

Memorandum 92-33

Subject: Study F-1001 - Inclusion of 1992 Legislation in Family Code

Attached to this memorandum are a number of exhibits containing draft legislation necessary to add 1992 legislation concerning family law to the Family Code. Both the Family Code bill (AB 2650) and the conforming revision bill (AB 2641) contained subordination provisions so that any 1992 legislation concerning sections affected by these bills would not be chaptered out. The understanding is that we would prepare legislation to repeal these 1992 amendments and additions to statutes concerning family law and include them in the Family Code before it becomes operative. This is simply a continuation of the process in which the Commission is already involved -- reorganizing and consolidating the family law statutes without making substantive changes.

<u>Ex.</u>	<u>Bill #</u>	<u>Ch. #</u>	<u>Author</u>
1.	SB 370	Ch. 46	Hart
2.	SB 1372	Ch. 355	Deddeh
3.	AB 1719	Ch. 51	Horcher
4.	AB 1101	Ch. 318	Frazee
5.	SB 1129	Ch. 176	Dills
6.	SB 1545	Ch. 183	Lockyer
7.	SB 1420	Ch. 360	Russell
8.	AB 2634	Ch. 149	Lee
9.	AB 3630	Ch. 159	Floyd
10.	SB 804	Ch. 392	Boatwright
11.	AB 3491	Ch. 316	Gotch
12.	AB 1394	Ch. 50	Speier
13.	SB 1817	Ch. 411	Morgan
14.	AB 3353	Ch. 252	Gotch & Vasconcellos
15.	AB 3544	Ch. 475	Lempert
16.	SB 2018	Ch. 431	Calderon
17.	SB 1564	Ch. 455	Watson
18.	AB 2887	Ch. 472	Conroy

A chart showing 1992 enactments that overlap the Family Code and conforming revisions is attached to this memorandum as an appendix. Note that the disposition of sunset provisions is considered separately in Memorandum 92-43 on the agenda for the September meeting.

We have drafted "Interim Comments" for the purpose of showing changes between the 1992 Family Code legislation and the proposed 1993 package. These interim comments are included to provide a detailed trail of the revision process and to assist those who are working with the Commission. However, when the Family Code and its conforming revisions become operative on January 1, 1994, the permanent "Comment" will be the only relevant one -- any "Interim Comment" concerning a particular section should cease to be of any interest. The reason for this complicated scheme is that we want to provide a detailed resource for review purposes without unnecessarily burdening the final product with minutiae. It is only of extremely transitory interest to follow a technical change between the 1992 and 1993 versions of a statute where the 1992 version never becomes operative. When the final text of the official Comments are prepared for the Commission's report and for the law publishers, the staff would not include the interim comments. A section of the Family Code that is to be repealed in 1993 (such as Section 3805 in Exhibit 1, at p. 13) would only have an Interim Comment, reflecting the fact that it will never become operative. A section of the Family Code that needs to be amended to revise a cross-reference or make some other type of change (such as Section 3621 in Exhibit 1, at pp. 11-12) would have both types of comments, with the official Comment drafted for posterity. A new section added to the Family Code will not have an Interim Comment.

After Commission approval of these drafts, and any necessary revision, the staff plans to send a copy of the relevant material to each legislator who authored 1992 legislation that we propose to revise. If we receive any comments, we will bring them to the Commission at a later meeting.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

Appendix

1992 LEGISLATION RELEVANT TO AB 2650 & AB 2641

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
AB 1101	318	CC § 4100 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4200 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4202 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4203 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4204 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4206 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4208 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4210 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4213 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4216 (am)	Ex 4, M.92-33	
AB 1101	318	Penal C § 360 (am)	Ex 4, M.92-33	
AB 1394	50	CC § 4700.11 (am)	Ex 12, M.92-33	
AB 1394	50	W&I § 903 (am)	Ex 12, M.92-33	Ref to CC § 4720 <i>et seq.</i>
AB 1396	36	CC § 4800.11 (add) C/O	—————>	Chaptered-out by AB 3399
AB 1437	37	CC § 4800.10 (add) C/O	—————>	Chaptered-out by AB 3399
AB 1719	51	CC § 5110.740 (am)	Ex 3, M.92-33	
AB 2634	149	CCP § 548 (am)	Ex 8, M.92-33	
AB 2887	472	CC § 220.20 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 223 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.20 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.30 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.40 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.46 (am)	Ex 18, M.92-33	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
AB 2887	472	CC § 227.50 (am)	Ex 18, M.92-33	
AB 3353	252	CC § 25.9 (am)	Ex 14, M.92-33	
AB 3491	316	Penal C § 11167 (am)	Ex 11, M.92-33	
AB 3544	475	Penal C § 1377 (am)	Ex 15, M.92-33	Reference to CCP § 542
AB 3630	159	CC § 4800.6 (am)	Ex 9, M.92-33	
SB 370	46	CC § 246 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4720 (rep/add)	Ex 1, M.92-33	New heading at § 4720.
SB 370	46	CC § 4720.1 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4720.2 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4721 (rep/add)	Ex 1, M.92-33	
SB 370	46	CC § 4722 (rep/add)	Ex 1, M.92-33	
SB 370	46	CC § 4723 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4724 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4725 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4727 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4728 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4728.5 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4729 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4730 (rep)	Ex 1, M.92-33	
SB 804	392	CC § 5152 (am)	Ex 10, M.92-33	
SB 804	392	CC § 5157 (am)	Ex 10, M.92-33	
SB 804	392	CC § 5158 (am)	Ex 10, M.92-33	
SB 1129	176	CC § 4800.8 (am) C/O	—————>	Chaptered-out by SB 2018
SB 1129	176	GC § 75050 (am)	Ex 5, M.92-33	
SB 1372	355	CCP § 699.560 (am)	Ex 2, M.92-33	
SB 1420	360	H&S § 10605 (am)	Ex 7, M.92-33	
SB 1545	183	Penal C § 273.5 (am)	Ex 6, M.92-33	
SB 1564	455	CC § 222.71 (add)	Ex 17, M.92-33	
SB 1564	455	W&I § 361.5 (am)	Ex 17, M.92-33	
SB 1817	411	CC § 4760 (rep/add)	Ex 13, M.92-33	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
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SB 1817	411	CC § 4761 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4762 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4763 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4764 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4765 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4766 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4767 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4768 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4769 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4770 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4771 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4772 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4773 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4774 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4775 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4776 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4777 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4778 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4778.5 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4779 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4780 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4781 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4782 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4783 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4784 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4785 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4786 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4787 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4788 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4789 (add)	Ex 13, M.92-33	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
SB 1817	411	CC § 4790 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4791 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4792 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4793 (add)	Ex 13, M.92-33	
SB 2018	431	CC § 4800.8 (am)	Ex 16, M.92-33	Chapters out SB 1129

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EXHIBIT 1

SB 370 (Statewide Uniform Child Support Guideline)

Staff Note. The draft legislation in this exhibit would implement SB 370 (1992 Cal. Stat. ch. 1493) in the new Family Code. The sections are set out in the order they would appear in a bill.

Outline

Civil Code (pp. 2-10)

- § 4720 (repealed). Legislative findings, declarations, and intent
- § 4721 (repealed). Statewide uniform guideline for determining child support
- § 4722 (repealed). Deductions for extreme financial hardship

Family Code (pp. 11-28)

- § 3621 (technical amendment). Ex parte order for child support during pendency of action
- § 3622 (technical amendment). Application for order
- § 3688 (technical amendment). Modification based on significant decrease in income
- § 3805 (repealed). Deferred sale of home order as additional child support
- § 4005 (repealed). Factors in determining amount of child support
- §§ 4050-4068 (repealed). Child support guidelines
- §§ 4050-4076 (added). Statewide Uniform Guideline
- ARTICLE 2. STATEWIDE UNIFORM GUIDELINE
- § 4050 (added). Statements of legislative intent
- § 4051 (added). Operative date of this article
- § 4052 (added). Mandatory adherence to guideline
- § 4053 (added). Mandatory adherence to principles
- § 4054 (added). Periodic review by Judicial Council
- § 4055 (added). Formula for statewide uniform guideline for determining child support
- § 4056 (added). Information court required to state in writing or on record
- § 4057 (added). Presumption that child support established by guideline is correct
- § 4058 (added). Annual gross income
- § 4059 (added). Annual net disposal income
- § 4060 (added). Monthly net disposable income
- § 4061 (added). Additional child support
- § 4062 (added). Allocation of additional child support
- § 4063 (added). Payment to service provider
- § 4064 (added). Adjustment for seasonal or fluctuating income
- § 4065 (added). Stipulated child support agreement
- § 4066 (added). Order or stipulation designating family support
- § 4067 (added). Continuing review by Legislature
- § 4068 (added). Judicial Council worksheets and forms
- § 4069 (added). Establishment of guideline as change of circumstances
- § 4070 (added). Financial hardship deductions
- § 4071 (added). Extraordinary health expenses and uninsured catastrophic loss as circumstance evidencing hardship

- § 4072 (added). Support of children from other marriages or relationships as circumstance evidencing hardship
- § 4073 (added). Statement of reasons for and duration of hardship deductions
- § 4074 (added). Court must consider legislative goals when ordering hardship deduction
- § 4075 (added). Application to family support awards
- § 4076 (added). Treatment of spousal support payments by IRS

Appendix: Revised Comments (p. 28)

- § 4320. Circumstances to be considered in ordering spousal support
- § 4404. Determination of amount of support

Civ. Code § 4720 (repealed). Legislative findings, declarations, and intent; Judicial Council review

SEC. _____. Section 4720 of the Civil Code, as added by Section 5 of Chapter 46 of the Statutes of 1992, is repealed.

~~4720. (a) (1) It is the intention of the Legislature to ensure that the State of California remains in compliance with federal regulations for child support guidelines. The Legislature therefore adopts the statewide uniform guideline set forth in Section 4721, to take effect on July 1, 1992.~~

~~(2) It is the intention of the Legislature that the courts shall adhere to the statewide uniform guideline adopted pursuant to Section 4721 and shall depart from this guideline only in the exceptional circumstances set forth in Section 4721.~~

~~(3) In implementing this guideline, the courts shall further adhere to the following principles:~~

~~(A) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.~~

~~(B) Both parents are mutually responsible for the support of their children.~~

~~(C) This guideline takes into account each parent's actual income and level of responsibility for the children.~~

~~(D) Each parent should pay for the support of the children according to his or her ability.~~

~~(E) This guideline seeks to place the interests of children as the state's top priority.~~

~~(F) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.~~

~~(G) Child support orders in cases in which both parents have high levels of custody of the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.~~

(H) The financial needs of the children should be met through private financial resources as much as possible.

(I) It is presumed that a parent having primary physical custody of the children contributes a significant portion of available resources for the support of the children.

(J) This guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

(K) This guideline is intended to be presumptively correct in all cases, and only under extraordinary circumstances should child support orders fall below the child support mandated by the guideline formula.

(L) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

(b) The Judicial Council shall periodically review the guideline established in Section 4721 to recommend to the Legislature appropriate revisions. The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council. Any recommendations for revisions to the guideline established in Section 4721 shall be made to ensure that the guideline results in appropriate child support orders to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law. The Judicial Council may also review and report on other matters, including, but not limited to, the treatment of the income of a subsequent spouse or nonmarital partner; the treatment of children from prior or subsequent relationships; the application of the guideline in a case where a payor parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage; the benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline; whether the use of gross or net income in the guideline is preferable; whether the guideline affects child custody litigation or the efficiency of the judicial process; and whether the various assumptions used in computer software used by some courts to calculate child support comport with state law and should be made available to parties and counsel. The initial review by the Judicial Council shall be submitted to the Legislature and to the State Department of Social Services on or before December 31, 1993, and subsequent reviews shall occur at least every four years thereafter unless federal law requires a different interval.

(c) In developing its recommendations, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following: custodial and noncustodial parents; representatives of established women's rights and fathers' rights groups; representatives of

~~established organizations that advocate for the economic well-being of children; members of the judiciary, district attorney's offices, the Attorney General's office, and the State Department of Social Services; certified family law specialists; academicians specializing in family law; persons representing low-income parents; and persons representing recipients of assistance under the Aid to Families with Dependent Children (AFDC) program seeking child support services.~~

~~(d) In developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the legislative intent that children share in the standard of living of both of their parents.~~

Comment. Subdivision (a)(1) of former Section 4720 is continued without substantive change in Family Code Sections 4050-4051. Subdivision (a)(2) is restated without substantive change in Family Code Section 4052. Subdivision (a)(3) is continued without substantive change in Family Code Section 4053.

Subdivision (b) is continued without substantive change in Family Code Section 4054(d)-(e).

Subdivision (c) is continued without substantive change in Family Code Section 4054(f).

Subdivision (d) is continued without substantive change in Family Code Section 4054(g).

Civ. Code § 4721 (repealed). Statewide uniform guideline for determining child support

SEC. ____ . Section 4721 of the Civil Code, as added by Section 9 of Chapter 46 of the Statutes of 1992, is repealed.

~~4721. (a) The statewide uniform guideline for determining child support orders is as follows: $CS = K [HN - (H\%)(TN)]$.~~

~~(b) (1) The components of the formula are as follows:~~

~~(A) CS = child support amount.~~

~~(B) K = amount of income to be allocated for child support as set forth in paragraph (3).~~

~~(C) HN = high earner's net monthly disposable income.~~

~~(D) H% = percentage of time that high earner has or will have physical custody of the children compared to the other parent.~~

~~(E) TN = total net monthly disposable income of both parties.~~

~~(2) To compute net disposable income, see subdivision (g).~~

~~(3) K (amount of income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:~~

Total Net Disposable Income Per Month	K
\$0-800	.20 + TN/16,000
\$801-7,000	.25
\$7,001-10,000	.20 + 350/TN
\$10,000-20,000	.16 + 400/TN
Over \$20,000	.12 + 800/TN

For example, if H% equals 20% and the total monthly net disposable income of the parents is \$1,000, $K = (1 + .20) \times .25$, or .30. If H% equals 80% and the total monthly net disposable income of the parents is \$1,000, $K = (2 - .80) \times .25$, or .30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children	2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) If the children who are the subject of the child support order are receiving assistance under the Aid to Families with Dependent Children program, H% shall be set at zero in the formula.

(7) In any default proceeding where proof is by affidavit pursuant to Section 4511, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula for the noncustodial parent where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has physical custody of the children.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children.

(c) The court shall state in writing or on the record the following information used in determining the guideline amount under this chapter.

(1) The net monthly disposable income of each parent.

(2) The actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household and number of exemptions).

(3) Deductions from gross income for each parent.

(4) The percentage of time pursuant to paragraph (1) of subdivision (b) that each parent has primary physical custody of the children compared to the other parent.

(5) The amount of support that would be received under the formula.

~~(6) If any rebuttal factors are found under subdivision (e), the reasons supporting the deductions, the documentation of the underlying facts and circumstances, the dollar amount of the rebuttal factor, and the duration that the rebuttal factor shall be in effect.~~

~~(7) A finding that the revised amount is in the best interests of the children.~~

~~(8) Any special circumstances found under paragraph (6) of subdivision (e).~~

~~(9) Any other findings required by federal law.~~

~~(d) There shall be a rebuttable presumption affecting the burden of proof that the amount of child support established by the formula set forth in subdivision (a) is the correct amount of child support to be ordered.~~

~~(e) The presumption of subdivision (d) may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4720, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court finds in writing or on the record pursuant to subdivision (c) that the revised amount is in the best interests of the children:~~

~~(1) The parties have stipulated to a different amount of child support under subdivision (m).~~

~~(2) The sale of the family residence is deferred pursuant to Section 4700.10 and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.~~

~~(3) A parent's subsequent spouse or nonmarital partner has income that helps meet that parent's basic living expenses, thus increasing the parent's disposable income available to spend on the children.~~

~~(4) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.~~

~~(5) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.~~

~~(6) Application of the formula would be unjust or inappropriate due to extraordinary circumstances in the particular case. These extraordinary circumstances include, but are not limited to, the following: cases in which the parents have different custody arrangements for different children; cases in which both parents have substantially equal custody of the children and one parent has a much lower or higher percentage of income used for housing than the other parent; and cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.~~

~~(f) (1) The annual gross income of each parent means income from whatever source derived, except as specified in paragraph (3) and includes, but is not limited to, all of the following:~~

~~(A) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to this order.~~

~~(B) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.~~

~~(C) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.~~

~~(2) The court may, in its discretion, consider the earning capacity of a parent in lieu of that parent's income, consistent with the best interests of the children.~~

~~(3) Annual gross income shall not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.~~

~~(g) The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this chapter:~~

~~(1) The state and federal income tax liability resulting from the parties' taxable income. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents. State and federal income taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions, and credits. Unless the parties stipulate otherwise, the tax effects of spousal support shall not be considered in determining the net disposable income of the parties for determining child support but shall be considered in determining spousal support consistent with Section 4801.~~

~~(2) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.~~

~~(3) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.~~

~~(4) Deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.~~

~~(5) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support~~

actually being paid, not to exceed the amount established by this guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. No deduction shall be allowed under this subdivision unless the parent proves payment of the support.

(6) Job-related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.

(7) A deduction for hardship, as defined by Section 4722 and applicable published appellate court decisions. The amount of the hardship shall not be deducted from the amount of child support but shall be deducted from the income of the party to whom it applies. In applying any hardship under subdivision (b) of Section 4722, the court shall use the formula provided for in that section and shall not use any local formula, in order to provide equity between competing child support orders.

(h) The annual net disposable income shall be divided by 12 to reflect the monthly net disposable income. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.

(i) The amounts in subdivision (j), if ordered to be paid, are considered additional support for the children. If there needs to be an apportionment of expenses pursuant to subdivision (j), the basic child support obligation shall first be computed using the formula set forth in subdivision (a), as adjusted for any appropriate rebuttal factors in subdivision (e). Any additional child support required for expenses pursuant to subdivision (j) shall thereafter be ordered to be paid by the parents in proportion to their adjusted net disposable incomes. In cases where spousal support is required to be paid by one parent to the other, for purposes of allocating additional expenses pursuant to subdivision (j), the gross income of the parent paying spousal support shall be decreased by the amount of the spousal support paid and the gross income of the parent receiving the spousal support shall be increased by the amount of the spousal support received for so long as the spousal support order is in effect and is paid. For purposes of computing the adjusted net disposable income of the parent paying child support for allocating any additional expenses pursuant to subdivision (j), the net disposable income of the parent paying child support shall be reduced by the amount of any basic child support ordered to be paid under subdivision (a). However, the net disposable income of the parent receiving child support shall not be increased by any amount of child support received.

(j) (1) The court shall order as additional child support:

(A) Child care costs related to employment or to reasonably necessary education or training for employment skills.

~~(B) The reasonable uninsured health care costs for the children. There is a rebuttable presumption that the costs actually paid for the uninsured health care needs of the children are reasonable.~~

~~(2) The court may order as additional child support:~~

~~(A) Costs related to the educational or other special needs of the children.~~

~~(B) Travel expenses for visitation.~~

~~(k) Unless there is an assignment of rights pursuant to Section 11477 of the Welfare and Institutions Code, any payment ordered pursuant to subdivision (j) may be ordered paid directly to a provider of services.~~

~~(l) The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.~~

~~(m) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement unless the parties declare all of the following:~~

~~(1) They are fully informed of their rights concerning child support.~~

~~(2) The order is being agreed to without coercion or duress.~~

~~(3) The agreement is in the best interests of the children involved.~~

~~(4) The needs of the children will be adequately met by the stipulated amount.~~

~~(n) A stipulated agreement of child support is not valid unless either of the following occurs:~~

~~(1) The parties declare the right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.~~

~~(2) The district attorney has joined in the stipulation by signing it. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.~~

~~(o) If the parties to a stipulated agreement stipulate to a child support order below the amount established by this section, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.~~

~~(p) Orders and stipulations otherwise in compliance with this guideline may designate as “family support” an unallocated total sum for support of the spouse and any children without specifically labeling all or any portion as “child support” so long as the amount is adjusted to reflect the effect of additional deductibility. The amount of the order shall be adjusted to maximize the tax benefits for both parents.~~

~~(q) It is the intent of the Legislature that the uniform guideline provided by this chapter shall be reviewed by the Legislature at least every four years and shall be revised by the Legislature as appropriate to ensure that its application results in the determination of appropriate child support amounts. The review shall include consideration of changes required by applicable federal laws and regulations or~~

~~recommended from time to time by the Judicial Council pursuant to subdivision (b) of Section 4720.~~

~~(r) The Judicial Council may develop model worksheets to assist parties in determining the approximate amount of child support due under the formula set forth in subdivision (a) and the approximate percentage of time each parent has custody of the children, and a form to assist the courts in making the findings and orders required by this chapter.~~

~~(s) The establishment of this guideline constitutes a change of circumstances for the purpose of any modification of child support order entered prior to this guideline's operative date.~~

Comment. Subdivisions (a)-(b) of Section 4721 are continued without substantive change in Family Code Section 4055.

Subdivision (c) is continued without substantive change in Family Code Section 4056.

Subdivisions (d)-(e) are continued without substantive change in Family Code Section 4057.

Subdivision (f) is continued without substantive change in Family Code Section 4058.

Subdivision (g) is continued without substantive change in Family Code Section 4059.

