

Memorandum 92-54

Subject: Study F-1001 - District Attorney Support Enforcement

This memorandum discusses two preliminary issues regarding whether or not to move the Welfare and Institutions Code provisions that provide for the enforcement of support by the district attorney to the Family Code.

Should the W&I Provisions Be Moved to the Family Code?

At the Commission's July meeting, the staff was asked to make a careful review of these statutes and their relationship to eligibility for public aid in an effort to determine if it was appropriate and technically feasible to move these sections into the Family Code. (See Minutes, July 9-10, 1992, at p.6.) After consideration of this issue and further review of the statutes, the staff believes that it is both appropriate and feasible to do so.

District Attorney Support Enforcement Services Not Limited to Cases Involving Public Assistance

The support enforcement services of the district attorney are available both to people receiving public assistance and to people who are not receiving public assistance. The California Supreme Court, in discussing Welfare and Institutions Code Sections 11350.1 and 11475.1, the two seminal Welfare and Institutions Code sections that provide for support enforcement by district attorneys, stated: "Both statutes were enacted by the California Legislature as a precondition to the state's participation in the federal AFDC program. A 1975 amendment to title IV of the federal Social Security Act mandates that states which participate in the AFDC program shall provide child support collection services to all individuals, whether or not they are receiving public assistance." *Monterey County v. Cornejo* 53 Cal. 3d 1271, 1281 (1991) (citations omitted). See also *Welf. & Inst. Code* § 11475.1(d)

(outreach program informing public that district attorney support enforcement services available to persons not receiving public assistance). The staff has also learned, from one district attorney practicing in this area, that district attorneys do appear in many nonwelfare cases and that nonwelfare cases can even outnumber welfare cases.

In addition, there are two unique support enforcement mechanisms that must be obtained through the district attorney, which are now located in the Welfare and Institutions Code. These are the procedures allowing for the capture of state unemployment benefits (Welf. & Inst. Code § 11350.5) and for the denial of a business or professional license (Welf. & Inst. Code § 11350.6). Neither of these enforcement mechanisms is limited to use by counties enforcing support on behalf of people receiving public assistance.

Family Code Includes Provisions Relating to District Attorney Enforcement of Support

At present there are provisions relating to the district attorney's role in support enforcement located in both the Family Code and in the Welfare and Institutions Code. See, e.g., Fam. Code §§ 3691 (district attorney notice of support modification), 3752, 3761, 3765, 3767, 3771 (special rules regarding health insurance coverage assignment where district attorney assigned payee), 4200-4293, 4350-4352 (court ordered payment of support to county designated officer and enforcement by district), 4550 ("child support obligee" can include district attorney for purposes of procedure for deposit of money to secure future child support payments), 4572 (service of order to deposit money on district attorney), 4573 (requirement that district attorney forward support received on behalf of child not receiving public assistance), 4729 (district attorney to use civil penalty for enforcement of child support). The district attorneys also enforce support under the Uniform Reciprocal Enforcement of Support Act, which is located at Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code.

Preliminary Opinion of Interested Parties Is that the Provisions Should Be Moved

The staff has been informed by people who use these statutes and are familiar with them that they believe these provisions should be moved. When the Commission conducted its original survey to determine the need for a new Family Code, 84% (489) of the 666 respondents answered that these provisions should be moved. (See Memorandum 90-37, at p. 7.) A consultant to the Assembly Judiciary Committee, who practiced family law prior to becoming a consultant, expressed to the staff her strong belief that these provisions should be moved to make them accessible to those attempting to use California family law. The staff also attended a meeting of Assemblywoman Jackie Speier's Family Law Advisory Committee at which the district attorney representative initially felt that the enforcement provisions should be moved, and other members of the Committee and Ms. Speier agreed.

On August 28, 1992, the staff met with two district attorney members of the Family Support Council. The Family Support Council is a statewide organization of district attorneys who are assigned to support enforcement. The staff drafted, for purposes of discussion, a proposal for moving the district attorney provisions into the Family Code. An outline of the discussion draft is attached to this memo as Exhibit 1. The discussion draft itself has not been attached for reasons explained in the First Supplement to this memo.

