert:
of marriage

§ 3802 AMENDMENT 99

On page 172, line 10, after "separation" insert:
of the parties

§ 3808 AMENDMENT 100

On page 173, line 21, after "dissolution" insert:
of marriage

§ 3808 AMENDMENT 101

On page 173, line 21, after "separation" insert:
of the parties

§ 4331 AMENDMENT 102

On page 192, line 40, after "or" insert:
for

§ 4331 AMENDMENT 103

On page 192, line 40, after "separation" insert:
of the parties

§ 4332 AMENDMENT 104

On page 194, line 4, after "or" insert:
for

§ 4332 AMENDMENT 105

On page 194, line 5, after "separation" insert:
of the parties

§ 4333 AMENDMENT 106

On page 194, line 11, after "or" insert:
for

§ 4333 AMENDMENT 107

On page 194, line 11, after "separation" insert:
of the parties

§ 4336 AMENDMENT 108

On page 194, line 36, after "or" insert:
for

§ 4336 AMENDMENT 109

On page 194, line 36, after "separation" insert:
of the parties

§ 4802 AMENDMENT 110

On page 216, line 29, strike out "judgment of nullity" and insert:
for nullity of marriage

§ 4802 AMENDMENT 111

On page 216, line 30, after "separation" insert:
of the parties

§ 4824 AMENDMENT 112

On page 220, line 31, after "separation" insert:
of the parties

§ 5531 AMENDMENT 113

On page 248, lines 36 and 37, strike out "legal separation,
nullity of marriage, or dissolution of marriage" and insert:
dissolution of marriage, for nullity of marriage, or for legal
separation of the parties

§ 5551 AMENDMENT 114

On page 250, line 6, after "5551." insert:
A temporary restraining order shall set forth on its face a notice in
substantially the following form:

"NOTICE TO RESTRAINED PARTY: If you do not appear at the court
hearing specified herein, the court may grant the requested orders for
a period of up to 3 years without further notice to you."

5552.

§ 6601 AMENDMENT 115

On page 260, line 19, after "the" insert:
action or

§ 6900 AMENDMENT 116

On page 264, line 1, after "6900." insert:
Unless the provision or context otherwise requires, the definitions in
this chapter govern the construction of this part.
6901.

§ 6900 AMENDMENT 117

On page 264, line 1, strike out "as used in this part"

§ 6901 AMENDMENT 118

On page 264, line 5, strike out "6901. 'Medical care' as used in
this part" and insert:
6902. "Medical care"

§ 6901 AMENDMENT 119

On page 264, line 8, after "of" insert:
or to be rendered by

§ 6902 AMENDMENT 120

On page 264, line 10, strike out "6902. 'Parent or guardian' as
used in this part" and insert:
6903. "Parent or guardian"

§ 7002 AMENDMENT 121

On page 270, line 3, strike out "This" and strike out lines 4 and 5

§ 7500pt AMENDMENT 122

On page 275, line 9, strike out "ISSUE" and insert:
CHILD

§ 7553 AMENDMENT 123

On page 277, line 3, after "action" insert:
or proceeding

§ 7557 AMENDMENT 124

On page 278, line 8, after "action" insert:
or proceeding

§ 7557 AMENDMENT 125

On page 278, line 10, after "action" insert:
or proceeding

§ 7557 AMENDMENT 126

On page 278, line 12, after "action" insert:
or proceeding

§ 7660 AMENDMENT 127

On page 286, line 39, strike out "(a)" and insert:
(1)

§ 7660 AMENDMENT 128

On page 286, line 40, strike out "(b)" and insert:
(2)

§ 8521 AMENDMENT 129

On page 320, line 5, strike out "Full-service" and strike out
lines 6 to 8, inclusive

§ 8533(b) AMENDMENT 130

On page 320, strike out lines 35 to 37, inclusive

§ 8608(b) AMENDMENT 131

On page 323, lines 28 and 29, strike out "and delegated county
adoption agencies"

§ 8608(b) AMENDMENT 132

On page 323, line 34, strike out "or delegated county adoption
agency"

§ 8700 AMENDMENT 133

On page 328, line 12, strike out "duly"