Subdivision (h) is continued without substantive change in Family Code Section 4060.

The first sentence of subdivision (i) is continued without substantive change in Family Code Section 4061(a). The remainder of subdivision (i) is continued without substantive change in Family Code Section 4062.

Subdivision (j) is continued without substantive change in Family Code Section 4061(b)-(c).

Subdivision (k) is continued without substantive change in Family Code Section 4063.

Subdivision (l) is continued without substantive change in Family Code Section 4064.

Subdivision (m) is continued without substantive change in Family Code Section 4065(a).

Subdivision (n) is continued without substantive change in Family Code Section 4065(b).

Subdivision (o) is continued without substantive change in Family Code Section 4065(c).

Subdivision (p) is continued without substantive change in Family Code Section 4066.

Subdivision (q) is continued without substantive change in Family Code Section 4067.

Subdivision (r) is continued without substantive change in Family Code Section 4068.

Subdivision (s) is continued without substantive change in Family Code Section 4069.

Civ. Code § 4722 (repealed). Deductions for extreme financial hardship

SEC. _____. Section 4722 of the Civil Code, as added by Section 11 of Chapter 46 of the Statutes of 1992, is repealed.

~~4722. If a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions under Section 4721 as may be necessary to accommodate those circumstances.~~

~~(a) Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.~~

~~(b) Circumstances evidencing hardship also include the minimum basic living expenses of either parent's natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may~~

~~allow such income deductions as necessary to accommodate these expenses after making the deductions allowable under subdivision (a). The maximum hardship deduction for each child who resides with the parent may be equal, but shall not exceed, the support awarded each child subject to the order. For purposes of calculating this deduction, the amount of support per child established by this guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) of subdivision (b) of Section 4721. The maximum hardship deduction shall be calculated as follows:~~

$$D = \frac{(F)(N)}{(S) + F(H)}$$

~~Where:~~

~~N = Parent's net disposable income prior to the deduction for hardship.~~

~~F = Factor 18 for one child, .27 for two children, .36 for three children, plus .04 more for each additional child over three children.~~

~~H = Number of children for whom a hardship deduction is being given.~~

~~S = Number of children for whom support is being ordered.~~

~~D = Maximum deduction per child.~~

~~The Judicial Council may develop tables in accordance with the above formula to reflect the maximum hardship deduction taking into consideration the parent's net disposable income before the hardship deduction, the number of children for whom the deduction is being given, and the number of children for whom the support award is being made.~~

~~(c) If deductions for hardship expenses are allowed, the court shall state in writing or on the record the reasons supporting the deductions, document the underlying facts and circumstances and the amount of deductions allowed. Whenever possible, the court shall specify the duration that any deduction shall be in effect.~~

~~(d) Upon considering whether to allow a deduction under this section, and in determining the amount of any such deduction, the court shall be guided by the goals set forth in the expression of legislative intent set forth in Section 4720.~~

~~**Comment.** The introductory paragraph of Section 4722 is continued without substantive change in Family Code Section 4070.~~

~~Subdivision (a) is continued without substantive change in Family Code Section 4071.~~

~~Subdivision (b) is continued without substantive change in Family Code Section 4072.~~

~~Subdivision (c) is continued without substantive change in Family Code Section 4073.~~

~~Subdivision (d) is continued without substantive change in Family Code Section 4074.~~

Fam. Code § 3621 (technical amendment). Ex parte order for child support during pendency of action

SEC. ____ . Section 3621 of the Family Code is amended to read:

3621. In an action for child support that has been filed and served, the court may, without a hearing, make an order requiring a parent or parents to pay for the support of their minor child or children during the pendency of that action, pursuant to this chapter, the amount required by Section 4053 4055 or, if the income of the obligated parent or parents is unknown to the applicant, then the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code.

Comment. Section 3621 continues the first sentence of former Civil Code Section 4357.5(a) without substantive change. A reference to Section 4055 has been substituted for the broader reference to former Civil Code Section 4722 [as added by 1990 Cal. Stat. ch. 1493, § 16 and repealed by 1992 Cal. Stat. ch. 46, § 10]. This is not a substantive change, since the relevant part of the former section is continued in Section 4055. A reference to maintenance and education of the child has been omitted as surplus. See Section 150 (when used in reference to a child, “support” includes maintenance and education).

Interim Comment. Section 3621 is amended to substitute a reference to Section 4055 which will supersede Section 4053.

Staff Note. *Would a cross-reference to all of Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 be better than the reference only to Section 4055?*

Fam. Code § 3622 (technical amendment). Application for order

SEC. ____ . Section 3622 of the Family Code is amended to read:

3622. The court shall make an expedited support order upon the filing of all of the following:

(a) An application for an expedited child support order, setting forth the minimum amount the obligated parent or parents are required to pay pursuant to Section 4053 4055 of this code or pursuant to Section 11452 of the Welfare and Institutions Code.

(b) An income and expense declaration for both parents, completed by the applicant.

(c) A worksheet setting forth the basis of the amount of support requested.

(d) A proposed expedited child support order.

Comment. Section 3622 continues the first sentence of former Civil Code Section 4357.5(b) without substantive change. A reference to Section 4055 has been substituted for the broader reference to former Civil Code Section 4722 (as added by 1990 Cal. Stat. ch. 1493, § 16, and repealed by 1992 Cal. Stat. ch. 46, § 10). This is not a substantive change, since the relevant part of the former section is continued in Section 4055. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 95 (“income and expense declaration” defined).

Interim Comment. Subdivision (a) of Section 3622 is amended to substitute a reference to Section 4055 which will supersede Section 4053.

Staff Note. *Would a cross-reference to all of Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 be better than the reference to Section 4055? Can the applicant for an expedited child support order fill out an income and expense declaration for the other party? Is this what subdivision (b) intends?*

Fam. Code § 3688 (technical amendment). Modification based on significant decrease in income

SEC. _____. Section 3688 of the Family Code is amended to read:

3688. (a) In a case in which the request for modification is based on a significant decrease in the income of the moving party, the moving party shall present evidence of the moving party's decline in economic circumstances. The amount of the modification shall be based on the economic evidence presented by way of income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(b) If the responding party defaults in a case where the request for the modification is based on a significant decrease in the income of the moving party, the court shall order a modification based on the evidence.

(c) If the court considering the request for modification of an order for spousal support orders support according to guidelines in use within its jurisdiction, the amount of the modification shall be based on the guidelines. If no guidelines are in use, the amount of the modification shall be based on the factors used in determining the existing spousal support award.

(d) The court considering the request for modification of an order for child support shall order support according to the statewide uniform guideline in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2.

Comment. Subdivisions (a) and (b) of Section 3688 continue without substantive change the first three sentences of the third paragraph of former Civil Code Sections 4700.1(d) and 4801.9(d).

Subdivision (c) continues without substantive change the last two sentences of the third paragraph of former Civil Code Section 4801.9(d).

Subdivision (d) supersedes the last two sentences of the third paragraph of former Civil Code Section 4700.1(d). This subdivision recognizes that the use of local guidelines for child support is obsolete in light of the adoption of the statewide uniform guideline. See Sections 4050-4075 (statewide uniform guideline for child support).

Interim Comment. The revisions of this section are made to harmonize existing Family Code provisions drawn from the predecessor of SB 370 with the new statewide uniform guideline.

Staff Note. *Are local guidelines still used for spousal support, or is subdivisions (c) obsolete in relation to spousal support as well?*

Fam. Code § 3805 (repealed). Deferred sale of home order as additional child support

SEC. _____. Section 3805 of the Family Code is repealed.

~~3805. A deferred sale of home order may be considered to constitute additional child support pursuant to subdivision (b) of Section 4055~~

Interim Comment. Section 3805 continued the last sentence of Civil Code Section 4700.10(c), which has been repealed. See 1992 Cal. Stat. ch. 46, § 17. Further, the new statewide uniform guideline scheme does not treat a deferred sale of home order as additional child support. See draft Fam. Code § 4057(b)(2) (deferred sale of home order as factor in rebuttal of presumption that support amount established by guideline formula is correct).

Fam. Code § 4005 (repealed). Factors in determining amount of child support

SEC. _____. Section 4005 of the Family Code is repealed.

4005. (a) ~~In determining the amount due for child support, the court shall consider the following circumstances of the parents:~~

- ~~(1) The earnings or earning capacity of each parent.~~
- ~~(2) The needs of each parent.~~
- ~~(3) The obligations and assets, including the separate property, of each parent.~~
- ~~(4) The ability of each parent to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the parent.~~
- ~~(5) The time required for a parent to acquire appropriate education, training, and employment.~~
- ~~(6) The age and health of the parents.~~
- ~~(7) The standard of living of the parents.~~
- ~~(8) The preservation of the adequacy of the child support award over the length of time during which the parents will be obligated to support a minor child, by utilizing an age increase factor in the standard used for the determination of child support. The Judicial Council shall develop a formula for the determination of that factor for the use of the courts.~~
- ~~(9) Any other factors the court determines are just and equitable.~~

~~(b) At the request of either party, the court shall make appropriate findings with respect to the circumstances on which the order for support of the child is based.~~

Interim Comment. Section 4005 continued Civil Code Section 246, insofar as that section applied to child support, but Section 246 has been repealed. See 1992 Cal. Stat. ch. 46, § 1.

Fam. Code §§ 4050-4068 (repealed). Child support guidelines

SEC. _____. Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code is repealed.

Interim Comment. Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code continued former Civil Code Sections 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) and 4720.2 (as amended by 1991 Cal. Stat. ch. 542, § 4.5), which were have been repealed. See 1992 Cal. Stat. ch. 46, §§ 6-7.

Fam. Code §§ 4050-4076 (added). Statewide Uniform Guideline

SEC. _____. Article 2 (commencing with Section 4050) is added to Chapter 2 of Part 2 of Division 9 of the Family Code, to read:

Article 2. Statewide Uniform Guideline

Fam. Code § 4050 (added). Legislative intent

4050. In adopting the statewide uniform guideline set forth in this article, it is the intention of the Legislature to ensure that this state remains in compliance with federal regulations for child support guidelines.

Comment. Section 4050 continues without substantive change the first sentence and the first part of the second sentence of former Civil Code Section 4720(a)(1) [as added by 1992 Cal. Stat. ch. 46, § 5]. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

Fam. Code § 4051 (added). Operative date of article

4051. This article takes effect on July 1, 1992.

Comment. Section 4051 continues without substantive change the last part of the second sentence of former Civil Code Section 4720(a)(1) [as added by 1992 Cal. Stat. ch. 46, § 5]. See also Section 4 (transitional provision for amendments, additions, and repeals).

Fam. Code § 4052 (added). Mandatory adherence to guideline

4052. The court shall adhere to the statewide uniform guideline and may depart from the guideline only in the exceptional circumstances set forth in this article.

Comment. Section 4052 restates former Civil Code Section 4720(a)(2) [as added by 1992 Cal. Stat. ch. 46, § 5] without substantive change, but states a positive rule rather than a legislative intent. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

Fam. Code § 4053 (added). Mandatory adherence to principles

4053. In implementing the statewide uniform guideline, the courts shall adhere to the following principles:

(a) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.

(b) Both parents are mutually responsible for the support of their children.

(c) The guideline takes into account each parent's actual income and level of responsibility for the children.

(d) Each parent should pay for the support of the children according to his or her ability.

(e) The guideline seeks to place the interests of children as the state's top priority.

(f) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.

(g) Child support orders in cases in which both parents have high levels of custody of the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.

(h) The financial needs of the children should be met through private financial resources as much as possible.

(i) It is presumed that a parent having primary physical custody of the children contributes a significant portion of available resources for the support of the children.

(j) The guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

(k) The guideline is intended to be presumptively correct in all cases, and only under extraordinary circumstances should child support orders fall below the child support mandated by the guideline formula.

(l) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

Comment. Section 4053 continues former Civil Code Section 4720(a)(3) [as added by 1992 Cal. Stat. ch. 46, § 5] without substantive change.

Fam. Code § 4054 (added). Periodic review by Judicial Council

4054. (a) The Judicial Council shall periodically review the statewide uniform guideline to recommend to the Legislature appropriate revisions.

(b) The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council.

(c) Any recommendations for revisions to the guideline shall be made to ensure that the guideline results in appropriate child support orders, to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law.

(d) The Judicial Council may also review and report on other matters, including, but not limited to, the following:

(1) The treatment of the income of a subsequent spouse or nonmarital partner.

(2) The treatment of children from prior or subsequent relationships.

(3) The application of the guideline in a case where a payor parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage.

(4) The benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline.

(5) Whether the use of gross or net income in the guideline is preferable.

(6) Whether the guideline affects child custody litigation or the efficiency of the judicial process.

(7) Whether the various assumptions used in computer software used by some courts to calculate child support comport with state law and should be made available to parties and counsel.

(e) The initial review by the Judicial Council shall be submitted to the Legislature and to the State Department of Social Services on or before December 31, 1993, and subsequent reviews shall occur at least every four years thereafter unless federal law requires a different interval.

(f) In developing its recommendations, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following:

- (1) Custodial and noncustodial parents.
- (2) Representatives of established women’s rights and fathers’ rights groups.
- (3) Representatives of established organizations that advocate for the economic well-being of children.
- (4) Members of the judiciary, district attorney’s offices, the Attorney General’s office, and the State Department of Social Services.
- (5) Certified family law specialists.
- (6) Academicians specializing in family law.
- (7) Persons representing low-income parents.
- (8) Persons representing recipients of assistance under the Aid to Families with Dependent Children (AFDC) program seeking child support services.

(g) In developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the legislative intent that children share in the standard of living of both of their parents.

Comment. Section 4054 continues former Civil Code Section 4720(b)-(d) [as added by 1992 Cal. Stat. ch. 46, § 5] without substantive change. In subdivisions (a) and (c), the references to “the statewide uniform guideline” and “the” guideline have been substituted for the former references to the “guideline established in [former Civil Code] Section 4721.” These are not substantive changes.

Staff Note. *Is subdivision (g) intended to be a generally applicable statement of legislative intent? If so, should this be made clear in Section 4050?*

Fam. Code § 4055 (added). Formula for statewide uniform guideline for determining child support

4055. (a) The statewide uniform guideline for determining child support orders is as follows: $CS = K [HN - (H\%) (TN)]$.

- (b) (1) The components of the formula are as follows:
 - (A) CS = child support amount.
 - (B) K = amount of income to be allocated for child support as set forth in paragraph (3).
 - (C) HN = high earner’s net monthly disposable income.
 - (D) H% = percentage of time that high earner has or will have physical custody of the children compared to the other parent.
 - (E) TN = total net monthly disposable income of both parties.
- (2) To compute net disposable income, see Section 4059.
- (3) K (amount of income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

<i>Total Net Disposable Income Per Month</i>	<i>K</i>
\$0–800	20 + TN/16,000
\$801–7,00025
\$7,001–10,000	20 + 350/TN
\$10,001–20,000	16 + 400/TN
Over \$20,000	12 + 800/TN

For example, if H% equals 20% and the total monthly net disposable income of the parents is \$1,000, $K = (1 + .20) \times .25$, or .30. If H% equals 80% and the total monthly net disposable income of the parents is \$1,000, $K = (2 - .80) \times .25$, or .30.

(4) For more than one child, multiply CS by:

2 children	1.6
3 children2
4 children	2.3
5 children	2.5
6 children	2.625
7 children	2.75
8 children	2.813
9 children	2.844
10 children	2.86

(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.

(6) If the children who are the subject of the child support order are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, H% shall be set at zero in the formula.

(7) In any default proceeding where proof is by affidavit pursuant to Section 2336, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula for the noncustodial parent where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has physical custody of the children.

(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children.

Comment. Section 4055 continues former Civil Code Section 4721(a)-(b) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. In the table set out in subdivision (b)(3), “\$10,001” was substituted for “\$10,000,” for consistency with the other entries on this table. In subdivision (b)(6), the reference to the acronym for the Aid to Families with Dependent Children program has been added for clarity and for consistency with Section 4054(f)(8).

Staff Note. In subdivision (b)(2) the substitution of the cross-reference to Section 4059 (formerly Civil Code Section 4721(g)) continues the cross-reference in the former subdivision. However, it appears that the cross-reference is meant to be to the “monthly net disposable income,” which is set forth in Section 4060 (formerly Civil Code Section 4721(h)). Should the cross-reference be changed?

Fam. Code § 4056 (added). Information court required to state in writing or on record

4056. The court shall state, in writing or on the record, the following information used in determining the statewide uniform guideline amount:

- (a) The net monthly disposable income of each parent.
- (b) The actual federal income tax filing status of each parent (for example, single, married, married filing separately, or head of household and number of exemptions).
- (c) Deductions from gross income for each parent.
- (d) The percentage of time pursuant to paragraph (1) of subdivision (b) of Section 4055 that each parent has primary physical custody of the children compared to the other parent.
- (e) The amount of support that would be received under the formula.
- (f) If any rebuttal factors are found under subdivision (b) of Section 4057, the reasons supporting the deductions, the documentation of the underlying facts and circumstances, the dollar amount of the rebuttal factor, and the duration that the rebuttal factor shall be in effect.
- (g) A finding that the revised amount is in the best interests of the children.
- (h) Any special circumstances found under paragraph (6) of subdivision (b) of Section 4057.
- (i) Any other findings required by federal law.

Comment. Section 4056 continues former Civil Code Section 4721(c) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. The reference to the “statewide uniform guideline amount” has been substituted for the “guideline amount under this chapter.” This is not a substantive change.

Fam. Code § 4057 (added). Presumption that child support established by guideline is correct; rebuttal of presumption

4057. (a) The amount of child support established by the formula set forth in subdivision (a) of Section 4055 is presumed to be the correct amount of child support to be ordered.

(b) The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4053, because one or more of

the following factors is found to be applicable by a preponderance of the evidence, and the court finds, in writing or on the record pursuant to Section 4056, that the revised amount is in the best interests of the children:

(1) The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.

(2) The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.

(3) A parent's subsequent spouse or nonmarital partner has income that helps meet that parent's basic living expenses, thus increasing the parent's disposable income available to spend on the children.

(4) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.

(5) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.

(6) Application of the formula would be unjust or inappropriate due to extraordinary circumstances in the particular case. These extraordinary circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different custody arrangements for different children.

(B) Cases in which both parents have substantially equal custody of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

Comment. Section 4057 continues former Civil Code Section 4721(d)-(e) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. The language in subdivisions (a) and (b) has been revised to conform with the language of the Evidence code sections dealing with presumptions. See, e.g., Evid. Code §§ 660-669.5 (presumptions affecting the burden of proof). This is not a substantive change. In subdivision (b), the reference to Section 4053 has been substituted for the broader reference to former Civil Code Section 4720. This is not a substantive change, since Section 4053 continues the relevant part of former Civil Code Section 4720 without substantive change.

Fam. Code § 4058 (added). Annual gross income

4058. (a) The annual gross income of each parent means income from whatever source derived, except as specified in paragraph (c) and includes, but is not limited to, all of the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social

security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children.

(c) Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

Comment. Section 4058 continues former Civil Code Section 4721(f) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. In subdivision (c), "does not" has been substituted for "shall not." This is not a substantive change. In subdivision (a)(1), "the proceeding to establish a child support order under this article" has been substituted for "this order" for clarity. This is not a substantive change.

Fam. Code § 4059 (added). Annual net disposal income

4059. The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this article:

(a) The state and federal income tax liability resulting from the parties' taxable income. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents. State and federal income taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions, and credits. Unless the parties stipulate otherwise, the tax effects of spousal support shall not be considered in determining the net disposable income of the parties for determining child support, but shall be considered in determining spousal support consistent with Chapter 3 (commencing with Section 4330) of Part 3.

(b) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(c) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(d) Deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.

(e) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by the guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. Unless the parent proves payment of the support, no deduction shall be allowed under this subdivision.

(f) Job-related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.

(g) A deduction for hardship, as defined by Section 4070 and applicable published appellate court decisions. The amount of the hardship shall not be deducted from the amount of child support, but shall be deducted from the income of the party to whom it applies. In applying any hardship under Section 4072, the court shall use the formula provided in that section and shall not use any local formula, in order to provide equity between competing child support orders.

Comment. Section 4059 continues former Civil Code Section 4721(g) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. In subdivision (g), the reference to Section 4070 has been substituted for the broader reference to former Civil Code Section 4722. This is not a substantive change, since Section 4070 continues the relevant part of the former section without substantive change.

Fam. Code § 4060 (added). Monthly net disposable income

4060. The monthly net disposable income shall be computed by dividing the annual net disposable income by 12. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.

Comment. Section 4060 continues former Civil Code Section 4721(h) [as added by 1992 Cal. Stat. ch. 46, § 9] without change. The first sentence of this section has been revised to conform with the first sentence Section 4059.

Fam. Code § 4061 (added). Additional child support

4061. (a) The amount of support ordered to be paid under this section, is considered additional child support.

(b) The court shall order the following:

(1) Child care costs related to employment or to reasonably necessary education or training for employment skills.

(2) The reasonable uninsured health care costs for the children. There is a rebuttable presumption that the costs actually paid for the uninsured health care needs of the children are reasonable.

(c) The court may order the following:

(1) Costs related to the educational or other special needs of the children.

(2) Travel expenses for visitation.