Which W&I Provisions Should Be Moved?

Assuming that the Commission approved moving these provisions into the Family Code, the next issue is which of the Welfare and Institutions Code statutes should be moved. (For an overview of the staff recommendation as to which of the Welfare and Institutions Code provisions would be moved and which would remain unchanged in the Welfare and Institutions Code, see the outline attached as Exhibit 1, at p.4.)

Provisions Proposed To Be Moved to Family Code

After review of these statutes, the staff recommends that those provisions having general application to enforcement of support by the

district attorney should be moved. This would involve moving the following provisions:

(1) Provisions providing generally for the enforcement of support in a proceeding initiated by the district attorney: Welf. & Inst. Code §§ 11350.1 (action for support), 11475.1 (action for support), 11476.1 (agreements with noncustodial parents), 11478.1 (confidentiality of information and records), 11478.2 (attorney representation of public interest), 11478.8 (duty to provide information to district attorney), 11488 (consideration of all children to be supported), 11489 (wage assignment for support), 11490 (medical insurance order), 11492 (medical insurance form), 11492.1 (administrative costs of medical insurance form).

(2) Provision providing for capture of payment of unemployment compensation benefits to a person owing child support: Welf. & Inst. Code § 11350.5.

(3) Provision providing for denial of a business or professional license of a person owing child support: Welf. & Inst. Code § 11350.6.

Provisions Proposed To Remain in Welfare and Institutions Code

The staff recommends that those sections solely or primarily concerned with public assistance, administrative provisions dealing with the role of the Department of Social Services in support enforcement, and the California Parent Locator and Central Registry Service should stay in the Welfare and Institutions Code. This would require that the following sections not be moved:

(1) Provisions that are concerned solely with public assistance: Welf. & Inst. Code §§ 11351.5 (contribution of unrelated adult male residing with family applying for or receiving aid), 11353 (statement of parents' current monthly income and expenses on application for aid), 11480 (penalty for receipt or use of aid for purpose other than support), 11481.5 (welfare fraud hotline pilot project), 11482-11486 (penalties for fraud and misrepresentation in obtaining aid), 11487.5 (Fresno County pilot program reimbursing county recovering aid overpayments).

(2) Provisions that are primarily concerned with public assistance: Welf. & Inst. Code §§ 11350 (action to recover public aid), 11477 (cooperation in district attorney support enforcement precondition to aid eligibility), 11477.1 (limitation on use of polygraph testing of aid applicants).

(3) Provisions dealing with the role of the Department of Social Services, the county welfare department, and other agencies in the support enforcement scheme: Welf. & Inst. Code §§ 11475 (administration of state plan for securing child and spousal support by DSS), 11475.2 (DSS authority where public agency fails to comply with state enforcement plan), 11475.5 (DSS publication describing procedure for collection and payment of child and spousal support), 11476 (county department to refer specific aid applicants to district attorney), 11476.2 (county department to notify aid recipient of support payments received), 11478 (agencies to cooperate in state enforcement plan), 11478.6 (DSS worker's compensation notification project), 11478.7 (AG uniform statistical report), 11479.5 (DSS authorization to develop and implement regulations establishing enforcement program), 11479.6 (DSS pilot program integrating federal support incentives into performance program), 11487 (state and federal shares of aid recovered).

(4) Provision creating California Parent Locator Service and Central Registry: Welf. & Inst. Code Section 11478.5.

Conclusion

In sum, while these Welfare and Institutions Code sections provide a unique form of support enforcement involving the use of governmental entities, these statutes are primarily concerned with the enforcement of support and are not limited in application or relevance to enforcement of support on behalf of people receiving public assistance.

The legislative resolution that assigned the drafting of the Family Code to the Commission states that a central purpose of the code is the consolidation of child and family relations law spread over numerous codes, including the Welfare and Institutions Code. (See 1989 Cal. Stat. res. ch. 70.) The staff believes that these provisions comprise a substantial and important piece of the body of California family law and should, therefore, be moved into the new integrated Family Code.