§ 8702(a)(2) AMENDMENT 134

On page 329, line 30, strike out "appropriate"

§ 8702(a)(3) AMENDMENT 135

On page 329, line 34, strike out "disclosure of" and insert:
the department or the licensed adoption agency to disclose

§ 8702(b) AMENDMENT 136

On page 330, line 25, strike out "DEPARTMENT OR"

§ 8703 AMENDMENT 137

On page 330, line 38, strike out "the department or"

§ 8706 AMENDMENT 138

On page 333, line 3, strike out "An agency may not" and insert:
No agency shall

§ 8713 AMENDMENT 139

On page 337, line 10, after the second "the" insert:
licensed

§ 8714(c) AMENDMENT 140

On page 338, line 19, strike out "provided that" and insert:
unless

§ 8714(c) AMENDMENT 141

On page 338, line 20, strike out "not"

§ 8714(c) AMENDMENT 142

On page 338, line 21, strike out "and that" and insert:
or

§ 8714(c) AMENDMENT 143

On page 338, line 22, strike out "not"

§ 8717 AMENDMENT 144

On page 339, line 20, strike out "If" and insert:
When

§ 8803 AMENDMENT 145

On page 343, line 36, after "delegated" insert:
county

§ 8803(b) AMENDMENT 146

On page 344, line 12, strike out "provided that" and insert:
unless

§ 8803(b) AMENDMENT 147

On page 344, line 13, strike out "not"

§ 8803(b) AMENDMENT 148

On page 344, line 14, strike out "and that" and insert:
or

§ 8803(b) AMENDMENT 149

On page 344, line 15, strike out "not"

§ 8814 AMENDMENT 150

On page 353, line 38, strike out the second "the" and insert:
a

§ 8818(a)(2) AMENDMENT 151

On page 356, line 20, strike out "appropriate"

§ 8818(a)(3) AMENDMENT 152

On page 356, line 24, strike out "disclosure of" and insert:
the department to disclose

§ 8912(c) AMENDMENT 153

On page 363, line 12, strike out "provided that" and insert:
unless

§ 8912(c) AMENDMENT 154

On page 363, line 13, strike out "not"

§ 8912(c) AMENDMENT 155

On page 363, line 14, strike out "not"

§ 8915 AMENDMENT 156

On page 363, line 39, strike out "If" and insert:

When

§ 9202(b) AMENDMENT 157

On page 370, line 40, strike out "decision. The" and insert:
decision.

(c) The

APR-30-'92 THU 14:46 ID:DEPT SOCIAL SERVICES TEL NO:916-322-0234
State of California

#317 P01

Health and Welfare Agency

FAX COVER SHEET

DEPARTMENT OF SOCIAL SERVICES
Office of Legislation

To : Stan Ulrich

From : Lenore Schmidt

Phone : (916) 657-2623 FAX #: (916) 653-1695

Date : 4/30 Time : 4:00

Subject : AB 2650

This coversheet and 7 page(s) were sent.

APR 9 0 1992

AB 2650 Amendments
(As introduced)

File: _____
Key: _____

Do not number the statutes consecutively. The numbering should leave room between each so future statute can be inserted. (This was taken into consideration during the development of AB 3532)

We know there is adoption-related legislation currently in process (AB 3717, AB 3456, etc.). However, there is no co-joining language in AB 2650.

At Section 3005 we suggest adding: "(e) Filing a relinquishment with the State Department of Social Services"; and "(f) The granting of a decree of adoption for the child" to the list of occurrences when authority of a parent ceases.

Page 315, line 5

"...of a minor child or , in the case of an adult adoption, an adult."

Clarification and consistency. The proposed legislation uses "minor" in some sections and "child" in others. "Child" is also a more humanizing term than is "minor". The other addition is for clarity since AB 2650 is placing the adoption of adults in the same division as the adoption of children.

line 7

~~child~~ child, other than..."

Consistency. "Child" is also a more humanizing term than is "minor".

Page 317, lines 1-2

~~'Stepparent adoption' means an adoption under Chapter 3 (commencing with Section 9000) of Part 2~~ 'Stepparent adoption' means the adoption of a child by a stepparent when one birth parents retains their custody and control of the child.'