Comment. Subdivision (a) of Section 4061 continues the first sentence of former Civil Code Section 4721(i) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. The language of subdivision (a) has been revised for clarity. This is not a substantive change.

Subdivisions (b) and (c) continue former Civil Code Section 4721(j) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. References to “additional child support” have been omitted as surplus. The phrase “the following” has been added for consistency with other sections. See, e.g., Section 4058. This is not a substantive change.

Fam. Code § 4062 (added). Allocation of additional child support; adjusted net disposable income

4062.(a) If there needs to be an apportionment of expenses pursuant to Section 4061, the basic child support obligation shall first be computed using the formula set forth in subdivision (a) of Section 4055, as adjusted for any appropriate rebuttal factors in subdivision (b) of Section 4057.

(b) Any additional child support required for expenses pursuant to Section 4061 shall thereafter be ordered to be paid by the parents in proportion to their adjusted net disposable incomes.

(c) The adjusted net disposable income shall be computed as follows:

(1) The gross income of the parent paying spousal support shall be decreased by the amount of the spousal support paid and the gross income of the parent receiving the spousal support shall be increased by the amount of the spousal support received for so long as the spousal support order is in effect and is paid.

(2) The net disposable income of the parent paying child support shall be reduced by the amount of any basic child support ordered to be paid under subdivision (a) of Section 4055. However, the net disposable income of the parent receiving child support shall not be increased by any amount of child support received.

Comment. Section 4062 continues without substantive change the second through the last sentences of former Civil Code Section 4721(i) [as added by 1992 Cal. Stat. ch. 46, § 9]. In subdivision (c), the language of the former subdivision has been revised for clarity. This is not a substantive change.

Fam. Code § 4063 (added). Payment to service provider

4063. Unless there is an assignment of rights pursuant to Section 11477 of the Welfare and Institutions Code, any payment ordered pursuant to Section 4061 may be ordered paid directly to a provider of services.

Comment. Section 4063 continues former Civil Code Section 4721(k) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change.

Fam. Code § 4064 (added). Adjustment for seasonal or fluctuating income

4064. The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.

Comment. Section 4064 continues former Civil Code Section 4721(l) [as added by 1992 Cal. Stat. ch. 46, § 9] without change.

Fam. Code § 4065 (added). Stipulated child support agreement

4065. (a) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement unless the parties declare all of the following:

- (1) They are fully informed of their rights concerning child support.
- (2) The order is being agreed to without coercion or duress.
- (3) The agreement is in the best interests of the children involved.
- (4) The needs of the children will be adequately met by the stipulated amount.

(b) A stipulated agreement of child support is not valid unless either of the following occurs:

(1) The parties declare the right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

(2) The district attorney has joined in the stipulation by signing it. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the Aid to Families with Dependent Children (AFDC) program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.

(c) If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

Comment. Section 4065 continues former Civil Code Section 4721(m)-(o) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. In subdivision (c), the reference to the amount established “by the statewide uniform guideline” has been substituted for the former reference to the amount established by “this section,” meaning former Civil Code Section 4721. This is not a substantive change, since the former section is continued in this article.

Fam. Code § 4066 (added). Order or stipulation designating family support

4066. Orders and stipulations otherwise in compliance with the statewide uniform guideline may designate as “family support” an unallocated total sum for support of the spouse and any children without specifically labeling all or any portion as “child support” so long as the amount is adjusted to reflect the effect of additional deductibility. The amount of the order shall be adjusted to maximize the tax benefits for both parents.

Comment. Section 4066 continues former Civil Code Section 4721(p) [as added by 1992 Cal. Stat. ch. 46, § 9] without change. The reference to the “statewide uniform guideline”

has been substituted for the former reference to “this guideline.” This is not a substantive change.

Fam. Code § 4067 (added). Continuing review by Legislature

4067. It is the intent of the Legislature that the statewide uniform guideline shall be reviewed by the Legislature at least every four years and shall be revised by the Legislature as appropriate to ensure that its application results in the determination of appropriate child support amounts. The review shall include consideration of changes required by applicable federal laws and regulations or recommended from time to time by the Judicial Council pursuant to Section 4054.

Comment. Section 4067 continues former Civil Code Section 4721(q) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. The reference to Section 4054 has been substituted for the narrower reference to former Civil Code Section 4720(b). This is not a substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to the “uniform guideline provided by this chapter.” This is not a substantive change.

Staff Note. Should this section be moved up to the front of the article? It could be added to Section 4050 or become Section 4051.

Fam. Code § 4068 (added). Judicial Council worksheets and forms

4068. The Judicial Council may develop the following:

(a) Model worksheets to assist parties in determining the approximate amount of child support due under the formula set forth in subdivision (a) of Section 4055 and the approximate percentage of time each parent has custody of the children.

(b) A form to assist the courts in making the findings and orders required by this article.

Comment. Section 4068 continues former Civil Code Section 4721(r) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. The phrase “the following” has been added and the section subdivided. The addition of “the following” makes this section consistent with other sections. See, e.g., Section 4058. These are not substantive changes.

Staff Note. Should this section be moved up to follow Section 4054 (periodic review by Judicial Council)?

Fam. Code § 4069 (added). Establishment of guideline as change of circumstances

4069. The establishment of the statewide uniform guideline constitutes a change of circumstances for the purpose of any modification of child support order entered prior to the guideline’s operative date.

Comment. Section 4069 continues former Civil Code Section 4721(s) [as added by 1992 Cal. Stat. ch. 46, § 9] without substantive change. The reference to the “statewide uniform guideline” has been substituted for the former reference to “this guideline.” This is not a substantive change.

Staff Note. Should this section be moved? It might be placed toward the beginning of the article, since it deals with the effect of the establishment of the guideline.

Fam. Code § 4070 (added). Financial hardship deductions

4070. If a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in Sections 4071 and 4072, upon the request of a party, the court may allow the income deductions under subdivision (g) of Section 4059 that may be necessary to accommodate those circumstances.

Comment. Section 4070 continues the introductory sentence of former Civil Code Section 4722 [as added by 1992 Cal. Stat. ch. 46, § 11] without substantive change. The reference to Section 4059(g) has been substituted for the broader reference to former Civil Code Section 4721. This is not a substantive change, since Section 4059(g) continues the relevant part of the former section without substantive change.

Staff Note. *Is the substitution of Section 4059(g) too narrow? Would Section 4059 be better?*

Fam. Code § 4071 (added). Extraordinary health expenses and uninsured catastrophic loss as circumstance evidencing hardship;

4071. Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

Comment. Section 4071 continues former Civil Code Section 4722(a) [as added by 1992 Cal. Stat. ch. 46, § 11] without change.

Fam. Code § 4072 (added). Support of children from other marriages or relationships as circumstance evidencing hardship; Judicial Council tables

4072. (a) Circumstances evidencing hardship also include the minimum basic living expenses of either parent’s natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may allow such income deductions as necessary to accommodate these expenses after making the deductions allowable under Section 4071.

(b) The maximum hardship deduction for each child who resides with the parent may be equal, but shall not exceed, the support awarded each child subject to the order. For purposes of calculating this deduction, the amount of support per child established by the statewide uniform guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) of subdivision (b) of Section 4055.

(c) The maximum hardship deduction shall be calculated as follows:

$$D = \frac{F(N)}{S+(F)(H)}$$

Where:

N = Parent’s net disposable income prior to the deduction for hardship.

F = Factor .18 for one child, .27 for two children, .36 for three children, plus .04 more for each additional child over three children.

H = Number of children for whom a hardship deduction is being given.

S = Number of children for whom support is being ordered.

D = Maximum deduction per child.

(d) The Judicial Council may develop tables in accordance with the formula prescribed in subdivision (c) to reflect the maximum hardship deduction, taking into consideration the parent's net disposable income before the hardship deduction, the number of children for whom the deduction is being given, and the number of children for whom the support award is being made.

Comment. Section 4072 continues former Civil Code Section 4722(b) [as added by 1992 Cal. Stat. ch. 46, § 11] without substantive change.

Fam. Code § 4073 (added). Statement of reasons for and duration of hardship deductions

4073. (a) If a deduction for hardship expenses is allowed, the court shall do all of the following:

(1) State the reasons supporting the deduction in writing or on the record.

(2) Document the amount of the deduction and the underlying facts and circumstances.

(b) Whenever possible, the court shall specify the duration of the deduction.

Comment. Section 4073 continues former Civil Code Section 4722(c) [as added by 1992 Cal. Stat. ch. 46, § 11] without substantive change. The language of the former section has been revised for clarity. See also Section 10 (singular includes the plural).

Fam. Code § 4074 (added). Court to consider legislative goals when ordering hardship deduction

4074. The court shall be guided by the goals set forth in this article when considering whether or not to allow a financial hardship deduction, and, if allowed, when determining the amount of the deduction.

Comment. Section 4074 continues former Civil Code Section 4722(d) [as added by 1992 Cal. Stat. ch. 46, § 11] without substantive change. The language of the former section has been revised for clarity. The reference to this article has been substituted for the narrower reference to former Civil Code Section 4720. This is not a substantive change, since the former section is continued in this article.

Fam. Code § 4075 (added). Application to family support awards

4075. This article applies to an award for the support of children, including those awards designated as "family support," that contain provisions for the support of children as well as for the support of the spouse.

Comment. Section 4075 continues former Civil Code Section 4731 [as added by 1984 Cal. Stat. ch. 1605, § 4] without substantive change.

Staff Note. Civil Code Section 4731 was repealed by the Family Code bill.

Fam. Code § 4076 (added). Treatment of spousal support payments by IRS

4076. This article shall not be construed to affect the treatment of spousal support and separate maintenance payments pursuant to Section 721 of the Internal Revenue Code of 1954 (27 U.S.C. Sec. 71).

Comment. Section 4076 continues former Civil Code Section 4732 [as added by 1984 Cal. Stat. ch. 1605, § 4] without substantive change.

Staff Note. Civil Code Section 4732 was repealed by the Family Code bill.

Appendix

Revised Comments

Staff Note. *The following Comments need to be revised in connection with SB 370 changes. Revisions are shown in the same form as amendments.*

Fam. Code § 4320. Circumstances to be considered in ordering spousal support

Comment. Section 4320 continues former Civil Code Section 4801(a)(1)-(10) without substantive change. In the introductory clause, the reference to “under this part” has been added to make clear that the court is only required to consider these factors when making an order for permanent spousal support. For provisions dealing with temporary support orders, see Chapter 4 (commencing with Section 3600) of Part 1. In subdivisions (a)-(c), the references to parties have been substituted for the former references to spouses. This is not a substantive change and conforms the terminology of subdivisions (a)-(c) with that of the remainder of the subdivisions in this section. ~~This section supersedes former Civil Code Section 246 to the extent it related to support of a spouse.~~

See Section 4360 (in determining supported spouse’s needs under Section 4320, court may include amount sufficient for annuity, insurance, or trust to provide support in event of supporting spouse’s death). See also Sections 273 (attorney’s fees for enforcement of support order), 2641 (reimbursement for community contributions to education or training), 3592 (support order where agreement for support of spouse discharged in bankruptcy).

Fam. Code § 4404. Determination of amount of support

Comment. Section 4404 continues without substantive change former Civil Code Section 246, insofar as that section applied to an order for support of a parent. Former Civil Code Section 246 has been continued, despite having been repealed by Section 1 of Chapter 46 of the Statutes of 1992 (the bill enacting the statewide uniform guideline for child support).

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EXHIBIT 2

SB 1372 (Wage Garnishment)

Staff Note. The draft legislation in this exhibit would restore a conforming change in AB 2641 (1992 Cal. Stat. ch. 163, § 36), which was chaptered-out by SB 1372 (1992 Cal. Stat. ch. 283, § 4).

Code Civ. Proc. § 699.560 (technical amendment). Return of writ of execution

SEC. 36. Section 699.560 of the Code of Civil Procedure is amended to read:

699.560. (a) Except as provided in subdivisions (b) and (c), the levying officer to whom the writ of execution is delivered shall return the writ to the court, together with a report of the levying officer's actions and an accounting of amounts collected and costs incurred, at the earliest of the following times:

- (1) Two years from the date of issuance of the writ.
- (2) Promptly after all of the duties under the writ are performed.
- (3) When return is requested in writing by the judgment creditor.
- (4) If no levy takes place under the writ within 180 days after its issuance, promptly after the expiration of the 180-day period.
- (5) Upon expiration of the time for enforcement of the money judgment.

(b) If a levy has been made under Section 700.200 upon an interest in personal property in the estate of a decedent, the writ shall be returned within the time prescribed in Section 700.200.

(c) If a levy has been made under Section ~~4383~~ 5103 of the Civil Family Code on the judgment debtor's right to the payment of benefits from an employee pension benefit plan, the writ shall be returned within the time prescribed in that section.

(d) If a levy has been made under the Wage Garnishment Law (Chapter 5 commencing with Section 706.010), and the earnings withholding order remains in effect, the writ of execution shall be returned as provided in subdivision (a) and a supplemental return shall be made as provided in Section 706.033.

Comment. Subdivision (c) of Section 699.560 [as amended by 1992 Cal. Stat. ch. 283, § 4] is amended to substitute a reference to the Family Code section that replaced the former Civil Code section.

Interim Comment. Subdivision (c) of Section 699.560 is amended to restore a change that was chaptered out.

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Memo 92-33

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EXHIBIT 3

AB 1719 (Nonprobate Transfers of Community Property)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), which repeal was chaptered-out by AB 1719 (1992 Cal. Stat. ch. 51, § 1), and make conforming changes in the Family Code.

Civ. Code § 5110.740 (repealed). Estate planning documents

SEC. _____. Section 5110.740 of the Civil Code is repealed.

~~5110.740. (a) A statement in a will of the character of property is not admissible as evidence of a transmutation of the property in any proceeding commenced before the death of the person who made the will.~~

~~(b) A waiver of a right to a joint and survivor annuity or survivor's benefits under the federal Retirement Equity Act of 1984 (Public Law 98-397) is not a transmutation of the community property rights of the person executing the waiver.~~

~~(c) A written joinder or written consent to a nonprobate transfer of community property on death that satisfies Section 5110.730 is a transmutation and is governed by the law applicable to transmutations and not by Chapter 2 (commencing with Section 5010) of Part 1 of Division 5 of the Probate Code.~~

Comment. Former Section 5110.740 [as amended by 1992 Cal. Stat. ch. 51, § 1] is continued without substantive change in Family Code Section 853.

Fam. Code § 853 (amended). Estate planning documents

SEC. _____. Section 853 of the Family Code is amended to read:

853. (a) A statement in a will of the character of property is not admissible as evidence of a transmutation of the property in a proceeding commenced before the death of the person who made the will.

(b) A waiver of a right to a joint and survivor annuity or survivor's benefits under the federal Retirement Equity Act of 1984 (Public Law 98-397) is not a transmutation of the community property rights of the person executing the waiver.

(c) A written joinder or written consent to a nonprobate transfer of community property on death that satisfies Section 852 is a transmutation and is governed by the law applicable to transmutations and not by Chapter 2 (commencing with Section 5010) of Part 1 of Division 5 of the Probate Code.

Comment. Section 853 continues former Civil Code Section 5110.740 [as amended by 1992 Cal. Stat. ch. 51, § 1] without substantive change. When enacted in 1984 (as former Civil Code Section 5110.740), subdivisions (a) of this provision reversed the case-law rule that

a declaration made in a will as to the character of property may be an effective transmutation of the property before the death of the declarant. See, e.g., *In re Marriage of Lotz*, 120 Cal. App. 3d 379, 174 Cal. Rptr. 618 (1981); *Estate of Wilson*, 64 Cal. App. 3d 786, 134 Cal. Rptr. 749 (1976). Section 853 is consistent with the general concepts that a will is ambulatory and subject to subsequent revocation or modification and does not speak until the testator's death.

For background on former Civil Code Section 5110.740, see *Recommendation Relating to Marital Property Presumptions and Transmutations*, 17 Cal. L. Revision Comm'n Reports 205 (1984); *Nonprobate Transfers of Community Property*, 21 Cal. L. Revision Comm'n Reports 163 (1991).

Interim Comment. Subdivisions (b) and (c) are added to Section 853 to implement the amendment made to Civil Code Section 5110.740 by the Commission's nonprobate transfer recommendation. A section reference has been adjusted for conformity with the Family Code.

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Memo 92-33

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EXHIBIT 4

AB 1101 (Vital Statistics and Marriage Licenses)

Staff Note. The draft legislation in this exhibit would repeal sections that were repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), which repeal has been chaptered-out by AB 1101 (1992 Cal. Stat. ch. 318), and make conforming changes in the Family Code.

Outline

Civil Code (pp. 33-40)

- § 4100 (repealed). Marriage relation
- § 4200 (repealed). Procedural requirements
- § 4202 (repealed). Certificate of registry
- § 4203 (repealed). Replacement of lost certificate of registry
- § 4204 (repealed). Expiration of license
- § 4206 (repealed). Essential element of solemnization
- § 4208 (repealed). Statement of person solemnizing marriage
- § 4210 (repealed). Unrecorded marriage
- § 4213 (repealed). Confidential marriage license
- § 4216 (repealed). Requirements for marriage of members of religious society or denomination

Family Code (pp. 40-45)

- § 306 (technical amendment). Procedural requirements
- § 307 (technical amendment). Requirements for marriage of members of religious society or denomination
- § 357 (technical amendment). Duties of county clerk and county recorder
- § 359 (technical amendment). Certificate of registry
- § 360 (technical amendment). Replacement of lost certificate of registry
- § 420 (technical amendment). Essential element of solemnization
- § 422 (technical amendment). Statement of person solemnizing marriage
- § 423 (technical amendment). Return of license and statement to local registrar
- § 425 (technical amendment). Unrecorded marriage
- § 506 (technical amendment). Preparation and filing of marriage certificate
- § 510 (technical amendment). Replacement of lost certificate

Penal Code (p. 45)

- § 360 (technical amendment). Solemnizing marriage without license

Civ. Code § 4100 (repealed). Marriage relation; consent, license, and solemnization

SEC. _____. Section 4100 of the Civil Code is repealed.

~~4100. Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that~~

~~contract is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and solemnization as authorized by this code, except as provided by Sections 4210 and 4213.~~

Comment. Section 4100 [as amended by 1992 Cal. Stat. ch. 318, § 1] is continued without substantive change in Family Code Section 300.

Staff Note. *No revision of the Family Code is required to reflect the new reference to Civil Code Section 4213, since Family Code Section 300 refers to exceptions in Part 4 (commencing with Section 500), which includes the substance of Civil Code Section 4213.*

Civ. Code § 4200 (repealed). Procedural requirements; effect of noncompliance

SEC. _____. Section 4200 of the Civil Code is repealed.

~~4200. A marriage shall be licensed, solemnized, authenticated, and the certificate of registry of marriage returned as provided in this article. However, noncompliance with this article by others than a party to a marriage does not invalidate the marriage.~~

Comment. Section 4200 [as amended by 1992 Cal. Stat. ch. 318, § 2] is continued without substantive change in Family Code Section 306.

Civ. Code § 4202 (repealed). Certificate of registry; preparation and filing

SEC. _____. Section 4202 of the Civil Code is repealed.

~~4202. (a) All persons about to be joined in marriage shall obtain from the county clerk of the county in which the license is issued, in addition to the license therefor provided for in Section 4201, a certificate of registry of marriage as provided in Division 9 (commencing with Section 10000) of the Health and Safety Code containing the items therein listed which certificate of registry of marriage shall be filled out as provided, in the presence of the county clerk issuing the marriage license, and shall then be presented to the person performing the ceremony who shall complete the certificate thereon and shall cause to be entered thereon the signature and address of one witness to the marriage ceremony. The certificate of registry of marriage shall be returned by the person performing the ceremony to the county recorder of the county in which the license was issued within 30 days after the ceremony.~~

~~(b) As used in this article, “returned” means presented to the appropriate person in person, or postmarked, before the expiration of the specified time period.~~

Comment. Section 4202 [as amended by 1992 Cal. Stat. ch. 318, § 3] is restated without substantive change in Family Code Section 359.

Civ. Code § 4203 (repealed). Replacement of lost certificate of registry

SEC. _____. Section 4203 of the Civil Code is repealed.

~~4203. Upon the loss or destruction of a certificate of registry of marriage subsequent to the marriage ceremony but before it is returned to the county recorder in order to comply with Section 4202, the person solemnizing the marriage shall obtain a duplicate certificate of registry of marriage by filing an~~

~~affidavit setting forth the facts with the county clerk of the county in which the license was issued.~~

~~The fee for issuing the duplicate license and certificate is five dollars (\$5). The duplicate certificate may be issued up to one year after issuance of the original license and shall be returned by the person solemnizing the marriage to the county recorder within 30 days after issuance.~~

Comment. Section 4203 [as amended by 1992 Cal. Stat. ch. 318, § 4] is restated without substantive change in Family Code Section 360.

Civ. Code § 4204 (repealed). Expiration of license; duties of county clerk and county recorder

SEC. _____. Section 4204 of the Civil Code is repealed.