Respectfully submitted,

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#F-1001
Memo 92-54

pm
8/28/92

EXHIBIT 1

Outline of Preliminary Draft Legislation Relocating District Attorney Support Enforcement Provisions

RECOMMENDED LEGISLATION Outline FAMILY CODE

DIVISION 9. SUPPORT

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 2. GENERAL PROVISIONS

§ 3557 (added). Intervention by district attorney

PART 2. CHILD SUPPORT

CHAPTER 2. COURT-ORDERED CHILD SUPPORT

§ 4005 (added). Notice to district attorney where likelihood of public aid to child

PART 5. ENFORCEMENT OF SUPPORT ORDERS

CHAPTER 1. GENERAL PROVISIONS

§ 4507 (added). Benefits exempted from satisfaction of support obligation

PART 6. ENFORCEMENT OF SUPPORT BY DISTRICT ATTORNEY

CHAPTER 1. SUPPORT ENFORCEMENT PROCEEDINGS INITIATED BY DISTRICT ATTORNEY

Article 1. Definitions

§ 5400 (added). Application of definitions

§ 5403 (added). "District attorney"

§ 5406 (added). "Out of wedlock"

Article 2. General Provisions

§ 5420 (added). District attorney represents public interest

§ 5421 (added). Cooperative arrangements

§ 5422 (added). Outreach program

§ 5423 (added). Independent action for support not limited

§ 5424 (added). Parties may bring independent action for support

§ 5425 (added). Consideration of number of children to be supported

§ 5426 (added). Enforcement of spousal support not limited

§ 5427 (added). Manner of giving notices

§ 5428 (added). Enforcement remedies not exclusive

Article 3. Agreements with Noncustodial Parent Before Filing Action or Proceeding

§ 5440 (added). Article not applicable where civil action commenced

§ 5441 (added). District attorney's authority to make agreements with noncustodial parent

§ 5442 (added). Hearing on entry of judgment based on agreement

§ 5443 (added). Applicability of provisions governing payment of support to district attorney

§ 5444 (added). Requirements for entry of judgment based on agreement

§ 5445 (added). Filing of agreement and certificate or finding

§ 5446 (added). Service of judgment and notice

§ 5447 (added). Modification or termination of support order included in judgment

§ 5448 (added). Enforcement of judgment

Family Code continued

§ 5449 (added). Suspension of criminal proceedings

Article 4. District Attorney Proceedings Establishing, Modifying, or Enforcing Support

§ 5460 (added). District attorney compliance with DSS response time guidelines

§ 5461 (added). Notice to persons requesting services

§ 5462 (added). Notice to persons already receiving services

§ 5463 (added). Notice to noncustodial parent

§ 5464 (added). District attorney responsible for establishing paternity and establishing, modifying, and enforcing support

§ 5465 (added). Maintaining proceeding for arrearages after child attains age of majority

§ 5466 (added). District attorney to administer wage withholding for Title IV-D

§ 5467 (added). Parties and pleadings in child support action

§ 5468 (added). Effect of pendency of other actions between parties

§ 5469 (added). Parties and pleadings in spousal support proceeding

§ 5470 (added). Notice on filing complaint

§ 5471 (added). Notice of hearing dates and times

§ 5472 (added). Notice of establishment or modification of support order

§ 5473 (added). Modification or termination of Title IV-D cases prescribed by federal law

§ 5474 (added). Person not receiving public assistance must execute or consent to stipulations

§ 5475 (added). Limitations on district attorney's authority to stipulate to reduction of arrearages

§ 5476 (added). Time requirements for completion of cases

Article 5. Temporary Support Orders

§ 5490 (added). District attorney may obtain temporary support order

§ 5491 (added). Time requirements for filing

§ 5492 (added). Limitations on reimbursement where time requirements not met

§ 5493 (added). Issuance of order in county with expedited process

Article 6. District Attorney Enforcement of Medical Support

§ 5510 (added). "Health insurance coverage" defined

§ 5511 (added). Medical support activities district attorney authorized to perform