The definition as proposed in AB 2650 is not a definition. It is also not consistent with the definitions for "Agency", "Independent" or "Intercountry" Adoptions.

ADD the following definitions:

'Child' and 'children' mean minor child and minor children, respectively.'

Clarification. See comments at page 315, line 5.

"'Personal knowledge' includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal name, age, religion, race or ethnicity, employment, whether other children or adults reside in their home, any health conditions curtailing their normal daily activities or reducing their normal life expectancy, and their general area of residence or, upon request, their address."

This is currently listed at Section 8801(b) in AB 2650. It is the only adoption definition in AB 2650 that is not included in the definitions section. While an argument could be made "personal knowledge" is specific to one adoptions program and should be referenced only there, there are several other terms defined in the definitions section for which the same could be said. It is felt if there is a definitions section, individuals will look there for a word rather than in the specific program section.

"'Petitioner' means a prospective adoptive parent who has filed an adoption petition with the superior court pursuant to the provisions of this Division in the county within which the person resides."

In the adoptions process, individuals wanting to adopt are designated differently depending upon their status in the process. Including this definition is for clarity.

Page 317, line 9 "...unmarried ~~with~~ child may..."

Consistency. See comments at page 315, line 5.

line 24 "...spouse, ~~with~~ shall not adopt..."

Clarity. AB 2650 defines "may" as permissive and "shall" as mandatory. Including the word "not" after "may" will be confusing because "may" has been defined as permissive. It is believed adoption attorneys would challenge the statute stating it is permissive by definition when in reality that is not the intent. "Shall" removes all doubt of the particular statute being mandatory.

Page 317, line 28 "...Section 7611 ~~with~~ shall"

See comments at page 317, line 24.

Page 318, line 10 "Section 7611 ~~with~~ shall not be..."

See comments at page 317, line 24.

Page 319, lines 17-18 "...licensed adoption agencies ~~and delegated county~~
~~adoption agencies~~ shall..."

Not needed. "delegated county adoption agency" is defined as licensed county adoption agency and "licensed adoption agency" definition includes the licensed county adoption agency.

Page 319, line 23 "~~..agency or delegated county adoption agency~~"

See comments at page 319, lines 17-18.

Page 325, line 19 "...a response to ~~appropriate~~"

Clarity. Using "appropriate" leaves the statute open to individual interpretation as "appropriate" is not defined. The intent of the statute is that the agency would respond to any inquiry received, not just the ones it felt appropriate. In addition, all agencies would not interpret "appropriate" the same.

Line 23 "...years to request ~~disclosure~~ of the department or the licensed adoption agency to disclose the name..."

Clarity. As proposed, the statute does not indicate to whom the 21 year old adoptee is to address their request.

Page 326, line 27 "~~..keep the department of this~~"

Duplicative and would be confusing. In the Agency Adoptions Program, the department would be part of "this agency".

Page 327, line 6 "...petition ~~may~~ shall be filed..."

See comments at page 317, line 24.

Page 328, line 32 "...agency ~~may~~ shall not place..."

See comments at page 317, line 24.

Page 328, line 35 "...biological parents, so far..."

Clarity.

Page 332, line 29 "~~§718714~~ (a) A person..."

In the Agency Adoptions process, the child is placed before a petition is filed. The statute should follow the process for clarity. As proposed in AB 2650, it appears the petition is filed before the child is placed.

Line 39 "...by the licensed adoption..."

Clarity. "Adoption agency" is not defined.

Page 333, line 11

"~~87748713~~ (a) In no event may/shall a child..."

See comments at pages 317, line 24 and 332, line 29.

line 12

"~~relinquish~~ freed for adoption..."

Clarity. In the Agency Adoptions Program, the birth parent can voluntarily relinquish their child to the licensed adoption agency or the parent's parental rights can be terminated by the court. Using "freed" covers both circumstances.

line 18

"...to be adopted may/shall not..."

See comments at page 317, line 24.

line 21

"...child may/shall not be..."

See comments at page 317, line 24.

Page 334, line 10

"...on the petitioners ~~and/or~~ that..."