~~4204. A license issued pursuant to Section 4201 shall expire 90 days after its issuance and the calendar date of expiration shall be clearly noted on the fact of each license.~~

~~The county clerk shall number each license issued, and shall transmit at periodic intervals to the county recorder a list or copies of the licenses issued. Not later than 60 days after the date of issuance the county recorder shall notify those parties whose certificates have not been returned of that fact and that the license will automatically expire on the date shown on the face of the license. The county recorder shall also notify the licenseholders of the obligation of the person marrying them to return the certificate of registry and endorsed license to the recorder's office within 30 days after the ceremony.~~

Comment. Section 4204 [as amended by 1992 Cal. Stat. ch. 318, § 5] is restated without substantive change in Family Code Sections 356-357.

Civ. Code § 4206 (repealed). Essential element of solemnization

SEC. _____. Section 4206 of the Civil Code is repealed.

~~4206. No particular form for the ceremony of marriage is required, but the parties shall declare, in the presence of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife.~~

Comment. Section 4206 [as amended by 1992 Cal. Stat. ch. 318, § 6] is continued without substantive change in Family Code Section 420(a).

Civ. Code § 4208 (repealed). Statement of person solemnizing marriage; return of license and statement to local registrar

SEC. _____. Section 4208 of the Civil Code is repealed.

~~4208. (a) The person solemnizing a marriage shall make, sign, and endorse upon or attach to the license a statement, in the form prescribed by the State Department of Health Services showing all of the following:~~

~~(1) The fact, date (month, day, year), and place (city and county) of solemnization.~~

~~(2) The names and places of residence of one or more witnesses to the ceremony.~~

~~(3) A statement of the official position of the person solemnizing the marriage, or of the denomination of which that person is a priest, minister, or member of the clergy thereof. The person solemnizing the marriage shall also type or print his or her name and address.~~

~~(b) The marriage license, endorsed as required in subdivision (a), shall be returned to the county recorder of the county in which the license was issued within 30 days after the ceremony.~~

Comment. Section 4208 [as amended by 1992 Cal. Stat. ch. 318, § 7] is continued without substantive change in Family Code Sections 422-423.

Civ. Code § 4210 (repealed). Unrecorded marriage

SEC. _____. Section 4210 of the Civil Code is repealed.

~~4210. If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may purchase a License and Certificate of Declaration of Marriage from the county clerk in the parties' county of residence. The license and certificate shall be returned in the manner specified in subdivision (b) of Section 4216.~~

Comment. Section 4210 [as amended by 1992 Cal. Stat. ch. 318, § 8] is continued without substantive change in Family Code Section 425.

Civ. Code § 4213 (repealed). Confidential marriage license

SEC. _____. Section 4213 of Civil Code is repealed.

~~4213. (a) When an unmarried man and an unmarried woman, not minors, have been living together as husband and wife they may be married by any person authorized to solemnize a marriage under Sections 4205, 4205.1, and 4205.5, without the necessity of first obtaining health certificates. Except as provided in Section 4213.1, a confidential marriage license shall be issued by the county clerk upon the personal appearance of the parties to be married and their payment of the fees required by Sections 26840.1 and 26840.8 of the Government Code and any fee imposed pursuant to the authorization of Section 26840.3 of the Government Code. Any license issued pursuant to this section shall be valid only for a period of 90 days after its issuance and may only be used in the county in which it is issued. The license shall be presented to the person performing the ceremony. Upon performance of the ceremony, the confidential marriage certificate shall be filled out by the parties to the marriage and authenticated by the person performing the ceremony. The certificate shall be returned by the person performing the ceremony to the office of the county clerk in the county in which the license was issued within 30 days after the performance of the ceremony. Except as provided in Section 4213.2, the county clerk shall maintain the certificate as a permanent record which shall not be open to the public inspection except upon order of the superior court issued upon a showing of good cause.~~

Upon performance of the ceremony, the person performing the ceremony shall give a copy of the confidential marriage certificate to the parties who were married. The person performing the ceremony shall also provide the parties who were married with an application for a certified copy of the confidential marriage certificate which shall be filled out by the parties and sent by the person performing the marriage to the county clerk.

The form of the confidential marriage license shall be prescribed by the State Registrar of Vital Statistics. The form shall be designed in a manner such that the parties to be married shall declare or affirm that they meet all of the requirements of this section. The form also shall contain a certificate of marriage, which shall be filled out by the parties upon performance of the marriage and authenticated by the person performing the marriage. The form shall include an affidavit on the back, which the husband and wife shall sign, affirming that they have received the brochure provided for in Section 4201.5.

(b) The county clerk shall issue a confidential marriage license upon the request of a notary public approved by the county clerk to authorize confidential marriages pursuant to subdivision (c) and his or her payment of the fees specified in Sections 26840.1 and 26840.8 of the Government Code. The parties shall reimburse a notary public who authorizes a confidential marriage for the amount of the fees. A confidential marriage license issued by the county clerk to a notary public shall be valid only for a period of 90 days after its issuance by the county clerk and may only be used in the county in which it was issued.

(c)(1) No notary public shall authorize a confidential marriage pursuant to this section unless he or she is approved by the county clerk to authorize such a marriage pursuant to this subdivision.

(2) An application for approval to authorize confidential marriages pursuant to this section shall be submitted to the county clerk in the county in which the notary public who is applying therefor resides. The application shall include all of the following:

- (A) The full name of applicant.
- (B) His or her date of birth.
- (C) His or her current residential address and telephone number.
- (D) The address and telephone number of the place where the applicant will issue authorizations for the performance of a marriage.
- (E) The full name of his or her employer if the applicant is employed by another party.
- (F) Whether or not the applicant has engaged in any of the acts specified in Section 8214.1 of the Government Code.

(3) The application shall be accompanied by a fee of one hundred seventy-five dollars (\$175). An approval to authorize confidential marriages pursuant to this section shall be valid for one year. The fee for a renewal of an approval is one hundred seventy-five dollars (\$175). Fees received pursuant to this section shall be deposited in a trust fund established by the county clerk, the funds contained

in which shall be used exclusively for the administration of the program described in this subdivision.

(4) If, after an approval to authorize confidential marriages is granted pursuant to this subdivision, it is discovered that the notary public has engaged in any of the actions specified in Section 8214.1 of the Government Code, the approval shall be revoked. In such a case, any fees paid by the notary public may be retained by the county clerk.

(5) No approval shall be granted pursuant to this subdivision unless the notary public shows evidence of successful completion of a course of instruction concerning the authorization of confidential marriages that shall be conducted by the county clerk. The course of instruction shall not exceed two hours in duration.

(6) The county clerk shall maintain a list of the notaries public who are approved to authorize confidential marriages. The list shall be available for inspection by the public. It is the responsibility of a notary public approved to authorize confidential marriages pursuant to this subdivision to keep current the information required in subparagraphs (A), (C), (D), and (E) of paragraph (2). This information shall be used by the county clerk to update the list required to be maintained by this paragraph.

(7) If a notary public who is approved to authorize confidential marriages pursuant to this subdivision is alleged to have violated any of the provisions of this article, the county clerk shall conduct a hearing to determine if the approval of the notary public should be suspended or revoked. The notary public may present any evidence necessary in his or her defense. If the county clerk determines that the notary public has violated this article, the county clerk may place the notary public on probation or suspend or revoke his or her registration. The county clerk shall report the findings of the hearing to the Secretary of State for whatever action the Secretary of State deems appropriate.

(d) A violation of paragraph (1) of subdivision (c) is a misdemeanor punishable by a fine not to exceed one thousand dollars (\$1,000) or six months in jail.

(e) The county clerk shall, not less than quarterly, transmit copies of all confidential marriage certificates filed after January 1, 1982, to the State Registrar of Vital Statistics. The registrar may destroy the copies so transmitted after they have been indexed. The registrar may respond to an inquiry as to the existence of a marriage performed pursuant to this section, but shall not disclose the date of the marriage.

(f) The county clerk may conduct a search for a confidential marriage certificate for the purpose of confirming the existence of a marriage. However, the date of the marriage and any other information contained in the certificate shall not be disclosed except upon order of the superior court.

(g) A party to a confidential marriage may obtain a certified copy of the confidential marriage certificate from the county clerk of the county in which the certificate is filed in any of the following ways:

~~(1) By submitting the application for a certified copy of the confidential marriage certificate provided to the parties at the time of the marriage.~~

~~(2) By personally appearing before a notary public or at the county clerk’s office in his or her county of residence, producing proper identification, obtaining a certificate attesting to his or her identity from the notary public or county clerk, and transmitting that certificate, together with a request for the certified copy of the confidential marriage certificate, to the county clerk of the county with which the certificate is filed.~~

~~(3) By personally appearing at the county clerk’s office where the certificate is filed and producing proper identification.~~

~~Copies of a confidential marriage certificate may be issued to the parties to such a marriage upon the payment of a fee equivalent to that charged for copies of a certificate of marriage.~~

~~(h) In the event that a certificate furnished pursuant to this section is lost, damaged, or destroyed after the performance of the marriage and before it is returned, the county clerk may issue a replacement upon th payment of a fee of five dollars (\$5). The duplicate license may be issued up to one year after issuance of the original license, and shall be returned by the person solemnizing the marriage to the county clerk within 30 days after issuance.~~

~~(i) The affidavit required by subdivision (a) shall state:~~

AFFIDAVIT

~~I acknowledge that I have received the brochure titled _____~~

~~_____
Signature of Wife Date~~

~~_____
Signature of Husband Date~~

Comment. Section 4213 [as amended by 1992 Cal. Stat. ch. 318, § 9] is restated without substantive change in Family Code Sections 500-536. See Fam. Code §§ 500-536 Comments.

Civ. Code § 4216 (repealed). Requirements for marriage of members of religious society or denomination

~~SEC. ____.~~ Section 4216 of the Civil Code is repealed.

~~4216. This article, so far as it relates to the solemnizing of marriages, is not applicable to members of any particular religious society or denomination not having clergy for the purpose of solemnizing marriage, or entering the marriage relation, if all of the following requirements are met:~~

~~(a) The parties entering the marriage make, sign, and endorse upon, or attach to, the license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:~~

~~(1) The fact, time, and place of entering into the marriage.~~

~~(2) The signature and place of residence of two witnesses to the ceremony.~~

~~(3) The religious society or denomination of the parties married, and that the marriage was entered into in accordance with the rules and customs of that religious society or denomination. The statement of the parties entering the marriage that the marriage was entered into in accordance with the rules and customs of the religious society or denomination is conclusively presumed to be true.~~

~~(b) The License and Certificate of Declaration of Marriage, endorsed pursuant to subdivision (a), is returned to the county recorder in which the license was issued within 30 days after the ceremony.~~

Comment. Section 4216 [as amended by 1992 Cal. Stat. ch. 318, § 10] is continued without substantive change in Family Code Section 307.

Fam. Code § 306 (technical amendment). Procedural requirements; effect of noncompliance

SEC. _____. Section 306 of the Family Code is amended to read:

306. Except as provided in Section 307, a marriage must shall be licensed, solemnized, and authenticated, and the certificate of registry of marriage must shall be filed returned as provided in this part; ~~but noncompliance.~~ Noncompliance with this part by a nonparty to the marriage does not invalidate the marriage.

Comment. Section 306 continues former Civil Code Section 4200 [as amended by 1992 Cal. Stat. ch. 318, § 2] without substantive change. The introductory clause has been added to recognize the exception provided in Section 307. The word “nonparty” has been substituted for “others than a party.”

Interim Comment. The minor wording changes made in Section 306 track similar changes in Civil Code Section 4200, as amended by 1992 Cal. Stat. ch. 318, § 2.

Fam. Code § 307 (technical amendment). Requirements for marriage of members of religious society or denomination

SEC. _____. Section 307 of the Family Code is amended to read:

307. This division, so far as it relates to the solemnizing of marriage, is not applicable to members of a particular religious society or denomination not having clergy for the purpose of solemnizing marriage or entering the marriage relation, if all of the following requirements are met:

(a) The parties to the marriage make, sign, and endorse on or attach to the license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:

(1) The fact, time, and place of entering into the marriage.

(2) The signatures and places of residence of two witnesses to the ceremony.

(3) The religious society or denomination of the parties to the marriage, and that the marriage was entered into in accordance with the rules and customs of that religious society or denomination. The statement of the parties to the marriage

that the marriage was entered into in accordance with the rules and customs of the religious society or denomination is conclusively presumed to be true.

(b) The License and Certificate of Declaration of Marriage, endorsed pursuant to subdivision (a), is filed with the local registrar of marriages of returned to the county recorder of the county in which the license was issued within ~~four~~ 30 days after the ceremony.

Comment. Section 307 continues former Civil Code Section 4216 [as amended by 1992 Cal. Stat. ch. 318, § 10] without substantive change. In the introductory part of this section, a reference to this division has been substituted for the narrower reference to “this article” in former law. This is not a substantive change, since the former article contained the sections relating to solemnization that are continued in this division.

Interim Comment. Subdivision (b) of Section 307 is amended to conform to amendments to Civil Code 4216(b) made by 1992 Cal. Stat. ch. 318, § 10. The phrase “of the county” has been added for clarity, and is consistent with the language of Section 357(c).

Fam. Code § 357 (technical amendment). Duties of county clerk and county recorder

SEC. _____. Section 357 of the Family Code is amended to read:

357. (a) The county clerk shall number each marriage license issued and shall transmit at periodic intervals to the county recorder a list or copies of the licenses issued.

(b) Not later than 60 days after the date of issuance, the county recorder shall notify license holders whose certificate of registry has not been filed returned of that fact and that the marriage license will automatically expire on the date shown on its face.

(c) The county recorder shall notify the license holders of the obligation of the person solemnizing their marriage to return the certificate of registry and endorsed license to the recorder’s office within ~~four~~ 30 days after the ceremony.

Comment. Section 357 restates without substantive change the second paragraph of former Civil Code Section 4204 [as amended by 1992 Cal. Stat. ch. 318, § 5]. In subdivision (c), the phrase “person solemnizing their marriage” has been substituted for “person marrying them” to conform with other sections in this division. See, e.g., Section 420.

Interim Comment. Section 357 is amended to conform to Civil Code Section 4204, as amended by 1992 Cal. Stat. ch. 318, § 5.

Fam. Code § 359 (technical amendment). Certificate of registry; preparation and filing

SEC. _____. Section 359 of the Family Code is amended to read:

359. (a) Applicants for a marriage license shall obtain from the county clerk issuing the license, a certificate of registry of marriage.

(b) The contents of the certificate of registry are as provided in Division 9 (commencing with Section 10000) of the Health and Safety Code.

(c) The certificate of registry shall be filled out by the applicants, in the presence of the county clerk issuing the marriage license, and shall be presented to the person solemnizing the marriage.

(d) The person solemnizing the marriage shall complete the certificate of registry and shall cause to be entered on the certificate of registry the signature and address of one witness to the marriage ceremony.

(e) The certificate of registry shall be filed returned by the person solemnizing the marriage ~~with to~~ the county recorder of the county in which the license was issued within ~~four~~ 30 days after the ceremony.

(f) As used in this division, “returned” means presented to the appropriate person in person, or postmarked, before the expiration of the specified time period.

Comment. Section 359 restates former Civil Code Section 4202 [as amended by 1992 Cal. Stat. ch. 318, § 3] without substantive change. The phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” throughout this section for consistency with other sections in this division. See, e.g., Section 420.

Interim Comment. Subdivision (e) of Section 359 is amended and subdivisions (f) is added to conform to changes made in Civil Code Section 4202 [as amended by 1992 Cal. Stat. ch. 318, § 3].

Fam. Code § 360 (technical amendment). Replacement of lost certificate of registry

SEC. _____. Section 360 of the Family Code is amended to read:

360. (a) If a certificate of registry of marriage is lost or destroyed after the marriage ceremony but before filing with it is returned to the county recorder, the person solemnizing the marriage, in order to comply with Section 359, shall obtain a duplicate certificate of registry by filing an affidavit setting forth the facts with the county clerk of the county in which the license was issued.

(b) The duplicate certificate of registry may not be issued later than one year after issuance of the original license and shall be returned by the person solemnizing the marriage to the county recorder within 30 days after issuance.

(c) The fee for issuing the duplicate marriage license and certificate of registry is five dollars (\$5).

Comment. Section 360 restates former Civil Code Section 4203 [as amended by 1992 Cal. Stat. ch. 318, § 4] without substantive change.

Interim Comment. Section 360 is amended to conform to amendments to Civil Code Section 4203 by 1992 Cal. Stat. ch. 318, § 4.

Fam. Code § 420 (technical amendment). Essential element of solemnization

SEC. _____. Section 420 of the Family Code is amended to read:

420. (a) No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties ~~must~~ shall declare, in the presence of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife.

(b) No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

Comment. Subdivision (a) of Section 420 continues former Civil Code Section 4206 [as amended by 1992 Cal. Stat. ch. 318, § 6] without substantive change. Subdivision (b) continues former Civil Code Section 4206.5 without substantive change.

Interim Comment. Subdivision (a) of Section 420 is amended to conform to amendments to Civil Code Section 4206 by 992 Cal. Stat. ch. 318, § 6.

Fam. Code § 422 (technical amendment). Statement of person solemnizing marriage

SEC. _____. Section 422 of the Family Code is amended to read:

422. The person solemnizing a marriage shall make, sign, and endorse upon or attach to the marriage license a statement, in the form prescribed by the State Department of Health Services, showing all of the following:

(a) The fact, ~~time~~ date (month, day, year), and place (city and county) of solemnization.

(b) The names and places of residence of one or more witnesses to the ceremony.

(c) The official position of the person solemnizing the marriage, or of the denomination of which that person is a priest, minister, rabbi, or member of the clergy.

(d) The person solemnizing the marriage shall also type or print the person's name and address.

Comment. Section 422 continues former Civil Code Section 4208(a) [as amended by 1992 Cal. Stat. ch. 318, § 7] without substantive change. The reference to "rabbi" has been added to subdivision (c) for consistency with Section 400 (persons authorized to solemnize).

Interim Comment. Subdivision (a) of Section 422 is amended to conform to amendments to Civil Code Section 4208(a)(1) by 1992 Cal. Stat. ch. 318, § 7.

Fam. Code § 423 (technical amendment). Return of license and statement to local registrar

SEC. _____. Section 423 of the Family Code is amended to read:

423. The person solemnizing the marriage shall return the marriage license, endorsed as required in Section 422, to the ~~local registrar of marriages~~ county recorder of the county in which the license was issued within ~~four~~ 30 days after the ceremony.

Comment. Section 423 continues former Civil Code Section 4208(b) [as amended by 1992 Cal. Stat. ch. 318, § 7] without substantive change.

Interim Comment. Section 423 is amended to conform to amendments to Civil Code Section 4208(b) by 1992 Cal. Stat. ch. 318, § 7.

Fam. Code § 425 (technical amendment). Unrecorded marriage; filing license and certificate of declaration of marriage

SEC. _____. Section 425 of the Family Code is amended to read:

425. If no record of the solemnization of a marriage previously contracted is known to exist, the parties may purchase a License and Certificate of Declaration of Marriage from the county clerk in the parties' county of residence. The license and certificate shall be ~~filed with~~ returned to the ~~local registrar of marriages~~ county recorder of the county in which the license was issued.

Comment. Section 425 continues former Civil Code Section 4210 [as amended by 1992 Cal. Stat. ch. 318, § 8] without substantive change. In the last sentence of this section, the phrase "returned to the county recorder of the county in which the license was issued" has

been substituted for “returned in the manner specified in subdivision (b) of Section 4216.” Section 307(b) (continuing former Civil Code Section 4216(b)) requires the filing within four days after the ceremony. This requirement is not relevant to a “previously contracted” marriage under Section 425.

Interim Comment. Section 425 is amended to conform to amendments to Civil Code Section 4210 made by 1992 Cal. Stat. ch. 318, § 8.

Fam. Code § 506 (technical amendment). Preparation and filing of marriage certificate

SEC. _____. Section 506 of the Family Code is amended to read:

506. (a) The confidential marriage license shall be presented to the person solemnizing the marriage.

(b) Upon performance of the ceremony, the confidential marriage certificate shall be filled out by the parties to the marriage and authenticated by the person solemnizing the marriage.

(c) The certificate shall be filed returned by the person solemnizing the marriage with to the office of the county clerk in the county in which the license was issued within ~~four~~ 30 days after the ceremony.

Comment. Section 506 continues the fourth, fifth, and sixth sentences of former Civil Code Section 4213(a) [as amended by 1992 Cal. Stat. ch. 318, § 9] without substantive change. The phrase “person solemnizing the marriage” has been substituted for “person performing the ceremony” throughout this section for consistency with other sections in this division. See, e.g., Section 420. The reference to “performance” of the ceremony has been omitted from subdivision (c) for consistency with Section 423 (return of license and statement to local registrar).

Interim Comment. Subdivision (c) of Section 506 is amended to conform to amendments to Civil Code Section 4213(a) made by 1992 Cal. Stat. ch. 318, § 9.

Fam. Code § 510 (technical amendment). Replacement of lost certificate

SEC. _____. Section 510 of the Family Code is amended to read:

510. (a) If a confidential marriage certificate is lost, damaged, or destroyed after the performance of the marriage and before it is filed returned, the county clerk may issue a replacement upon the payment of a fee of five dollars (\$5).

(b) The duplicate license may not be issued later than one year after issuance of the original license and shall be returned by the person solemnizing the marriage to the county clerk within 30 days after issuance.