§ 5512 (added). Notice regarding availability of support services

§ 5513 (added). Consent of person not receiving public aid required

§ 5514 (added). District attorney to obtain state medical insurance form

§ 5515 (added). Information to be included in state medical insurance form

§ 5516 (added). Lapses in coverage

§ 5517 (added). Completion and return of medical insurance form by parent

§ 5518 (added). Reimbursement for administrative costs

Article 7. Duty of Employers and Labor Organizations To Provide Employment and Income Information to District Attorney

§ 5530 (added). "Labor organization" defined

§ 5531 (added). Information to be provided to employer and labor organization

§ 5532 (added). Employer and labor organization to provide relevant information

§ 5533 (added). Notice to person about whom information sought

§ 5534 (added). Matters constituting relevant information

§ 5535 (added). Fines for employer or labor organization failing to comply

§ 5536 (added). No additional enforcement or collection duties mandated

Article 8. Judgment

§ 5550 (added). Judgment pursuant to noticed motion

§ 5551 (added). Continuance based on defendant's appearance

§ 5552 (added). Earnings assignment order for support

Article 9. Confidentiality of Support Enforcement Records

§ 5570 (added). Intent of Legislature

Family Code continued

- § 5571 (added). "Administration and implementation of the child and spousal support enforcement program" and "obligor" defined
- § 5572 (added). Violation of article is misdemeanor
- § 5573 (added). Article consistent with federal law
- § 5574 (added). All files, applications, papers, documents, and records are confidential
- § 5575 (added). Disclosure of confidential information

CHAPTER 2. ENFORCEMENT OF SUPPORT OBLIGATIONS AGAINST UNEMPLOYMENT COMPENSATION BENEFITS

Article 1. Definitions

- § 5700 (added). Application of definitions
- § 5706 (added). "Support obligations"

Article 2. General Provisions

- § 5720 (added). Necessary agreements between DSS and EDD
- § 5721 (added). DSS to ensure resolution of overwithholding
- § 5722 (added). Authorization for withholding

Article 3. Withholding Unemployment Compensation Benefits for Payment of Support Arrearages

- § 5740 (added). District attorney's certification of support arrearages
- § 5741 (added). DSS certified list and notification of EDD
- § 5742 (added). EDD recordkeeping responsibilities
- § 5743 (added). Notification of voluntary plan payer by EDD
- § 5744 (added). EDD withholding and forwarding of amounts
- § 5745 (added). Voluntary plan payer to withhold and forward amounts
- § 5746 (added). Amount to be withheld

Article 4. Rights and Remedies of Individuals Subject to Withholding

- § 5760 (added). Notice of withholding
- § 5761 (added). Agreement or order reducing amount withheld
- § 5762 (added). Request for equitable division of unemployment benefits withheld

CHAPTER 3. DENIAL OF BUSINESS OR PROFESSIONAL LICENSE FOR FAILURE TO PAY CHILD SUPPORT

Article 1. Definitions

- § 5800 (added). Application of definitions
- § 5802 (added). "Applicant"
- § 5804 (added). "Board"
- § 5806 (added). "Certified list"
- § 5808 (added). "Compliance with an order for support"
- § 5814 (added). "License"
- § 5816 (added). "Licensee"

Article 2. Withholding of Business or Professional License when Support Payments in Arrears

- § 5840 (added). District attorney certified lists
- § 5841 (added). DSS consolidated certified list and notification of boards
- § 5842 (added). Board notice to applicant
- § 5843 (added). Issuance of temporary license and refund of licensing fees
- § 5844 (added). Release of information regarding license status of applicant restricted

Article 3. Rights and Remedies of Applicant for License

- § 5860 (added). Request for district attorney review and issuance of release
- § 5861 (added). Applicant diligence required
- § 5862 (added). Requirements for issuance of release
- § 5863 (added). Effect of issuance and receipt of release
- § 5864 (added). Written notice of district attorney findings and other information
- § 5865 (added). Request for judicial review of district attorney's decision

Family Code continued

§ 5866 (added). Applicant not entitled to APA remedies

§ 5867 (added). Right to file order to show cause or notice of motion not limited