As currently in statute, this section states "or" which means that the notice of recommendation of denial has not been personally served or the court has not issued an order prohibiting removal. In most instances, the petitioner will have been personally served by the adoption agency but the court will not have issued its order prohibiting removal from the county. To use "and" would require both, thereby giving the prospective adoptive parents time to leave the county with the child.

line 27

"Code may/shall be construed..."

See comments at page 317, line 24.

Page 337, line 39

"8801. (a) The selection..."

Not needed because we are recommending deletion of (b).

Page 338, lines 5-13

(b) "Personal knowledge" as used in this section includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, age, religion, race or ethnicity, employment, whether other children or adults reside in their home, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, and their general area of residence or, upon request, their address."/>

See comments after definition addition of "personal knowledge".

Page 339, line 10 "...to be adopted ~~may~~shall not..."

See comments at page 317, line 24.

line 13 "...child ~~may~~shall not be..."

See comments at page 317, line 24.

Page 340, line 3 "...the petitioners ~~and/or~~ that..."

See comments at page 334, line 10.

line 17 "Code ~~may~~shall be..."

See comments at page 317, line 24.

Page 346, line 20 "...or parents ~~may~~shall not"

See comments at page 317, line 24.

line 24 "...agency still ~~may~~shall not accept..."

See comments at page 317, line 24.

Page 349, line 26 "...the department or of ~~the~~"

Clarity. The birth parents may not live in the same county as the prospective adoptive parents. This may require the birth parents to appear before another delegated county adoption agency to sign their consent to the adoption. Using "the" can be confusing since it appears to mean only delegated county adoption agency investigating the independent adoption.

Page 351, line 16 "...consent ~~may~~shall not be..."

See comments at page 317, line 24.

Page 352, line 8 "...response to ~~appropriate~~ inquiries..."

See comments at page 325, line 19.

line 12 "...to request ~~disclosure~~ of the department to disclose the..."

See comments at page 325, line 23.

line 34 "Services, or the licensed adoption agency that joined in the petition, for the..."

The form that is used for this process is the same for both the Agency and the Independent Adoptions Programs. Therefore, the wording in this section should match the wording in Section 8702.

Page 353, lines 14-15 "...the department ~~of this agency~~ informed of..."

In the Independent Adoptions Process, the delegated county adoption agency sends their closed files to the department. The birth parent should also send this information to the department.

Page 355, line 23 "...the time the child ~~left~~ leaves the..."

Grammatical.

Page 356, line 13 "...adoption agencies ~~may~~ shall work..."

See comments at page 317, line 24.

line 16 "...agreement ~~may~~ shall not violate..."

See comments at page 317, line 24.

line 18 "...chapter ~~may~~ shall be construed..."

See comments at page 317, line 24.

Page 357, line 9 "...agency ~~may~~ shall not place..."

See comments at page 317, line 24.

line 22 "~~§9288911~~. As a condition..."

line 25 "~~§9278912~~. (a) A person..."

Page 358, line 7 "~~§9278910~~. (a) In no..."

This places the sections into the order they occur.

line 7 "...eventually ~~shall~~ a child..."

See comments at page 317, line 24.

line 14 "...to be adopted ~~may~~ shall not..."

See comments at page 317, line 24.

line 17 "...child ~~may~~ shall not be..."

See comments at page 317, line 24.

Page 359, line 21 "Code ~~may~~ shall be construed..."

See comments at page 317, line 24.

Page 361, line 20 "...The court ~~may~~shall not make..."

See comments page 317, line 24.

line 24 "...no home study ~~may~~shall"

See comments page 317, line 24.

Page 365, line 25 "court ~~may~~shall not authorize..."

See comments page 317, line 24.

Page 366, line 31 "decision. (c) The names..."

Clarity.

Page 367, lines 3-4 "in writing/; and (2) Upon request..."

As proposed in (1), it appears the adoptee could obtain the birth parent's name and address without agreeing to the release of theirs. The same for the birth parent in (2). This was not the intent when this section was originally written. The intent was that in order for the adoptee to obtain the birth parent's name and address, the adoptee would have to agree to the release of his/hers. The same reciprocal requirement applies for the birth parent.

line 13 "(2) Disclose..."

As a result of the change to lines 3-4.