Comment. Section 510 continues former Civil Code Section 4213(h) without substantive change. The phrase “confidential marriage certificate” has been substituted for “certificate furnished pursuant to this section.” This is not a substantive change, since the certificates furnished pursuant to former Civil Code Section 4213 are confidential marriage certificates.

Interim Comment. Section 510 is amended to conform to amendments to Civil Code Section 4213(h) made by 1992 Cal. Stat. ch. 318, § 9.

Penal Code § 360 (technical amendment). Solemnizing marriage without license

SEC. _____. Section 360 of the Penal Code is amended to read:

360. Every person authorized to solemnize any marriage, who solemnizes a marriage without first being presented with the marriage license, as required by ~~Section 4207 of the Civil~~ Section 421 of the Family Code; or who solemnizes a marriage pursuant to ~~Section 4213 of the Civil Part 4 (commencing with Section 500) of Division 3 of the Family Code~~ without the authorization required by that ~~section~~ part; or who willfully makes a false return of any marriage or pretended marriage to the recorder or clerk; or who, having solemnized a marriage, fails to return to the recorder or clerk the marriage license with the certificate indorsed thereon, as required by ~~Section 4208 of the Civil~~ Section 423 of the Family Code; or who having solemnized a marriage pursuant to ~~Section 4213 of the Civil Part 4 (commencing with Section 500) of Division 3 of the Family Code~~, fails to return the certificate as required by ~~that section~~ Section 506 of the Family Code, and every person who willfully makes a false record of any marriage return, is guilty of a misdemeanor.

Comment. Section 360 [as amended by 1992 Cal. Stat. ch. 318, § 13] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Interim Comment. Section 360 is amended to restore conforming changes that were chaptered out.

EXHIBIT 5

SB 1129 (Judges' Retirement Law)

Staff Note. The draft legislation in this exhibit would restore a conforming change made by AB 2641 (1992 Cal. Stat. ch. 163, § 89), which was chaptered-out by SB 1129 (1992 Cal. Stat. ch. 176, § 4).

The amendment of Civil Code Section 4800.8 by SB 1129 was chaptered-out by SB 2018 (1992 Cal. Stat. ch. 431, § 1). See Exhibit 16.

Gov't Code § 75050 (technical amendment). Judges' retirement benefits

SEC. _____. Section 75050 of the Government Code is amended to read:

75050. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the court orders the division of the community property interest in the system pursuant to subdivision (c) of Section 4800.8 of the Civil 2610 of the Family Code, the accumulated contributions and service credit attributable to periods of service during the marriage shall be divided into two separate and distinct accounts in the name of the member and nonmember, respectively. Any service credit or accumulated contributions which are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) Upon receipt of the court order separating the account of the member and the nonmember pursuant to this section, the board shall determine the rights of the nonmember, taking into consideration the court order and the account of the member. These rights may include the following:

- (1) The right to a retirement allowance.
 - (2) The right to a refund of accumulated retirement contributions.
 - (3) The right to redeposit accumulated contributions which are eligible for redeposit by the member under Section 75028.5.
 - (4) The right to purchase service credit which is eligible for purchase by the member under Sections 75029 to 75030.5.
 - (5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.
 - (6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember's death.
- (d) In the capacity of nonmember, the nonmember shall not be entitled to any disability retirement allowance.

Comment. Subdivision (b) of Section 75050 [as amended by 1992 Cal. Stat. ch. 176, § 4] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

Interim Comment. This section is amended to restore a conforming revision made by AB 2641 (1992 Cal. Stat. ch. 163, § 89) that was chaptered out.

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EXHIBIT 6

SB 1545 (Domestic Violence)

Staff Note. The draft legislation in this exhibit would restore a conforming change in AB 2641 (1992 Cal. Stat. ch. 163, § 104) which was chaptered-out by SB 1545 (1992 Cal. Stat. ch. 183).

Penal Code § 273.5 (technical amendment). Willful injury to spouse or others

SEC. ____ Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person of the opposite sex with whom he or she is cohabiting, or any person who willfully inflicts upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 3 or 4 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father as set forth in ~~Section 7004 of the Civil~~ Sections 7611 and 7612 of the Family Code.

(e) In any case in which a person is convicted of violating this section and probation is granted, the court shall require participation in a batterer's treatment program as a condition of probation unless, considering all of the facts and the circumstances, the court finds participation in a batterer's treatment program inappropriate for the defendant.

(f) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted under subdivision (a) for an offense that occurred within seven years of the offense of the second conviction, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than 96 hours and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program, as designated by the court. However, the court, upon a

showing of good cause, may find that the mandatory minimum imprisonment, or the participation in a batterer's treatment program, or both the mandatory minimum imprisonment and participation in a batterer's treatment program, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted of two or more violations of subdivision (a) for offenses that occurred within seven years of the most recent conviction, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than 30 days and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program as designated by the court. However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, or the participation in a batterer's treatment program, or both the mandatory minimum imprisonment and participation in a batterer's treatment program, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars (\$1,000).

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court child support.

(i) Where an injury to a married person is caused in whole or part by the criminal acts of his or her spouse in violation of subdivision (a), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by this section or Section 1203.04, or to a shelter for payments pursuant to subdivision (h), until all separate property of the offending spouse is exhausted.

Comment. Subdivision (d) of Section 273.5 [as amended by 1992 Cal. Stat. ch. 183, § 1] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 7004.

Interim Comment. This amendment restores a conforming revision made by AB 2641 (1992 Cal. Stat. ch. 163, § 104).

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EXHIBIT 7

SB 1420 (Minors)

Staff Note. The draft legislation in this exhibit would restore a conforming change in AB 2641 (1992 Cal. Stat. ch. 163, § 97) which was chaptered-out by SB 1420 (1992 Cal. Stat. ch. 360).

Health & Safety Code § 10605 (technical amendment). Certified copies

SEC. _____. Section 10605 of the Health and Safety Code is amended to read:

10605. (a) A fee of three dollars (\$3) shall be paid by the applicant for a certified copy of a fetal death or death record.

(b)(1) A fee of three dollars (\$3) shall be paid by a public agency or licensed private adoption agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars (\$7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars (\$4) of any seven-dollar (\$7) fee is exempt from subdivision (e) and shall be paid to either a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(2)(A) As a pilot project, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, Santa Clara, and Tulare Counties may increase the fee for a certified copy of a birth certificate by up to three dollars (\$3), through December 31, 1996, for the purpose of providing dependency mediation services in the juvenile court. Public agencies shall be exempt from paying this portion of the fee. However, if a county increases this fee, neither the revenue generated from the fee increase nor the increased expenditures made for these services shall be considered in determining the court's progress towards achieving its cost reduction goals pursuant to Section 68113 of the Government Code if the net effect of the revenue and expenditures is a cost increase. In each county participating in the pilot project up to 5 percent of the revenue generated from the fee increase may be apportioned to the county recorder for the additional accounting costs of the program.

(B) On or before December 31, 1995, each participating county shall submit an independent study of the project to the Legislature. The study shall consider the effectiveness of mediation, the cost-avoidance realized, what model of juvenile court mediation should be promoted statewide, and at what point mediation is most effective.

(C) The presiding judge of the superior court of each participating county shall designate a persons who will facilitate access to case files and any other data necessary for the independent study.

(D) Variables to be evaluated and measured to indicate the success of the pilot projects shall include, but not be limited to:

(i) At least 75 percent of all participants should be satisfied or very satisfied with the dependency mediation process.

(ii) The range of creative solutions for resolution of the families' problems within the development of the court ordered plan shall increase by 10 percent.

(iii) At least 70 percent of matters coming before the court should be settled in less time using dependency mediation than if adjudicated.

(iv) Dependency mediation shall result in a 25 percent reduction in foster care placements.

(c) A fee of three dollars (\$3) shall be paid by a public agency applicant for a certified copy of a marriage record, that has been filed with the county recorder or county clerk, that the agency is required to obtain in the ordinary course of business. A fee of six dollars (\$6) shall be paid by any other applicant for a certified copy of a marriage record that has been filed with the county recorder or county clerk. Three dollars (\$3) of any six-dollar (\$6) fee is exempt from subdivision (e) and shall be transmitted monthly by each local registrar, county recorder, and county clerk to the state for deposit into the General Fund as provided by Section ~~5183 of the Civil~~ 1852 of the Family Code.

(d) A fee of three dollars (\$3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record obtained from the State Registrar that the agency is required to obtain in the ordinary course of business. A fee of six dollars (\$6) shall be paid by any other applicant for a certified copy of a marriage dissolution record obtained from the State Registrar.

(e) Each local registrar, county recorder, or county clerk collecting a fee pursuant to this section shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

(f) The additional three dollars (\$3) authorized to be charged to applicants other than public agency applicants for certified copies of marriage records by subdivision (c) may be increased pursuant to Section 114.

Comment. Subdivision (c) of Section 10605 [as amended by 1992 Cal. Stat. ch. 1420, § 1] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 5183.

Interim Comment. This section is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 97) that was chaptered-out by SB 1420 (1992 Cal. Stat. ch. 360).

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EXHIBIT 8

AB 2634 (Domestic Violence Restraining Orders)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 5), but chaptered-out in part by AB 2634 (1992 Cal. Stat. ch. 149, § 1), and make conforming changes in the Family Code.

The revisions proposed in this exhibit would be superseded if the domestic violence statutes are consolidated as provided in the recommendation Family Code: Reorganization of Domestic Violence Provisions (October 1992) is approved by the Legislature.

Code Civ. Proc. § 548 (repealed). Duration of domestic violence restraining order

SEC. _____. Section 548 of the Code of Civil Procedure is repealed.

~~548. (a) Any restraining order granted after notice and a hearing pursuant to this chapter, in the discretion of the court, shall have a duration of not more than three years, unless otherwise terminated or extended by further order of the court either on written stipulation filed with the court or on the motion of any party.~~

~~(b) The failure to state the expiration date on the face of the form shall create an order with a duration of three years from the date of issuance.~~

~~(c) Nothing in this section shall prohibit parties, by written stipulation, from creating domestic violence restraining orders arising under the Family Law Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) with a permanent duration.~~

Comment. Section 548 [as amended by 1992 Cal. Stat. ch. 149, § 1] is continued in Family Code Section 5756 without substantive change. See Fam. Code § 5756 Comment.

Fam. Code § 5756 (technical amendment). Duration of restraining order granted after notice and hearing

SEC. _____. Section 5756 of the Family Code is amended to read:

5756. (a) A restraining order granted after notice and a hearing pursuant to this division, in the discretion of the court, shall have a duration of not more than three years, unless otherwise terminated or extended by further order of the court either on written stipulation filed with the court or on the motion of any party.

(b) The failure to state the expiration date on the face of the form shall create an order with a duration of three years from the date of issuance.

(c) Nothing in this section prohibits parties, by written stipulation, from creating domestic violence restraining orders arising under this code with a permanent duration.

Comment. Section 5756 continues former Code of Civil Procedure Section 548 [as amended by 1992 Cal. Stat. ch. 149, § 1] without substantive change. In subdivision (c), the reference to this code replaces the narrower reference to the former Family Law Act (former

Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code. This is not intended as a substantive change.

Interim Comment. Section 5756 is amended to add subdivisions (b) and (c) for conformity with Code of Civil Procedure Section 548 [as amended by 1992 Cal. Stat. ch. 149, § 1].

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EXHIBIT 9

AB 3630 (Marriage)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), which repeal was chaptered-out by AB 3630 (1992 Cal. Stat. ch. 159, § 1), and make conforming changes in the Family Code.

Civ. Code § 4800.6 (repealed). Notices in petition and judgment

SEC. _____. Section 4800.6 of the Civil Code is repealed.

~~4800.6. (a) A petition for nullity, dissolution of marriage, or legal separation, or a joint petition for summary dissolution of marriage shall contain the following notice: “Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Section 412.21 of the Code of Civil Procedure).”~~

~~(b) A judgment of nullity, a judgment of dissolution of marriage, or a judgment of legal separation shall contain the following notice: “Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters you may want to change in view of the dissolution or annulment of your marriage, or your legal separation.”~~

Comment. Section 4800.6 [as amended by 1992 Cal. Stat. ch. 159, § 1] is continued in Family Code Section 2628 without substantive change. See Fam. Code § 5756 Comment.

Fam. Code § 2628 (technical amendment). Notice in petition and judgment

SEC. _____. Section 2628 of the Family Code is amended to read:

2628. (a) A petition for dissolution of marriage, nullity of marriage, or legal separation of the parties, or a joint petition for summary dissolution of marriage, shall contain the following notice: “Please review your will, insurance policies, retirement benefit plans, credit cards, other credit accounts and credit reports, and other matters you may want to change in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Section 412.21 of the Code of Civil Procedure).”

(b) The A judgment of dissolution of marriage, or the a judgment of legal separation of the parties, shall contain the following notice: “A debt or obligation may be assigned to one party as part of the division of property and debts, but if that party does not pay the debt or obligation, the creditor may be able to collect from the other party.”

Comment. Section 2628 continues former Civil Code Section 4800.6 [as amended by 1992 Cal. Stat. ch. 159, § 1] without substantive change. See also Section 916 (liability after property division).

Interim Comment. Subdivisions (a) is added to Section 2628 to conform to Civil Code Section 4800.6, as amended by 1992 Cal. Stat. ch. 159, § 1).

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EXHIBIT 10

SB 804 (Child Custody)

Staff Note. The draft legislation in this exhibit would repeal sections repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), which repeals were chaptered-out by SB 804 (1992 Cal. Stat. ch. 392), and make conforming changes in the Family Code.

Civ. Code § 5152 (repealed). UCCJA jurisdictional requirements

SEC. _____. Section 5152 of the Civil Code is repealed.

~~5152. (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:~~

~~(1) This state (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his or her removal or retention by a person claiming his or her custody or for other reasons, and a parent or person acting as parent continues to live in this state.~~

~~(2) It is in the best interest of the child that a court of this state assume jurisdiction because (A) the child and his or her parents, or the child and at least one contestant, have significant connection with this state, and (B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships.~~

~~(3) The child is physically present in this state and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because he or she has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent. "Subjected to or threatened with mistreatment or abuse" for the purposes of this subdivision includes a child who has a parent who is a victim of domestic violence, as defined in Section 542 of the Code of Civil Procedure.~~

~~(4) It (A) appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (1), (2), or (3) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (B) is in the best interest of the child that this court assume jurisdiction.~~

~~(b) Except under the conditions specified in paragraphs (3) and (4) of subdivision (a), physical presence in this state of the child, or of the child and one~~

of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his or her custody.

Comment. Former Section 5152 [as amended by 1992 Cal. Stat. ch. 392, § 1] is continued in Family Code Section 3403 without substantive change.

Civ. Code § 5157 (repealed). Jurisdiction declined by reason of conduct

SEC. _____. Section 5157 of the Civil Code is repealed.

5157. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) Where the court declines to exercise jurisdiction upon petition for an initial custody decree pursuant to subdivision (a), the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with Section 5169. If no such request is made within a reasonable time after the notification, the court may entertain a petition to determine custody by the petitioner if it has jurisdiction pursuant to Section 5152.

(d) Where the court refuses to assume jurisdiction to modify the custody decree of another state pursuant to subdivision (b) or pursuant to Section 5163, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for that period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to the appropriate court of the other state which has continuing jurisdiction, or, in the event that court declines jurisdiction, to a court in a state which has jurisdiction pursuant to Section 5152.

~~(e) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees and the cost of returning the child to another state.~~

~~(f) In making a determination pursuant to subdivisions (a) to (e), inclusive, the court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section 542 of the Code of Civil Procedure.~~

Comment. Former Section 5157 [as amended by 1992 Cal. Stat. ch. 392, § 2] is continued in Family Code Section 3408 without substantive change.

Civ. Code § 5158 (repealed). Information to be provided to court

SEC. ____ . Section 5158 of the Civil Code is repealed.

~~5158. (a) Every party in a custody proceeding in his or her first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. However, where there are allegations of domestic violence or child abuse, any addresses of the party alleging abuse and of the child which are unknown to the other party shall be confidential and shall not be disclosed in the pleading or affidavit. In this pleading or affidavit every party shall further declare under oath as to each of the following whether:~~

~~(1) He or she has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state.~~

~~(2) He or she has information of any custody proceeding concerning the child pending in a court of this or any other state.~~

~~(3) He or she knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.~~

~~(b) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to the other matters pertinent to the court's jurisdiction and the disposition of the case.~~

~~(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he or she obtained information during this proceeding.~~

Comment. Former Section 5158 [as amended by 1992 Cal. Stat. ch. 392, § 3] is continued in Family Code Section 3409 without substantive change.

Fam. Code § 3403 (technical amendment). Jurisdictional requirements

SEC. _____. Section 3403 of the Family Code is amended to read:

3403. (a) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:

(1) This state (A) is the home state of the child at the time of commencement of the proceeding, or (B) had been the child’s home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody of the child or for other reasons, and a parent or person acting as parent continues to live in this state.

(2) It is in the best interest of the child that a court of this state assume jurisdiction because (A) the child and the child’s parents, or the child and at least one contestant, have a significant connection with this state, and (B) there is available in this state substantial evidence concerning the child’s present or future care, protection, training, and personal relationships.

(3) The child is physically present in this state and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent. For the purposes of this subdivision, “subjected to or threatened with mistreatment or abuse” includes a child who has a parent who is a victim of domestic violence, as defined in Section [70].

(4) Both of the following conditions are satisfied:

(A) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with ~~paragraphs~~ paragraph (1), (2), and or (3), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, ~~and~~.

(B) ~~It~~ It is in the best interest of the child that this court assume jurisdiction.

(b) Except under the conditions specified in paragraphs (3) and (4) of subdivision (a), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine the custody of the child.

Comment. Section 3403 continues former Civil Code Section 5152 [as amended by 1992 Cal. Stat. ch. 392, § 1] without substantive change. See also Section 3022 (factors to be considered in determining best interest of child).

Interim Comment. Subdivisions (a) and (b) of Section 3403 are amended to conform to Civil Code Section 5152, as amended by 1992 Cal. Stat. ch. 392, § 1. The structure of subdivisions (a)(3)-(4) has been revised for clarity and style.

Fam. Code § 3408 (technical amendment). Jurisdiction declined by reason of conduct

SEC. _____. Section 3408 of the Family Code is amended to read:

3408. (a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

(b) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(c) Where the court declines to exercise jurisdiction upon petition for an initial custody decree pursuant to subdivision (a), the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with Section 3421. If no request is made within a reasonable time after the notification, the court may entertain a petition to determine custody by the petitioner if it has jurisdiction pursuant to Section 3403.

(d) Where the court refuses to assume jurisdiction to modify the custody decree of another state pursuant to subdivision (b) or pursuant to Section 3414, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for that period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to (1) the appropriate court of the other state which has continuing jurisdiction or (2) if that court declines jurisdiction, to a court in a state which has jurisdiction pursuant to Section 3403.

(e) In appropriate cases, a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees and the cost of returning the child to another state.

(f) In making a determination pursuant to subdivisions (a) to (e), inclusive, the court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was a result of domestic violence against the petitioner, as defined in Section [70].

Comment. Section 3408 continues former Civil Code Section 5157 [as amended by 1992 Cal. Stat. ch. 392, § 2] without substantive change.

Interim Comment. Subdivision (f) is added to Section 3408 to conform to Civil Code Section 5157, as amended by 1992 Cal. Stat. ch. 392, § 2.

Fam. Code § 3409 (technical amendment). Information to be provided to court

SEC. _____. Section 3409 of the Family Code is amended to read:

3409. (a) Every party in a custody proceeding in the party's first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. However, where there are allegations of domestic violence or child abuse, any addresses of the party alleging abuse and of the child that are unknown to the other party are confidential and may not be disclosed in the pleading or affidavit. In this pleading or affidavit, every party shall further declare under oath as to each of the following whether the party:

(1) Has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state.

(2) Has information of any custody proceeding concerning the child pending in a court of this or any other state.

(3) Knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which the party obtained information during this proceeding.

Comment. Section 3409 continues former Civil Code Section 5158 without substantive change. See also Section 3060 (temporary custody order).

Interim Comment. The second sentence is added to subdivision (a) of Section 3409 to conform to Civil Code Section 5158, as amended by 1992 Cal. Stat. ch. 392, § 3.

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EXHIBIT 11

AB 3491 (Child Abuse and Neglect Reporting Act)

Staff Note. The draft legislation in this exhibit would restore a conforming change in AB 2641 (1992 Cal. Stat. ch. 163, § 112), which was chaptered-out by AB 3491 (1992 Cal. Stat. ch. 316, § 2).

Penal Code § 11167 (technical amendment). Report

SEC. _____. Section 11167 of the Penal Code is amended to read:

11167. (a) A telephone report of a known or suspected instance of child abuse shall include the name of the person making the report, the name of the child, the present location of the child, the nature and extent of the injury, and any other information, including information that led that person to suspect child abuse, requested by the child protective agency.

(b) Information relevant to the incident of child abuse may also be given to an investigator from a child protective agency who is investigating the known or suspected case of child abuse.

(c) Information relevant to the incident of child abuse may be given to the licensing agency when it is investigating a known or suspected case of child abuse, including the investigation report, and other pertinent materials.