Article 4. Administrative Provisions

§ 5880 (added). Development of forms

§ 5881 (added). Interagency agreements regarding funding

§ 5882 (added). Boards and departments surcharges

§ 5883 (added). Issuance of rules and regulations

§ 5884 (added). Report to Legislature and Governor

§ 5885 (added). Chapter repealed January 1, 1997, unless extended

WELFARE AND INSTITUTIONS CODE

DIVISION 9. PUBLIC SOCIAL SERVICES

PART 3. AID AND MEDICAL ASSISTANCE

CHAPTER 2. AID TO FAMILIES WITH DEPENDENT CHILDREN

Article 4. Relatives' Responsibility

§ 11350 (*unchanged*). *Separation or desertion*

§ 11350.1 (repealed). Judgment by noticed motion

§ 11350.2 (repealed). Benefits exempted from satisfaction of support obligation

§ 11350.6 (repealed). Enforcement of support obligations

§ 11351 (added). Judgment by noticed motion

§ 11351.5 (*unchanged*). *Contribution of unrelated adult male residing with family applying for or receiving aid*

§ 11353 (*unchanged*). *Statement of parents' current monthly income and expenses*

Article 7. Enforcement

§ 11475 (*unchanged*). *State plan for securing child and spousal support and determining paternity*

§ 11475.1 (repealed). County organizational unit

§ 11475.2 (*unchanged*). *Failure of public agency to function or comply with state plan*

§ 11475.5 (*unchanged*). *Publication describing procedures for collection and payment of child and spousal support*

§ 11476 (*unchanged*). *Absent or unmarried parents*

§ 11476.1 (repealed). Agreements with noncustodial parents

§ 11476.2 (*unchanged*). *Notice of amount of assigned support payments made*

§ 11476.6 (repealed). Data regarding time periods of notification of receipt of child support payments

§ 11477 (*unchanged*). *Conditions for aid eligibility*

§ 11477.1 (*unchanged*). *Polygraph tests*

§ 11478 (*unchanged*). *Cooperation of agencies*

§ 11478.1 (repealed). Confidentiality of support enforcement records

§ 11478.2 (repealed). Actions by district attorney to establish support or paternity

§ 11478.5 (*unchanged*). *Parent locator service and central registry*

§ 11478.6 (*unchanged*). *DSS workers' compensation notification project*

§ 11478.7 (*unchanged*). *Uniform statistical report*

§ 11478.8 (repealed). Duty of employers and labor organizations to provide information to district attorney

§ 11479 (technical amendment). Investigation of paternity

§ 11479.5 (*unchanged*). *Basic family support enforcement program*

§ 11479.6 (*unchanged*). *Integration of federal family support enforcement incentives to state and counties*

§ 11480 (*unchanged*). *Receipt or use of aid for purpose other than support*

§ 11481 (technical amendment). Prosecution for contributing to delinquency of minor

Welfare and Institutions Code continued

- § 11481.5 (unchanged). *Welfare fraud hotline pilot project*
 - § 11482 (unchanged). *False representation to obtain aid*
 - § 11482.5 (unchanged). *Applications claiming multiple entitlements, false identity, or for fictitious or nonexistent persons*
 - § 11483 (unchanged). *Fraud in obtaining aid*
 - § 11483.5 (unchanged). *Obtaining aid by applications claiming multiple entitlements, false identity, or for fictitious or nonexistent persons*
 - § 11485 (amended). *Notice to court where public aid received*
 - § 11486 (unchanged). *Fraudulent or misleading statements relating to eligibility for aid*
 - § 11487 (unchanged). *Recovered aid*
 - § 11487.5 (unchanged). *Fresno County reimbursement for overpayment recoveries under § 11004*
 - § 11488 (repealed). *District attorney required to consider number of children*
 - § 11489 (repealed). *Assignment of earnings*
 - § 11490 (repealed). *District attorney requirements regarding medical insurance in support proceedings*
 - § 11491 (repealed). *Proposal to legislature*
 - § 11492 (repealed). *Medical insurance form requirements*
 - § 11492.1 (repealed). *Reimbursement for costs to district attorney for completion of medical forms*
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