Page 368, line 35 "~~may~~shall solicit, directly..."

See comments at page 317, line 24.

Page 369, line 39 "...or agency ~~may~~shall not solicit..."

See comments at page 317, line 24.

Page 372, line 11 "...birth parents of a..."

Clarity.



May 19, 1992

Mr. Stan Ulrich, Assistant Executive Secretary
CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303

Law Revision Commission
RECEIVED

MAY 20 1992

File: _____
Key: _____

Re: AB 2650: Family Code

Dear Mr. Ulrich:

I write to you on behalf of the board of the Association of Certified Family Law Specialists (ACFLS). Our board has previously endorsed the passage of the Code and we applaud its eradication of remnants of gender discrimination and other inequities which had lingered in the "old law."

On the other hand, the board has a number of concerns relative to the form and substance of the new code. For example, new language has created new ambiguities and inconsistencies in terminology abound. In other critical areas, the new code omits or inadvertently changes the existing law and the legislative intent.

At the direction of the board, and with their approval, I present to you a list of some of the most pressing concerns regarding this bill. The time left prior to the effective date of the bill will be well spent in correcting the indicated defects.

Although our organization cannot speak for all family law practitioners, we do believe that we represent the opinions of large number of the most experienced family lawyers. That is, we believe that our positions would find a great consensus amongst the family law bar--and bench for that matter. We believe that family lawyers all over the state would be grateful for our curing as many of these ills now as possible so that they and their clients will be spared some of the consternation and confusion which would likely ensue.

We want to reiterate that we believe that the Law Revision Commission has done a splendid job. We are offering help to enable you to make the code even more clear and concise than it already is.

In general, we have not indicated an order of priority with respect to the items below. However, we hope that the review and resolution of these issues will be a priority for study by the staff of the Law Revision Commission over the next few months.

Mr. Stan Ulrich
May 19, 1992
Page two

Re: Family Code

Please call upon us for further dialog in this regard:

1. Recent legislation (SB 370) replaces the terms "family member" "household member" or "cohabitant of the opposite sex" in defining persons residing together with the term "cohabitant" or "former cohabitant." It behooves us to make this definition consistent throughout the Code.

2. The use of the terms "actions" and "proceedings" are not generally defined and thus inconsistent and ambiguous. "Action" should be replaced with "proceeding" throughout the Code.

3. The use of the term "this part" is unintelligible now that the Family Law Act is about to be repealed. The use of the terms "this code" or "this division" should replace "this part" or "this act" so that, for instance, custody and related counseling and attorneys' fees provisions may be extended to all matters whether they originally fell under the Family Law Act, the Uniform Parentage Act or the Domestic Violence Prevention Act.

4. It is time to determine that visitation should also be available to any nonparent, not just a stepparent or grandparent, who has established a meaningful relationship with the child.

5. Family law practitioners and judicial officers are more and more frequently using leveling language in setting forth "parenting plan" provisions which were previously termed "custody" and "visitation." This new language, which removes the "primary" and "secondary" class of parent and replaces it with time-share provisions encouraging positive cooperation and equal status between the parents regardless of which parent is caring for the child at the moment, is supported by Hugh McIsaac, Ph.D., head of the Family Conciliation Court Services in Los Angeles County, and the Family Law Advisory Committee. We also encourage the use of such non-threatening language and strongly recommend an immediate change in the language of the Code to reflect more modern practice and theory.

6. The definitions in AB 2650 of "community property," "separate property," "quasi-community property" and the introduction of the term "community estate" is, in our opinion, a DISASTER! We would like the opportunity to study, along with the staff of the Law Revision Commission, proposals for uniform and accurate definitions which encompass both past legislative intent and present practice and circumstance. For example, there is no definition for property purchased out of state by a married couple while domiciled in THIS State! Furthermore, recent amendments such

Mr. Stan Ulrich
May 19, 1992
Page three

Re: Family Code

as current Civil Code Section 5125.1 do not include quasi-community property. Why does the term "community estate" property include quasi-community property sometimes, but not others? Is there really a need to continue with the concept of "quasi-community property?" Quasi-community property is treated as separate property for purposes of management and control during marriage. Consequently, property that was formerly community property (real property purchased while domiciled in a community property state other than California that becomes quasi-community property upon moving to California) may be stripped of its character for purposes of management and control during marriage upon moving to California. The definition of "community estate" in §§901 and 2501 are not identical. Clearly, it would be preferable to have one definition of each of these property characterizations, taking into consideration the retroactive applications of such change. This should be an IMMEDIATE STUDY! Also, the placement and lack, at times, of substantive content of these definitions is confusing and inappropriate.