(d) The identity of all persons who report under this article shall be confidential and disclosed only between child protective agencies, or to counsel representing a child protective agency, or to the district attorney in a criminal prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or district attorney in ~~an action initiated under Section 232 of the Civil a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code~~ or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Persons who may report pursuant to subdivision (d) of Section 11166 are not required to include their names.

Comment. Section 11167 [as amended by 1992 Cal. Stat. ch. 316, § 2] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

Interim Comment. Subdivision (d) of Section 11167 is amended to restore a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 112) that was chaptered-out by AB 3491 (1992 Cal. Stat. ch. 316, § 2).

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EXHIBIT 12

AB 1394 (Child Support)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), which repeal was chaptered-out by AB 1394 (1992 Cal. Stat. ch. 50, § 2), and make conforming changes in the Family Code. This draft legislation would also make a conforming change to reflect repeal of the Family Law Act.

Civ. Code § 4700.11 (repealed). Child support delinquency

SEC. _____. Section 4700.11 of the Civil Code is repealed.

~~4700.11. (a) Any person with a court order for child support, the payments on which are more than 30 days in arrears, may file and then serve a notice of delinquency, as described in this section. Except as provided in subdivision (d), any amount of child support specified in a notice of delinquency that remains unpaid for more than 30 days after the notice of delinquency has been filed and served shall incur a penalty of 6 percent of the delinquent payment for each month that it remains unpaid, up to a maximum of 72 percent of the unpaid balance due.~~

~~(b) The notice of delinquency shall be signed under penalty of perjury by the support obligee; shall state the amount that the child support obligor is in arrears; shall set forth the installments of support due, the amounts, if any, that have been paid, and the balance due; and shall state that any unpaid installment of child support shall incur a penalty of 6 percent of the unpaid support per month until paid, to a maximum of 72 percent of the original amount of the unpaid support, unless the support arrearage is paid within 30 days of the date of service of the notice of delinquency.~~

~~(c) The notice of delinquency may be served personally or by certified mail or in any manner provided for service of summons.~~

~~(d) No penalties may be imposed pursuant to this section if, in the discretion of the court, each of the following conditions are met:~~

~~(1) Within a timely fashion after service of the notice of delinquency the support obligor files and serves a motion to determine arrearages and to show cause why the penalties provided in this section should not be imposed.~~

~~(2) At the hearing on the motion filed by the support obligor, the court finds that the support obligor has proved any of the following:~~

~~(A) The child support payments were not 30 days in arrears as of the date of service of the notice of delinquency and are not in arrears as of the date of the hearing.~~

~~(B) The support obligor suffered serious illness, disability, or unemployment which substantially impaired the ability of the support obligor to comply full with the support order and the support obligor has made every possible effort to comply with the support order.~~

~~(C) The support obligor is a public employee and for reasons relating to fiscal difficulties of the employing entity the obligor has not received a paycheck for 30 or more days.~~

~~(D) It would not be in the interests of justice to impose a penalty.~~

~~(e) If the child support owed, or any arrearages, interest, or penalty remains unpaid more than 30 days after serving the notice of delinquency, the support obligee may file a motion to obtain a judgment on the amount owed, which shall be enforceable in any manner provided by law for the enforcement of judgments.~~

~~(f) At any hearing to set or modify the amount payable for the support of a minor child, the court shall not consider any penalties imposed under this section in determining the amount of current support to be paid.~~

~~(g) In the absence of a protective order prohibiting the support obligor from knowing the whereabouts of the child or children for whom support is payable, or otherwise excusing the requirements of this subdivision, the notice of delinquency shall include a current address and telephone number of all of the children for whom support is due, and if different from that of the support obligee, the address at which court papers may be served upon the support obligee.~~

~~(h) A subsequent notice of delinquency may be served and filed at any time. Child support arrearages and ongoing installments listed on subsequent notices shall state that they have been listed on a previous notice. Any penalty due under this section shall not be greater than 6 percent per month of the original amount of support arrearages or support installment, nor may the penalties on any arrearage amount or support installment exceed 72 percent of the original amount due, regardless of whether or not the installments have been listed on more than one notice.~~

~~(i) Penalties due pursuant to this section may be enforced by the issuance of a writ of execution in the same manner as a writ of execution may be issued for unpaid installments of child support, as described in Section 4383, except that payment of penalties under this section may not take priority over payment of arrearages or current support.~~

~~(j) The Judicial Council shall adopt forms or notices for the use of the procedures provided by this section.~~

~~(k) This section shall apply only to installments of child support that are due on or after January 1, 1992.~~

~~(l) The district attorney or any other agency providing support enforcement services pursuant to Title IV-D of the federal Social Security Act shall enforce child support obligations utilizing the penalties provided for by this section to the extent permitted by federal law upon implementation of the Statewide Automated Child Support System (SACSS) prescribed in Section 10815 of the Welfare and~~

~~Institutions Code and certification of the SACSS by the United States Department of Health and Human Services.~~

~~(m) “Support” for the purposes of this section means support as defined in subdivision (h) of Section 4390.~~

~~(n) Penalties collected pursuant to this section shall be paid to the custodian of the child or children who are the subject of the child support judgment, order, or decree, whether or not the child or children are the recipients of public assistance.~~

~~**Comment.** Former Section 4700.11 [as amended by 1992 Cal. Stat. ch. 50, § 2] is continued without substantive change in Family Code Sections 4720-4732.~~

Fam. Code § 4729 (technical amendment). Utilization of penalties by district attorney

SEC. _____. Section 4729 of the Family Code is amended to read:

4729. The district attorney or any other agency providing support enforcement services pursuant to Title IV-D of the federal Social Security Act shall enforce child support obligations utilizing the penalties provided for by this chapter to the extent permitted by federal law upon implementation of the Statewide Automated Child Support System (SACSS) prescribed in Section 10815 of the Welfare and Institutions Code and certification of the SACSS by the United States Department of Health and Human Services.

Comment. Section 4729 continues former Civil Code Section 4700.11(l) [as amended by 1992 Cal. Stat. ch. 50, § 2] without substantive change.

Interim Comment. Section 4729 is amended to conform to amendments to Civil Code Section 4700.11(l) by 1992 Cal. Stat. ch. 50, § 2.

Fam. Code § 4733 (added). Payment of penalties to custodian

SEC. _____. Section 4733 is added to the Family Code, to read:

4733. Penalties collected pursuant to this chapter shall be paid to the custodian of the child who is the subject of the child support judgment, order, whether or not the child is a recipient of public assistance.

Comment. Section 4733 continues former Civil Code Section 4700.11(n) [as amended by 1992 Cal. Stat. ch. 50, § 2] without substantive change. The former reference to “children” is omitted as surplus. See Section 10 (singular includes plural). The former reference to a decree is omitted as surplus. See Section 100 (“judgment” includes decree, as appropriate).

Interim Comment. Section 4729 is added to conform to amendments to Civil Code Section 4700.11(n) by 1992 Cal. Stat. ch. 50, § 2.

Welf. & Inst. Code § 903 (technical amendment). Parental responsibility

SEC. _____. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) A parent of a minor, the estate of a parent, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625 unless, at the detention hearing, the juvenile court determines that

detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) It shall be the responsibility of a county to demonstrate to any person against whom it seeks to enforce the liability established by this section, that the charges it seeks to impose are limited to the reasonable costs of support of the minor and that these charges exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. Nothing in this section shall preclude the district attorney from seeking reimbursement of those costs pursuant to Section 11350 of this code or ~~Chapter 2 (commencing with Section 4720) of Title 5 of Part 5 of the Civil Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code.~~

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), and (3), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars (\$15) per day, except that:

(1) The maximum cost of fifteen dollars (\$15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 2 (commencing with Section 248) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee for service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met under any of the coverages listed in paragraph (2), the county may impose these additional costs.

Comment. Subdivision (b) of Section 903 [as amended by 1992 Cal. Stat. ch. 50, § 3] is amended to substitute a reference to the Family Code provision concerning the statewide uniform guideline that replaces the former Civil Code provisions.

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EXHIBIT 13

SB 1817 (Pilot Project)

Staff Note. The draft legislation in this exhibit would repeal sections repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 00), which repeals were chaptered-out by SB 1817 (1992 Cal. Stat. ch. 411) and make conforming changes in the Family Code.

Civ Code §§ 4760-4793 (repealed). Family Law Pilot Projects

SEC. ____. Title 5.7 (commencing with Section 4760) of Part 5 of Division 4 of the Civil Code is repealed.

Comment. Sections 4760-4793 are continued without substantive change in Family Code Sections 20000-2044. Former references to this "title" have been changed to this "part" to reflect the structure of the Family Code. Other minor changes have been made for style purposes.

DISPOSITION TABLE

<i>Civil Code</i>	<i>Family Code</i>	<i>Civil Code</i>	<i>Family Code</i>
4760.....	20000	4778.....	20025
4761.....	20001	4778.5.....	20026
4762.....	20002	4779.....	20030
4763.....	20010	4780.....	20002
4764.....	20011	4781.....	20031
4765.....	20012	4782.....	20032
4766.....	20013	4783.....	20033
4767.....	20014	4784.....	20034
4768.....	20015	4785.....	20035
4769.....	20016	4786.....	20036
4770.....	20017	4787.....	20037
4771.....	20018	4788.....	20038
4772.....	20019	4789.....	20039
4773.....	20020	4790.....	20040
4774.....	20021	4791.....	20041
4775.....	20022	4792.....	20042
4776.....	20023	4793.....	20043
4777.....	20024		

Fam. Code §§ 20000-20012(repealed). Child Support Pilot Projects

SEC. ____. Part 1 (commencing with Section 20000) of Division 20 of the Family Code is repealed.

Interim Comment. Sections 20000-20012 of the Family Code, as enacted by 1992 Cal. Stat. ch. 162, § 10, are superseded by new Sections 2000-20033, as added by 1992 Cal. Stat. ch. 411, § 2.

Fam. Code §§ 20000-20033(added). Family Law Pilot Projects

Outline

CHAPTER 1. GENERAL PROVISIONS

- § 20000 (added). Legislative declaration
- § 20001 (added). Pilot projects in Santa Clara and San Mateo Counties
- § 20002 (added). Duration of projects

CHAPTER 2. SAN MATEO COUNTY PILOT PROJECT

- § 20010 (added). Application of San Mateo County Pilot Project
- § 20011 (added). Motions for temporary orders
- § 20012 (added). Family Law Evaluator
- § 20013 (added). No fee
- § 20014 (added). Notice of requirement
- § 20015 (added). Adoption of protocol for access to hearing
- § 20016 (added). Booklet
- § 20017 (added). Qualifications of family law evaluator
- § 20018 (added). Compliance with statewide uniform guideline
- § 20019 (added). Mediation
- § 20020 (added). Submission of documents
- § 20021 (added). Failure to submit documents
- § 20022 (added). Review and examination of tax return
- § 20023 (added). Services provided by district attorney
- § 20024 (added). Costs
- § 20025 (added). Study and report
- § 20026 (added). Project estimates

CHAPTER 3. SANTA CLARA COUNTY PILOT PROJECT

- § 20030 (added). Santa Clara County pilot project
- § 20031 (added). Application of Santa Clara County Pilot Project
- § 20032 (added). Hearing and procedure
- § 20033 (added). Local rule
- § 20034 (added). Attorney Mediator
- § 20035 (added). Compliance with statewide uniform guideline
- § 20036 (added). Exemption from pilot project
- § 20037 (added). Services provided by district attorney
- § 20038 (added). Mediation
- § 20039 (added). Costs
- § 20040 (added). Booklet
- § 20041 (added). Centralization of programs
- § 20042 (added). Study and report
- § 20043 (added). Project estimates

SEC. ____. Part 1 (commencing with Section 20000) is added to Division 20 of the Family Code, to read:

PART 1. FAMILY LAW PILOT PROJECTS

CHAPTER 1. GENERAL PROVISIONS

Fam. Code § 20000 (added). Legislative declaration

20000. (a) The Legislature finds and declares the following:

(1) That child and spousal support are serious legal obligations. In addition, children are frequently left in limbo while their parents engage in protracted litigation concerning custody and visitation. The current system for obtaining child and spousal support orders is suffering because the family courts are unduly burdened with heavy case loads and personnel insufficient to meet the needs of increased demands on the courts.

(2) That there is a compelling state interest in the development of a child and spousal support system that is cost-effective and accessible to families with middle or low incomes.

(3) That there is a compelling state interest in first implementing such a system on a small scale.

(4) That there is a compelling state interest in the development of a speedy, conflict-reducing method of resolving custody and visitation disputes.

(b) Therefore, it is the intent of the Legislature in enacting this part to provide a means for experimenting with and evaluating procedural innovations with significant potential to improve the California child and spousal support systems, and the system for mediation, evaluation, and litigation of custody and visitation disputes.

Comment. Section 20000 continues former Civil Code Section 4760 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20001 (added). Pilot projects in Santa Clara and San Mateo Counties

20001. The superior courts of the Counties of Santa Clara and San Mateo may conduct pilot projects pursuant to this part. Chapter 2 (commencing with Section 20010) shall govern the San Mateo County Pilot Project, and Chapter 3 (commencing with Section 20030) shall govern the Santa Clara County Pilot Project.

Comment. Section 20001 continues former Civil Code Section 4761 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20002 (added). Duration of projects

20002. The duration of the pilot projects shall be two years.

Comment. Section 20002 continues former Civil Code Sections 4762 and 4780 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

CHAPTER 2. SAN MATEO COUNTY PILOT PROJECT

Fam. Code § 20010 (added). Application of San Mateo County Pilot Project

20010. The San Mateo County Pilot Project shall apply to hearings on motions for temporary child support, temporary spousal support, and temporary health insurance issuable in proceedings this code, where at least one party is unrepresented by counsel.

Comment. Section 20010 continues former Civil Code Section 4763 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. The former reference to motions for temporary support or health insurance under “this part” (meaning the former Family Law Act), former Section 7000 *et seq.* (Uniform Parentage Act), and former Code of Civil Procedure Section 540 *et seq.* (domestic violence) are superseded by a reference to this code, which contains all of these former provisions.

Fam. Code § 20011 (added). Motions for temporary orders

20011. Motions for temporary orders under this part shall be heard as soon as practicable, consistent with the rules governing other civil actions.

Comment. Section 20011 continues former Civil Code Section 4764 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20012 (added). Family Law Evaluator

20012. The court shall appoint a Family Law Evaluator, who shall be available to assist parties. By local rule the superior court may designate the duties of the Family Law Evaluator, which may include, but are not limited to, the following:

(a) Requiring litigants in actions which involve temporary child support, temporary spousal support, and temporary maintenance of health insurance in which at least one litigant is unrepresented, to meet with the Family Law Evaluator prior to the support hearing.

(b) Preparing support schedules based on standardized formulae accessed through existing up-to-date computer technology.

(c) Drafting stipulations to include all issues agreed to by the parties.

(d) Prior to, or at, any hearing pursuant to this chapter, reviewing the paperwork by the court, advising the judge whether or not the matter is ready to proceed, and making a recommendation to the court regarding child support, spousal support, and health insurance.

(e) Assisting the clerk in maintaining records.

(f) Preparing a formal order consistent with the court’s announced oral order, unless one of the parties is represented by an attorney.

(g) Assisting the court with research and such other responsibilities which will enable the court to be responsive to the litigants’ needs.

Comment. Section 20012 continues former Civil Code Section 4765 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20013 (added). No fee

20013. The court shall provide the Family Law Evaluator at no cost to the parties.

Comment. Section 20013 continues former Civil Code Section 4766 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20014 (added). Notice of requirement; service

20014. The clerk shall stamp all moving papers in which a party is not represented by counsel with a notice of a requirement to see the Family Law Evaluator. The unrepresented party shall serve the stamped pleadings on the other party.

Comment. Section 20014 continues former Civil Code Section 4767 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20015 (added). Adoption of protocol for access to hearing

20015. The court shall adopt a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court.

Comment. Section 20015 continues former Civil Code Section 4768 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20016 (added). Booklet

20016. The court may elect to publish a low-cost booklet describing this program.

Comment. Section 20016 continues former Civil Code Section 4769 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20017 (added). Qualifications of family law evaluator

20017. The Family Law Evaluator shall be an attorney, licensed to practice in this state.

Comment. Section 20017 continues former Civil Code Section 4770 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20018 (added). Compliance with statewide uniform guideline

20018. Orders for temporary support issued pursuant to this part shall comply with the statewide uniform guideline set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 and shall be based on the economic evidence supplied by the parties or otherwise available to the court.

Comment. Section 20018 continues former Civil Code Section 4771 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. Language has been revised to conform to terminology of the statewide uniform guideline.

Staff Note. See the draft of the Statewide Uniform Guideline in Exhibit 1 (SB 370).

Fam. Code § 20019 (added). Mediation

20019. Where it appears from a party's application for an order under this part or otherwise in the proceedings that the custody of, or visitation with, a minor child is contested, the court shall set those issues for mediation pursuant to Section 3170. The pendency of the mediation proceedings shall not delay a hearing on any other matter for which a temporary order is required, including child support, and a separate hearing, if required, shall be scheduled respecting the custody and visitation issues following mediation in accordance with Section 3170. However, the court may grant a continuance for good cause shown.

Comment. Section 20019 continues former Civil Code Section 4772 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20020 (added). Submission of documents

20020. In a contested proceeding for temporary child or spousal support under this part, both the moving party and the responding party shall provide all of the following documents to the Family Law Evaluator, and to the court at the time of the hearing:

- (a) Copies of the last two federal and state income tax returns filed.
- (b) Paycheck stubs for all paychecks received in the four months immediately prior to the hearing.

Comment. Section 20020 continues former Civil Code Section 4773 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20021 (added). Failure to submit documents

20021. A party who fails to submit documents to the court as required by this section may, in the court's discretion, not be granted the relief requested, or the court may impose evidentiary sanctions.

Comment. Section 20021 continues former Civil Code Section 4774 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20022 (added). Review and examination of tax return

20022. The tax return submitted pursuant to Section 20020 may be reviewed by the other party. A party may be examined by the other party as to the contents of the tax return.

Comment. Section 20022 continues former Civil Code Section 4775 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20023 (added). Services provided by district attorney

20023. (a) Except as provided in subdivision (c);
- (1) Nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a district attorney pursuant to Section 11475.5 of the Welfare and Institutions Code.
 - (2) The court shall not hear or enter any order under this chapter in a matter involving such a child.

(b) Any order entered contrary to the provisions of subdivision (a) is void and without legal effect.

(c) For purposes of enabling a custodial parent receiving assistance under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code to participate in a pilot project authorized by this chapter, the district attorney, upon the request of the custodial parent, may execute a limited waiver of the obligation or representation under Section 11475.1 of the Welfare and Institutions Code. These limited waivers shall be signed by both the district attorney and custodial parent and shall only permit the custodial parent to participate in the proceedings under this part. It is not the intent of the Legislature in enacting this section to limit the duties of district attorneys with respect to seeking child support payments or to in any way limit or supersede other provisions of this part respecting temporary child support.

Comment. Section 20023 continues former Civil Code Section 4776 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20024 (added). Costs; donations

20024. (a) The costs of the Family Law Evaluator, such staff as is necessary to assist the Family Law Evaluator, and the cost of the booklet describing the program, if any, shall be borne by an increase and an equalization of filing fees in San Mateo County to one hundred fifty dollars (\$150) for all petitions for marital dissolution, annulment, and legal separation, and all first papers on behalf of respondents in actions for marital dissolution, annulment, and legal separation. Alternatively, the costs associated with this pilot program may be paid for other funding sources.

(b) A donation of computers, printers, software, and other equipment shall be solicited from existing hardware and software providers.

Comment. Section 20024 continues former Civil Code Section 4777 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20025 (added). Study and report

20025. (a) The presiding judge of the San Mateo County Superior Court, in conjunction with judges of the family law court and with attorneys practicing therein selected by the presiding judge, shall conduct a study of the effectiveness of the San Mateo Pilot Project in making the California child support system more equitable, responsive, cost-effective, and accessible, particularly to those with middle and low incomes, and shall make a report of findings to the Legislature on or before July 1, 1994.

(b) The satisfaction of participating parties shall be determined by requiring litigants entering the pilot project to fill out a simple exit poll. The response of at least 70 percent of those questionnaires shall be analyzed by the Senate Office of Research to decide whether the program has been deemed satisfactory by the participants.

Comment. Section 20025 continues former Civil Code Section 4778 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20026 (added). Project estimates

20026. (a) It is estimated that under the pilot project authorized by this chapter, approximately 2,200 litigants will be served annually and that the following savings will occur:

- (1) The program would save 520 hours, or 65 days, of court time per year.
- (2) There would be a concomitant saving of time by litigants due to the expedited proceedings and, in addition, there would be a saving to litigants of wages that would otherwise be lost due to time off from work.

(b) The estimated costs of the pilot project are as follows:

(1) The salaries of the family law evaluator and such staff as will be necessary for the evaluator to carry out his or her functions.

(2) The cost of a booklet, if any, describing the program.

(c) There would be no cost for the following:

(1) Computers, printers, or other equipment. This equipment is already available in the family law department.

(2) Training for the family law evaluator or his or her staff. They will be trained by already existing judicial personnel.

Comment. Section 20026 continues former Civil Code Section 4778.5 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

CHAPTER 3. SANTA CLARA COUNTY PILOT PROJECT

Fam. Code § 20030 (added). Santa Clara County pilot project

20030. The superior court of the County of Santa Clara may conduct a pilot project pursuant to this chapter.

Comment. Section 20030 continues former Civil Code Section 4779 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20031 (added). Application of Santa Clara County Pilot Project

20031. The pilot project applies to all hearings, for temporary or permanent child or spousal support, modifications thereof, health insurance, custody, or visitation under this code.

Comment. Section 20031 continues former Civil Code Section 4781 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. The former reference to hearings for temporary or permanent support or health insurance under “this part” (meaning the former Family Law Act) and former Section 7000 *et seq.* (Uniform Parentage Act) are superseded by a reference to this code, which contains all of these former provisions.

Fam. Code § 20032 (added). Hearing and procedure; tax returns

20032. (a) Each and every hearing under this code in which child or spousal support is at issue, including related contempt matters, shall be set by the clerk of the court for hearing within 30 days of filing.

(b) At any hearing in which child or spousal support is at issue, each party, both moving and responding, shall bring to the hearing, copies of the last two federal and state income tax returns filed by the party and pay stubs from the last four full months immediately preceding the hearing received by the party, and shall serve those documents on the opposing party at least five days in advance of the hearing date. Willful failure to comply with these requirements or any of the requirements of this pilot project may result in a citation for contempt under Title 5 (commencing with Section 1209) of Part 3 of the Code of Civil Procedure, or in the court's discretion, the court may refuse to grant relief requested or may impose evidentiary sanctions on a party who fails to submit these documents. The clerk shall cause to be placed on the face sheet of any moving papers for child or spousal support at the time of filing, a notice informing the parties of the requirements of this section. The notice shall also inform the parties that prior to the hearing, they must meet with the Attorney Mediator pursuant to Section 20034. That meeting may occur in advance of the hearing dates by agreement of the parties, or on the day of the hearing.

(c) No continuance of any hearing involving child or spousal support shall be granted by a court without an order setting an interim support level unless the parties stipulate otherwise or the court finds good cause therefor.

Comment. Section 20032 continues former Civil Code Section 4782 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. In subdivision (a), a reference to this code has been substituted for the former reference to "this part" meaning the former Family Law Act and former Section 7000 *et seq.* (Uniform Parentage Act). This is not a substantive change, since this code contains the former provisions.

Fam. Code § 20033 (added). Local rule

20033. The court may pass a local rule that suspends the use of the Income and Expense Declaration mandated by California Rule of Court 1285.50 in some or all proceedings during the pendency of the pilot project, provided that substitute forms are developed and adopted to solicit substantially the same information in a simplified format. The court may, notwithstanding the adoption of a local form, require the use of the Income and Expense Declaration mandated by California Rule of Court 1285.50 in appropriate cases on the motion of either party or on the court's own motion.

Comment. Section 20033 continues former Civil Code Section 4783 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20034 (added). Attorney Mediator

20034. (a) An attorney, known as an Attorney Mediator, shall be hired to assist the court in resolving child and spousal support disputes and develop community outreach programs and to undertake other duties as assigned by the court.

(b) The Attorney Mediator shall be an attorney, licensed to practice in this state, with mediation or litigation experience or both in the field of family law.

(c) By local rule, the superior court may designate the duties of the Attorney Mediator, which may include, but shall not be limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Preparing support schedules based on statutory guidelines accessed through existing up-to-date computer technology.

(3) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 20031.

(4) If the parties are unable to resolve issues with the assistance of the Attorney Mediator, prior to or at the hearing, and at the request of the court, the Attorney Mediator shall review the paperwork, examine documents, prepare support schedules, advise the judge whether or not the matter is ready to proceed.

(5) Assisting the clerk in maintaining records.

(6) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(7) Serving as a special master to hearing proceedings and make findings to the court unless he or she has served as a mediator in that case.

(8) Assisting the court with research and such other responsibilities which will enable the court to be responsive to the litigants' needs.

(9) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to Family Court. These programs shall specifically include information concerning under-utilized legislation, such as expedited temporary support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9)), modification of support orders (Article 3 (commencing with Section 3680) of Chapter 6 of Part 1 of Division 9) and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

(d) The court shall develop a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court.

Comment. Section 20034 continues former Civil Code Section 4784 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change. Language has been revised to conform to terminology of the statewide uniform guideline.

Fam. Code § 20035 (added). Compliance with statewide uniform guideline

20035. Orders for temporary support issued pursuant to this part shall comply with the statewide uniform guideline set forth in Title 5 (commencing with Section 4700) of this part and shall be based on the economic evidence supplied by the parties or otherwise available to the court.

Comment. Section 20035 continues former Civil Code Section 4785 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20036 (added). Exemption from pilot project

20036. Upon motion by either party or on the court's own motion, any proceeding that would otherwise fall within this pilot project may by judicial order be exempted from its requirements.

Comment. Section 20036 continues former Civil Code Section 4786 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20037 (added). Services provided by district attorney

20037. (a) Except as provided in subdivision (c):

(1) Nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(2) The court shall not hear or enter any order under this chapter in a matter involving such a child.

(b) Any order entered contrary to subdivision (a) is void and without legal effect.

(c) For purposes of enabling a custodial parent receiving assistance under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code to participate in a pilot project authorized by this chapter, the district attorney, upon the request of the custodial parent, may execute a limited waiver of the obligation of representation under Section 11475.1 of the Welfare and Institutions Code. These limited waivers shall be signed by both the district attorney and custodial parent and shall only permit the custodial parent to participate in the proceedings under this chapter. It is not the intent of the Legislature in enacting this section to limit the duties of district attorneys with respect to seeking child support payments or to in any way limit or supersede other provisions of this part respecting temporary child support.

Comment. Section 20037 continues former Civil Code Section 4787 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20038 (added). Mediation

20038. (a) In any case where either party has filed a motion regarding a custody or visitation dispute and has not yet scheduled an appointment for the mediation orientation class by the time of the hearing on the order to show cause, the court shall order all parties to go to Family Court Services that day to schedule an appointment. The mediation orientation shall be scheduled within 14 days. Mediation orientation shall be conducted by Family Court Services and shall include general information on the effect of separation and dissolution on children and parents, the developmental and emotional needs of children in those circumstances, time sharing considerations and various options concerning legal and physical custody of children, the effect of exposure to domestic violence and extreme conflict on children and parents, the nature of the mediation process and other Family Court Services procedures, and related community resources.

(b) After the mediation orientation, the parties may elect to utilize private mental health professionals, in which case the parties or the court may modify the fast track time guidelines provided for in this section.

(c) If, after orientation, either party requests mediation, and both parties complete Family Court Services mediation petitions, an appointment shall be scheduled within four weeks after both petitions are submitted and both parties shall attend the mediation as scheduled.

(d) At the mediation, if the parties agree to all of the issues regarding custody or visitation, the mediator shall memorialize the agreement in writing, and shall mail copies of the document to the attorneys and parents. Unless written objections to the agreement are sent to Family Court Services within 20 days of mailing the agreement, it will be submitted to the court and become a court order. A copy of the order shall be sent with proof of service to the parties and attorneys by the Family Court.

(e) If mediation is completed and there are remaining disputes, the mediator shall write a memorandum of any partial agreement and shall outline the remaining disputes which shall be sent to the attorneys and parties acting in propria persona. The mediator shall refer the parties to the Early Resolution Project. The parties shall meet and confer within 14 days of the referral to determine if a solution can be formulated. If there are remaining issues to be settled after the meeting, an early resolution judicial conference shall be scheduled within 30 days of the request of either party.

(f) At the early resolution conference, the judge may take stipulations resolving the issues of custody or visitation. The judge may also request the staff of Family Court Services to provide assessments and expedited evaluations to be held on the same day as the conference, in which case the judge, upon stipulation of the parties, may also order a hearing as soon as the same day on the issues. The judge may also order counseling, a mental health special master, psychological testing, or an extended evaluation by Family Court Services or a private evaluator on some or all issues.

(g) When the court at the early resolution judicial conference orders an extended evaluation, the parties shall complete all paperwork, submit deposits to Family Court Services, or both, within five days of the early resolution judicial conference. An evaluator shall be assigned to the case within 10 days thereafter.

(h) Evaluation shall be completed within 60 days of assignment to the evaluator, and the evaluator shall submit a report and recommendations which include a proposed order resolving all disputed issues. This report shall be served by certified mail on the attorneys of record, or on the parties if they are appearing in propria persona. If there are objections to the proposed order, the parties shall file written objections, meet with the evaluator within 30 days of service of the report, and serve a copy of the order on Family Court Services within the 30-day period. If a stipulation is reached, it shall be filed with the court. If a dispute remains, a judicial settlement conference shall be scheduled within 14 days of the

meeting with the evaluator. Parties, counsel, and the evaluator shall be present at this judicial settlement conference. If there is no resolution at this settlement conference, a trial shall be set within 30 days from the settlement conference by the settlement conference judge. If no objections are filed, Family Court Services shall file the proposed order with the court, and it shall become the court's order.

(i) For good cause shown, all deadlines in this section may be altered by the court.

Comment. Section 20038 continues former Civil Code Section 4789 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20039 (added). Costs

20039. (a) The costs of the pilot project shall be borne by an equalization of filing fees in Santa Clara County for all petitions for marital dissolution, annulment, and legal separation, and all first papers on behalf of respondents in actions for marital dissolution, annulment, and legal separation and by equalization of filing fees for motions and responsive pleadings.

(b) A donation of computers, printers, software, and other equipment shall be solicited from existing hardware and software providers.

(c) The court shall administer funds for the various components of the pilot program.

Comment. Section 20039 continues former Civil Code Section 4790 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20040 (added). Booklet

20040. The court may elect to publish a low-cost booklet describing the program.

Comment. Section 20040 continues former Civil Code Section 4790 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20041 (added). Centralization of programs

20041. The court shall centralize, augment, and coordinate all presently existing programs under the court's supervision that relate to children, including, but not limited to, mental health special masters, appointment of attorneys for children, supervised visitation, and other supporting personnel.

Comment. Section 20041 continues former Civil Code Section 4791 [as added by 1992 Cal. Stat. ch. 411, § 2] without substantive change.

Fam. Code § 20042 (added). Study and report

20042. (a) The presiding judge of the Santa Clara County Superior Court, in conjunction with judges of the family law court and with attorneys practicing therein selected by the presiding judge, shall conduct a study of the effectiveness of the Santa Clara County Pilot Project in making the California child and spousal support system more equitable, responsive, cost-effective, and accessible, particularly to those with middle and low incomes, and the effectiveness of the

pilot project in expediting resolution and reducing conflict in custody and visitation disputes, and shall make a report of its findings to the Legislature on or before July 1, 1994.

(b) The satisfaction of participating parties shall be determined by requiring litigants entering the pilot project to fill out a simple exit poll. The response of at least 70 percent of those questionnaires shall be analyzed by the Senate Office of Research to determine whether the program has deemed satisfactory by the participants.

Comment. Section 20042 continues former Civil Code Section 4792 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

Fam. Code § 20043 (added). Project estimates

20043. (a) It is estimated for Santa Clara County's participation in the pilot project authorized by this chapter, that 4,000 litigants will be served annually, and that the following savings will occur:

(1) With an estimated 20 percent reduction in the use of court time over the current system, the county would save approximately 178 hours per year of court time, or approximately 22 workdays per year.

(2) With an estimated cost savings in incomes of judges, court reporters, clerks, bailiffs, and sheriffs, the project is expected to save approximately twenty thousand dollars (\$20,000) per year. Cases involving child support obligations which the district attorney's office was required to handle in one participating county, for the 1989-90 fiscal year, number 2,461. The average time spent on a typical child support order is approximately five hours. There is a potential of 12,500 man-hours per year that could be saved, resulting in a savings of three hundred sixty-seven thousand eight hundred seventy-five dollars (\$367,875) per year in attorney salaries alone. This does not take into consideration costs for documents, filing, and other district attorney personnel.

(3) The average savings personally to litigants who otherwise would require private representation would be from fifty dollars (\$50) to two hundred fifty dollars (\$250) per hour of court time and other preparation work.

(b) The satisfaction of participating parties will be determined by requiring the litigants using the pilot project to fill out a simple exit poll. The response of at least 70 percent of those questionnaires will be analyzed to decide whether the program has been deemed satisfactory by the participants.

(c) The estimated cost of the program is as follows:

(1) The estimated salary for an Attorney-Mediator is sixty thousand dollars (\$60,000) to sixty-five thousand dollars (\$65,000) per year, plus an additional 25 percent of salary to cover the costs of benefits for that position. In addition, there may be other costs connected with this position for support staff at the court.

(2) The costs of exit polling and any informational materials to be handed out to the public by the Attorney-Mediator is undetermined and cannot be estimated.

(d) The estimated income to cover the costs of this program will be as follows:

(1) There are approximately 10,000 dissolution of marriage petitions filed in Santa Clara County each year. Of those cases, approximately one-third of them have responses filed. At the present time, it costs one hundred sixty-five dollars (\$165) to have a petition for dissolution of marriage filed and one hundred twenty-seven dollars (\$127) to have a response filed, for a cost differential of thirty-eight dollars (\$38). By equalizing the response fee with the petition fee, income generated would be approximately one hundred twenty-five thousand four hundred dollars (\$125,400) per year. This does not include the cost of fourteen dollars (\$14) for each responsive declaration filed to a motion or order to show cause, the annual number of which is significantly greater than 3,300. It is estimated that an additional fifty thousand dollars (\$50,000) per year could be generated by equalizing the responsive fees to a motion or order to show cause with the filing of those motions. These fees generated would more than offset the costs of the program.

(2) It is also anticipated that the Attorney-Mediator will develop public information and outreach programs which will be paid for by any excess revenue generated from the pilot project and ultimately will result in savings to the public and the court. The public will save by not having to pay attorneys for certain information regarding child support matters, and the court will save by not having to educate the public from the bench, thus expediting the handling of support and custody cases.

(e) The cost of computers, printers, and other equipment will be defrayed by contributions.

Comment. Section 20043 continues former Civil Code Section 4793 [as added by 1992 Cal. Stat. ch. 411, § 2] without change.

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EXHIBIT 14

AB 3353 (Minor's Consent to Provision of Shelter)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2641 (1992 Cal. Stat. ch. 163, § 2), which repeal was chaptered-out by AB 3353 (1992 Cal. Stat. ch. 252, § 1), and make conforming changes in the Family Code.

Civ. Code § 25.9 (repealed). Minor's consent to treatment and shelter

SEC. _____. Section 25.9 of the Civil Code is repealed.

~~25.9. (a) Notwithstanding any other provision of law, a minor who has attained the age of 12 years who, in the opinion of the attending professional person, is mature enough to participate intelligently in mental health treatment or counseling on an outpatient basis or in a decision to consent to residential shelter services, and (1) would present a danger of serious physical or mental harm to himself or herself or to others without the mental health treatment or counseling or residential shelter services, or (2) has been alleged victim of incest or child abuse, may give consent to the furnishing of outpatient services or residential shelter services. That consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or the legal guardian of the minor shall not be necessary to authorize the provision of these services. A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in subdivision (e), shall make his or her best efforts to notify the parent, parents, or legal guardian of the provision of services. Mental health treatment or counseling of a minor as authorized by this section shall include the involvement of the minor's parent, parents, or legal guardian, unless in the opinion of the professional person who is treating or counseling the minor, that involvement would be inappropriate. The person shall state in the client record whether and when he or she attempted to contact the parent, parents, or legal guardian of the minor, and whether the attempt to contact was successful or unsuccessful, or the reason why, in his or her opinion, it would be inappropriate to contact the parent, parents, or legal guardian of the minor.~~

~~(b) The parent, parents, or legal guardian of a minor shall not be liable for payment for any such mental health treatment or counseling services, as provided in subdivision (a), unless the parent, parents, or legal guardian participates in the mental health treatment or counseling and then only for the services rendered with that participation. The parent, parents, or legal guardian of a minor shall not be liable for payment for any residential shelter services a provider in subdivision (a) unless the parent, parents, or legal guardian consented to the provision of those services.~~

~~(c) “Mental health treatment or counseling services,” as used in this section, means the provision of mental health treatment or counseling on an outpatient basis by any governmental agency, by a person or agency having a contract with a governmental agency to provide these services, by any agency which receives funding from community united funds, by runaway houses and crisis resolution centers, or by any private mental health professional, as defined in subdivision (d).~~

~~(d) “Professional person,” as used in this section, means a person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations; marriage, family and child counselors as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code; licensed educational psychologists as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code; credentialed school psychologists as defined in Section 49424 of the Education Code; clinical psychologists, as defined in Section 1316.5 of the Health and Safety Code; and the chief administrators of any agency referred to in subdivision (c) or (e).~~

~~(e) “Residential shelter services” means the provision of residential and other support services to minors on a temporary or emergency basis in a facility which services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency which receives funding from community funds, or a licensed community care facility or crisis resolution center; or the provision of other support services on a temporary or emergency basis by any professional person as defined in subdivision (d).~~

~~(f) This section shall not be construed to authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of his or her parent or guardian.~~

Comment. Section 25.9 [as amended by 1992 Cal. Stat. ch. 252, § 1] is amended to

Fam. Code § 6924 (technical amendment). Consent by minor to mental health treatment or counseling

SEC. ____ . Section 6924 of the Family Code is amended to read:

6924. (a) As used in this section:

(1) “Mental health treatment or counseling services” means the provision of mental health treatment or counseling on an outpatient basis by any of the following:

(A) A governmental agency.

(B) A person or agency having a contract with a governmental agency to provide the services.

(C) An agency that receives funding from community united funds.

(D) A runaway house or crisis resolution center.

(E) A professional person, as defined in paragraph (2).

(2) “Professional person” means any of the following:

(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Article 8 of Subchapter 3 of Chapter 1 of Title 9 of the California Code of Regulations.

(B) A marriage, family and child counselor as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(C) A licensed educational psychologist as defined in Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 of the Business and Professions Code.

(D) A credentialed school psychologist as described in Section 49424 of the Education Code.

(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.

(F) The chief administrator of an agency referred to in paragraph (1).

(3) “Residential shelter services” means any of the following:

(A) The provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

(B) The provision of other support services on a temporary or emergency basis by any professional person as defined in paragraph (2).

(b) A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse.

(c) A professional person offering residential shelter services, whether as an individual or as a representative of an entity specified in paragraph (3) of subdivision (a), shall make his or her best efforts to notify the parent or guardian of the provision of services.

(d) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor’s parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor’s parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional

person's opinion, it would be inappropriate to contact the minor's parent or guardian.

(d)

(e) The minor's parents or guardian are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian.

(e)

(f) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor's parent or guardian.

Comment. Section 6924 restates former Civil Code Section 25.9 [as amended by 1992 Cal. Stat. ch. 252, § 1] without substantive change. See Sections 6920 (consent by parent or guardian not necessary), 6921 (consent not subject to disaffirmance). References to "parents" have been omitted as surplus. See Section 10 (singular includes the plural). The reference to the "legal" guardian has been omitted as surplus. This conforms with terminology in the Probate Code. See Prob. Code §§ 2350(b), 2400(b) ("guardian" defined). See also Section 6903 ("parent or guardian" defined). For provisions concerning emancipated minors, see Sections 7002 (conditions for emancipation), 7050(e)(1) (minor may consent to medical, dental, or psychiatric care).

Interim Comment. Section 6924 is amended to include the new provisions concerning residential shelter services added to Civil Code Section 25.9 by 1992 Cal. Stat. ch. 252, § 1. Subdivision (a)(3) continues former Civil Code Section 25.9(e) without substantive change. Subdivision (b) is amended for consistency with the first sentence of former Civil Code Section 25.9(a). Subdivision (c) is amended to add the new provision concerning notice in the fourth sentence of former Civil Code Section 25.9(a). The remaining subdivisions have been redesignated to accommodate the new subdivision (c).

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EXHIBIT 15

AB 3544 (Domestic Violence)

Staff Note. The draft legislation in this exhibit would correct cross-references to a section repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 5), which references were added by AB 3544 (1992 Cal. Stat. ch. 475, § 1).

Penal Code § 1377 (technical amendment). Compromise of misdemeanors

SEC. _____. Section 1377 of the Penal Code is amended to read:

1377. When the person injured by an act constituting a misdemeanor has a remedy by a civil action, the offense may be compromised, as provided in Section 1378, except when it is committed as follows:

(a) By or upon an officer of justice, while in the execution of the duties of his or her office.

(b) Riotously.

(c) With an intent to commit a felony.

(d) In violation of any court order as described in Section 273.6.

(e) By or upon any family or household member, or upon any person when the violation involves any person described in ~~subdivision (b) of Section 542 of the Code of Civil Procedure~~ Section [70] of the Family Code or subdivision(b) of Section 13700 of this code, and when the defendant has civilly compromised any domestic violence offense committed upon any victim within seven years of the commission of the currently charged offense.

When an offense by or upon any family or household member, or upon any person, when the violation involves any person described in ~~subdivision (b) of Section 542 of the Code of Civil Procedure~~ Section [70] of the Family Code or subdivision(b) of Section 13700 of this code, is sought to be compromised and the prosecution objects to that civil compromise pursuant to this section, the court shall hold a hearing that is noticed within 10 court days where the victim is present and acknowledges and presents proof of satisfaction for injury. During the hearing, the prosecution shall have an opportunity to present evidence and make arguments with regard to the proposed civil compromise, and the court may question the victim in open court on the issue of the satisfaction being presented on a basis for the compromise.