7. The revision of Code of Civil Procedure Sections 540 et seq. (Domestic Violence Prevention Act) is somewhat inconsistent and contradictory with the original legislative intent and, as such, some of the hard-fought temporary restraining orders (such as residence exclusions and property restraints) have been arbitrarily limited or excluded by the drafters of AB 2650. The inclusion of several definitions of a similar domestic violence prevention order is of no benefit. This, too, should be a major priority for study.

8. ALL violations of temporary restraining orders should be treated equally (i.e., punishable under Penal Code Section 273.6.) It is urged that revision of the Summons occur in order to comply with existing law.

9. Ex parte orders and orders to show cause have also been torn asunder in the proposed bill. Civil Code Section 4620 has been omitted. Ex parte pendente lite child custody orders and child support orders have also been omitted. We strongly suggest new Sections 240 and 241 be looked at with a view towards preserving current law in its entirety! Temporary restraining orders and support orders issued without notice should be uniform in all aspects, including time, and should follow the more recent DVPA language.

10. Attorneys' fees provision in general must be reviewed and studied. Besides the much-needed anti-Droeger legislation, we need guidelines for the courts for increased pendente lite fee orders across the board. Consistent standards must be applied not only to

Mr. Stan Ulrich
May 19, 1992
Page four

Re: Family Code

marital situations, but to the UPA and DVPA as well. New Sections 291 and 273 should be reviewed so as to be consistent.

11. Fiduciary duty laws must be looked at relative to retroactivity, standards of duty, "fiduciary" versus "confidential" relationship, "trustee" versus "partnership" language, and ownership interests (i.e., changing §751 to "present, existing, undivided and equal interest.") Most important, there are no procedural rules for enforcing these hard-won rights! Please consider including such rules prior to enactment of AB 2650.

12. There is an inconsistency between the temporary restraining orders preventing disposition of separate property and the general absolute power of disposition of separate property which needs to be dealt with.

13. The terms "common necessities," "basic needs" and "necessaries of life" may have different meanings and need clarification. Please also clarify the terms "living separately;" and "living separate and apart."

14. Section 1815 regarding conciliation court services permits unqualified people to act as mediators in small counties. We would prefer uniform standards similar to the recent amendment regarding vocational counselors.

15. Since the presumption in §7500 can now be rebutted, is it really conclusive? Which test should be used for presumptions of paternity, "preponderance of the evidence" or "clear and convincing evidence?" Both currently exist in §7555 and §7612. Gender bias still exists with regard to paternity (i.e. §4846), which needs addressing.

16. The statute detailing the community property presumptions for property held in joint form has been rewritten such that the community property presumptions of the Civil Code have been substantively altered. Immediate review and revision is needed.

17. It is time that the legislation regarding dates for valuation of assets and liabilities include the procedural requirements necessary to effectuate (i.e., Is a noticed motion necessary?)

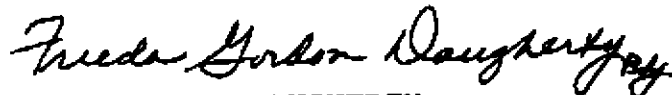
18. The ground of insanity in a Petition for Dissolution should be eliminated as it is redundant and obsolete.

Mr. Stan Ulrich
May 19, 1992
Page five

Re: Family Code

19. Employee pension benefit plan enforcement orders as set forth in §§2060 and 5103 must be reconciled.

Very truly yours,



FRIEDA GORDON DAUGHERTY,
Certified Family Law Specialist

cc: Jackie Speier
Larry Gassner ✓
Bob Chrisman ✓
John Rothchild ✓
Melissa Tobin ✓
Michelle Katz ✓
Stephen Wagner ✓