For purposes of this subdivision, a victim of a domestic violence offense is a person described in ~~subdivision (b) of Section 542 of the Code of Civil Procedure~~ Section [70] of the Family Code or subdivision(b) of Section 13700 of this code.

Comment. Section 1377 [as amended by 1992 Cal. Stat. ch. 475, § 1] is amended to substitute references to the Family Code provision that replaced former Code of Civil Procedure Section 542(b).

Staff Note. *The references to Section 70 are subject to revision as discussed in Memorandum 92-56 concerning reorganization of the domestic violence statutes.*

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EXHIBIT 16

SB 2018 (Division of Community Property Retirement Plans)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), which repeal was chaptered-out by SB 2018 (1992 Cal. Stat. ch. 431, § 1), and make conforming changes in the Family Code.

Civ. Code § 4800.8 (repealed). Division of retirement plan benefits

SEC. _____. Section 4800.8 of the Civil Code is repealed.

~~4800.8. (a) Except as provided in subdivisions (b), the court shall make whatever orders are necessary or appropriate to assure that each party receives his or her full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:~~

~~(1) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 4800.~~

~~(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.~~

~~(3) Order the division of accumulated community property contributions and service credit as provided in Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of, or Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of, the Government Code.~~

~~(4) Order the division of community property rights in accounts with the State Teachers' Retirement System pursuant to Chapter 7.5 (commencing with Section 22650) of Part 13 of the Education Code.~~

~~(5) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.~~

~~(b) A court shall not make any order that requires a retirement plan to do either of the following:~~

~~(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.~~

~~(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraphs (3) and (4) of subdivision (a), unless the plan so provides.~~

~~(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraphs (3) and (4) of subdivision (a).~~

Comment. Section 4800.8 [as amended by 1992 Cal. Stat. ch. 431, § 1] is continued in Family Code Section 2610 without substantive change. See Fam. Code § 2610 Comment.

Fam. Code § 2610 (technical amendment). Division of retirement plan benefits

SEC. _____. Section 2610 of the Family Code is amended to read:

2610. (a) ~~The~~ Except a provided in subdivisions (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(a) (1) Order the division of any retirement benefits payable upon or after the death of either party in a manner consistent with this division.

(b) (2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(c) (3) Order the division of accumulated community property contributions and service credit as provided in Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of, or Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of, the Government Code.

(d) (4) Order the division of community property rights in accounts with the State Teachers' Retirement System pursuant to Chapter 7.5 (commencing with Section 22650) of Part 13 of the Education Code.

(5) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraphs (3) and (4) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraphs (3) and (4) of subdivision (a).

Comment. Section 2610 continues former Civil Code Section 4800.8 [as amended by 1992 Cal. Stat. ch. 431, § 1] without change. In subdivision (a), a reference to "this division" has

been substituted for the narrower reference to former Civil Code Section 4800. This is not intended as a substantive change.

Interim Comment. Section 2610 is amended to conform to Civil Code Section 4800.8, as amended by 1992 Cal. Stat. ch. 431, § 1. Note that this legislation chaptered-out the amendment to Civil Code Section 4800.8 by SB 1129 (1992 Cal. Stat. ch. 176).

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EXHIBIT 17

SB 1564 (Minors)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 2), which repeal was chaptered-out by SB 1564 (1992 Cal. Stat. ch. 455, § 1), and make conforming changes in the Family Code. The draft legislation would also restore a conforming change in AB 2641 (1992 Cal. Stat. ch. 163, § 136), which was chaptered-out by SB 1564 (1992 Cal. Stat. ch. 455, § 2).

Civ. Code § 222.71 (repealed). Venue where child freed for adoption under Welfare and Institutions Code Section 300

SEC. _____. Section 222.71 of the Civil Code is repealed.

~~222.71. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition for adoption of the minor may be filed either in the county where the prospective adoptive parents reside or the county where the child was freed for adoption.~~

Comment. Section 222.71 [as added by 1992 Cal. Stat. ch. 455, § 2] is continued without substantive change in Family Code Section 8714(a).

Fam. Code § 8714 (technical amendment). Adoption petition and order

SEC. _____. Section 8714 of the Family Code is amended to read:

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b)

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e)

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship

filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d)

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

Comment. Section 8714 continues former Civil Code Sections 222.70 and 222.71 [as added by 1992 Cal. Stat. ch. 455, § 1] without substantive change. In subdivision (a), the reference to an "action" for adoption has been changed to "proceeding" for consistency with subdivision (d). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court).

For comparable provisions, see Sections 8802 (petition for independent adoption), 8912 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

Interim Comment. Subdivision (a) of Section 8714 is divided so that the alternate venue provision of Civil Code Section 222.71 (as added by 1992 Cal. Stat. ch. 455, §1) can be added in a logical place. The rest of the subdivisions are redesignated. Minor language changes are made for consistency with the remainder of Section 8714.

Welf. & Inst. Code § 361.5 (technical amendment). Child welfare services; reunification of family; adoption assessments

SEC. _____. Section 361.5 of the Welfare and Institutions Code is amended to read:

361.5. (a) Except as provided in subdivision (b), whenever a minor is removed from a parent's or guardian's custody, the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. The court also shall make findings pursuant to subdivision (a) of Section 366. When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

Except in cases where, pursuant to subdivision (b), the court does not order reunification services, the court shall inform the parent or parents of Section 366.25 or 366.26 and shall specify that the parent's or parents' parental rights may be terminated.

(b) Reunification services need not be provided to a parent described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

(1) That the whereabouts of the parents is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in such a search.

(2) That the parent is suffering from a mental disability that is described in ~~Section 232 of the Civil~~ Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.

(3) That the minor had been previously adjudicated a dependent pursuant to any subdivision of Section 300 as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the minor has been returned to the custody of the parent or parents or guardian or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 361, due to additional physical or sexual abuse. However, this section is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(4) That the parent of the minor has been convicted of causing the death of another child through abuse or neglect.

(5) That the minor was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent.

(6) That the minor has been adjudicated a dependent pursuant to any subdivision of Section 300 as a result of severe sexual abuse or the infliction of severe physical harm by a parent or guardian, as defined in this subdivision, and the court makes a factual finding that it would not benefit the child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child, or between the child and another person or animal with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian; or the penetration or manipulation of the child's genital organs or rectum by any animate or inanimate object, for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of, and for the financial gain or other advantage of, the parent or guardian.

A finding of the infliction of severe physical harm, for the purposes of this subdivision, may be based on, but is not limited to, deliberate and serious injury inflicted to or on a child's body by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child in a closed space; or any other torturous act or omission which would be reasonably understood to cause serious emotional damage.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The probation officer shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

When paragraph (3), (4), or (5), inclusive, of subdivision (b) is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) and Section 366.25 are not tolled by the parent's absence.

(e) (1) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 18-month limitation imposed in subdivision (a). Services may include, but shall not be limited to, all of the following:

(A) Maintaining contact between parent and child through collect phone calls.

(B) Transportation services, where appropriate.

(C) Visitation services, where appropriate.

(D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the minor pursuant to Section 2625 of the Penal Code.

(3) Notwithstanding any other provision of law, if the incarcerated parent is a woman seeking to participate in the community treatment program operated by the Department of Corrections pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, the court shall determine whether the parent's participation in a program is in the child's best interest and whether it is suitable to meet the needs of the parent and child.

(f) If a court, pursuant to paragraph (2), (3), (4), (5), or (6) of subdivision (b), does not order reunification services, it shall conduct a hearing pursuant to Section 366.25 or 366.26 within 120 days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to subdivision (a). The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26 it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for

seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child pursuant to paragraph (6) of subdivision (b), the court shall consider any information it deems relevant, including the following factors:

(1) The specific act or omission comprising the severe sexual abuse or the severe physical harm inflicted on the child.

(2) The circumstances under which the abuse or harm was inflicted on the child.

(3) The severity of the emotional trauma suffered by the child.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

Comment. Subdivision (b)(2) of Section 361.5 [as amended by 1992 Cal. Stat. ch. 455, § 2] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

Interim Comment. This amendment restores a conforming revision in AB 2641 (1992 Cal. Stat. ch. 163, § 136) that was chaptered-out by SB 1564 (1992 Cal. Stat. ch. 455, § 2).

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Memo 92-33

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8/21/92

EXHIBIT 18

AB 2887 (Adoption — Qualified Court Investigator)

Staff Note. The draft legislation in this exhibit would repeal sections repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 2), which repeals were chaptered-out by AB 2887 (1992 Cal. Stat. ch. 472), and make conforming changes in the Family Code.

Outline

Civil Code (pp. 103-109)

- § 220.20 (repealed). Adoption definitions
- § 227.20 (repealed). Investigation
- § 227.30 (repealed). Cost of investigation
- § 227.40 (repealed). Consent of birth parents
- § 227.46 (repealed). Withdrawal of consent
- § 227.50 (repealed). Withdrawal of petition
- § 223 (repealed). Petition to free child from parental custody and control

Family Code (pp. 109-112)

- § 7850 (technical amendment). Investigation of circumstances of child
- § 8543 (added). "Qualified court investigator"
- § 9001 (technical amendment). Investigation
- § 9002 (technical amendment). Cost of investigation
- § 9003 (technical amendment). Consent of birth parents to adoption
- § 9005 (technical amendment). Motion or petition to withdraw consent
- § 9006 (technical amendment). Notice of withdrawal or dismissal

Appendix: Revised Comments (p. 113)

- § 7806. No filing fee
- § 7841. Right of interested person to file petition
- § 7845. Venue
- § 7851. Report and recommendations to court

Civ. Code § 220.20 (repealed). Adoption definitions

SEC. _____. Section 220.20 of the Civil Code is repealed.

220.20. ~~As used in this chapter, the following terms have the following means:~~

(a) ~~"Adoptive parent" means a person who has petitioned the court for, and obtained, an order or final decree for the adoption of a particular child or children.~~

(b) ~~"Agency adoption" means the adoption of a child, other than an intercountry adoption, in which the department or an agency licensed by the department is a party to, or joins in, the petition for adoption.~~

~~(c) "Applicant" means a person who has submitted a written application to adopt a child from the department or licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.~~

~~(d) "Birth parent" means the biological parent or, in the case of a child previously adopted, the adoptive parent.~~

~~(e) "Child" and "children" mean minor child and minor children, respectively.~~

~~(f) "Delegated county adoption agency" means a licensed county adoption agency that has agreed to provide those services described in Article 3 (commencing with Section 224.10).~~

~~(g) "Department" means the State Department of Social Services.~~

~~(h) "Full-service adoption agency" means any licensed entity engaged in the business of providing adoption services, which does all of the following:~~

~~(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.~~

~~(2) Assesses the birth parents, prospective adoptive parents, or child.~~

~~(3) Places children for adoption.~~

~~(4) Supervises adoptive placements.~~

~~Private full-service adoption agencies shall be organized and operated on a nonprofit basis. Full-service adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 224.50 until January 1, 1994.~~

~~(i) "Independent adoption" means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the petition for adoption.~~

~~(j) "Intercountry adoption" means the adoption of a foreign born child for whom federal law makes a special immigration visa available. Intercountry adoption includes completion of the adoption in the child's native country or completion of the adoption in California.~~

~~(k) "Licensed adoption agency" means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.~~

~~(l) "Noncustodial adoption agency" means any licensed entity engaged in the business of providing adoption services, which does all of the following:~~

~~(1) Assesses the prospective adoptive parents.~~

~~(2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved prospective adoptive applicants.~~

~~(3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.~~

~~Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. Noncustodial adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 224.50 until January 1, 1994.~~

~~(m) "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.~~

~~(n) "Petitioner" means a prospective adoptive parent who has filed an adoption petition with the superior court pursuant to the provisions of this chapter in the county within which he or she resides.~~

~~(o) "Place for adoption" means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents.~~

~~(p) "Prospective adoptive parent" means a person who has filed or intends to file a petition to adopt a child who has been or who is to be placed in his or her physical care.~~

~~(q) "Special needs child" means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group which should remain intact, mental, physical, medical, or emotional handicaps or age of three years or more.~~

~~(r) "Stepparent adoption" means the adoption of a child by a stepparent when one birth parent retains his or her custody and control of the child.~~

~~(s) "Qualified court investigator" means a superior court investigator with the same minimum qualifications as a probation officer or county welfare worker designated to conduct stepparent adoption investigations in stepparent adoption proceedings and proceedings to declare a minor free from parental custody and control.~~

~~Comment. Subdivision (s) of former Section 220.20 [as amended by 1992 Cal. Stat. ch. 472, § 1] is continued without substantive change in Family Code Section 8543.~~

Civ. Code § 227.20 (repealed). Investigation

SEC. ____ Section 227.20 of the Civil Code is repealed.

~~227.20. The probation officer, qualified court investigator, or, at the option of the board of supervisors, the county welfare department in the county in which the action for adoption is pending shall make an investigation of each case of adoption by a stepparent. No order of adoption shall be made by the court until after the probation officer or qualified court investigator has filed his or her, or the welfare department has filed its, report and recommendation and it has been considered by the court.~~

~~No home study shall be required of the petitioner's home in such a case unless ordered by the court. The agency conducting the investigation or any interested person may request the court to order a home study or the court may order such a study on its own motion.~~

As used in this section, “home study” means a physical investigation of the premises where the child is residing.

Comment. Former Section 227.20 [as amended by 1992 Cal. Stat. ch. 472, § 2] is continued without substantive change in Family Code Section 9001.

Civ. Code § 227.30 (repealed). Cost of Investigation

SEC. ____. Section 227.30 of the Civil Code is repealed.

~~227.30. A stepparent adopting a child of his or her spouse shall be liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 227.20, up to a maximum of two hundred dollars (\$200). The probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee or costs when such a payment would cause economic hardship to the prospective adoptive parent which would be detrimental to the welfare of the adoptive child.~~

Comment. Former Section 227.30 [as amended by 1992 Cal. Stat. ch. 472, § 3] is continued without substantive change in Family Code Section 9002..

Civ. Code § 227.40 (repealed). Consent of birth parents

SEC. ____. Section 227.40 of the Civil Code is repealed.

~~227.40. In a stepparent adoption, the consent of either or both parents must be signed in the presence of a county clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state and the county clerk, probation officer, qualified court investigator, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the superior court of the county where the petition is filed and the clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of the same county.~~

~~If the birth parent of a child to be adopted is outside the State of California at the time of signing consent, his or her consent may be signed before a notary, or other person authorized to perform notarial acts.~~

~~The consent, when reciting that the person giving it is entitled to sole custody of the child, shall, when duly acknowledged before the county clerk, probation officer, qualified court investigator, or county welfare department staff member be prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.~~

~~A birth parent who is a minor shall have the right to sign a consent for the adoption of his or her child and the consent shall not be subject to revocation by reason of the minority.~~

Comment. Former Section 227.40 [as amended by 1992 Cal. Stat. ch. 472, § 4] is continued without substantive change in Family Code Section 9003.

Civ. Code § 227.46 (repealed). Withdrawal of consent

SEC. ____ Section 227.46 of the Civil Code is repealed.

~~227.46. (a) Once given, consent of the birth parent to the adoption of the child by the stepparent may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw his or her consent may file with the clerk of the superior court where the petition is pending, a petition for approval of withdrawal of consent, without the necessity of payment of any fee for the filing of the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.~~

~~(b) The clerk of the court shall set the matter for hearing, and shall give notice thereof to the probation officer, qualified court investigator, or county welfare department, to the persons to whose adoption of the child the consent was given, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.~~

~~(c) The probation officer, qualified court investigator, or county welfare department shall, prior to the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear the hearing to represent the interests of the child.~~

~~(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and his or her fee therefor shall be paid from the county treasury on order of the court. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances, and that withdrawal of the consent will be for the best interests of the child, the court shall approve the withdrawal of the consent; otherwise the court shall withhold its approval. Consideration of the best interests of the child shall include, but not be limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent, the extent of bonding or the potential to bond with the birth parent, and the ability of the birth parent to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceedings shall be dismissed.~~

~~(e) Any order of the court granting or withholding approval of a withdrawal of a consent to an adoption may be appealed from in the same manner as an order of the juvenile court declaring any person to be a ward of the juvenile court.~~

~~Comment. Former Section 227.46 [as amended by 1992 Cal. Stat. ch. 472, § 5] is continued without substantive change in Family Code Section 9005.~~

Civ. Code § 227.50 (repealed). Withdrawal of petition

SEC. ____ Section 227.50 of the Civil Code is repealed.

~~227.50. Whenever the petitioner moves to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the~~

~~proceeding is pending shall immediately notify the probation officer, qualified court investigator, or county welfare department of that action.~~

~~In any adoption proceeding in which the birth parent has refused to give the required consent, the petition shall be dismissed.~~

~~Comment. Former Section 227.50 [as amended by 1992 Cal. Stat. ch. 472, § 6] is continued without substantive change in Family Code Section 9006.~~

~~Civ. Code § 223 (repealed). Petition to free child from parental custody and control~~

~~SEC. ____.~~ Section 233 of the Civil Code is repealed.

~~233. (a) Any interested person may petition the superior court of the county in which a minor person described in Section 232 resides or in which the minor person is found or in which any of the acts which are set forth in Section 232 are alleged to have occurred, for an order or judgment declaring the minor person free from the custody and control of either or both of his or her parents. There shall be no filing fee charged for any action instituted in accordance with this section. Upon the filing of the petition, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer, the qualified court investigator, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the minor person and the circumstances which are alleged to bring the minor person within any of the provisions of Section 232. The juvenile probation officer, qualified court investigator, or the county department shall render to the court a written report of the investigation with a recommendation to the court of the proper disposition to be made in the action in the best interests of the minor person.~~

~~The report shall include all of the following:~~

~~(1) A statement that the person making the report explained the nature of the legal action to end parental custody and control to the minor.~~

~~(2) A statement of the minor's feelings and thoughts concerning the pending action.~~

~~(3) A statement of the minor's attitude towards his or her parent or parents and particularly whether or not the minor would prefer living with his or her parent or parents.~~

~~(4) A statement that the minor was informed of his or her right to attend the hearing on the petition and the minor's feelings concerning attending the hearing. The court shall receive the report in evidence and shall read and consider the contents thereof in rendering its judgment.~~

~~(5) If the age, or the physical, emotional, or other condition of the minor precludes his or her meaningful response to the explanations, inquiries, and information required by the provisions of subdivisions (a), (b), (c), and (d), a description of the condition shall satisfy the requirements of those subdivisions.~~

~~(b) "Qualified court investigator," as used in this section, has the meaning set forth in Section 220.20.~~

Comment. Former Section 233 [as amended by 1992 Cal. Stat. ch. 472, § 7] is continued, without substantive change in Family Code Sections 7806, 7841, 7845, 7850-7851. See the Comments to these sections.

Fam. Code § 7850 (technical amendment). Investigation of circumstances of child

SEC. ____. Section 7850 of the Family Code is amended to read:

7850. Upon the filing of a petition under Section 7841, the clerk of the court shall, in accordance with the direction of the court, immediately notify the juvenile probation officer or qualified court investigator, or the county department designated by the board of supervisors to administer the public social services program, who shall immediately investigate the circumstances of the child and the circumstances which are alleged to bring the child within any of the provisions of Chapter 2 (commencing with Section 7820).

Comment. Section 7850 continues the third sentence of former Civil Code Section 233(a) [as amended by 1992 Cal. Stat. ch. 472, § 7] without substantive change. References to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment. Section 7850 does not require the notice and investigation if the petition is filed under Section 7840 (petition by licensed private or public adoption agency or state or county agency).

Interim Comment. Section 7850 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 233, as amended by 1992 Cal. Stat. ch. 472, § 7.

Fam. Code § 8543 (added). “Qualified court investigator”

SEC. ____. Section 8543 is added to the Family Code, to read:

8543. “Qualified court investigator” means a superior court investigator with the same minimum qualifications as a probation officer or county welfare worker designated to conduct stepparent adoption investigations in stepparent adoption proceedings and proceedings to declare a minor free from parental custody and control.

Comment. Section 8543 continues former Civil Code Section 220.20(s) [as amended by 1992 Cal. Stat. ch. 472, § 1] without substantive change.

Fam. Code § 9001 (technical amendment). Investigation

SEC. ____. Section 9001 of the Family Code is amended to read:

9001. (a) The probation officer, qualified court investigator, or, at the option of the board of supervisors, the county welfare department in the county in which the adoption proceeding is pending shall make an investigation of each case of stepparent adoption. The court may not make an order of adoption until after the probation officer, qualified court investigator, or welfare department has filed its report and recommendation and they have been considered by the court.

(b) Unless ordered by the court, no home study may be required of the petitioner’s home in a stepparent adoption. The agency conducting the

investigation or any interested person may request the court to order a home study or the court may order a home study on its own motion.

(c) "Home study" as used in this section means a physical investigation of the premises where the child is residing.

Comment. Section 9001 continues former Civil Code Section 227.20 [as amended by 1992 Cal. Stat. ch. 472, § 2] without substantive change. In subdivision (a), the reference to an "action" has been changed to "proceeding" for consistency with other sections. See also Section 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8712 (investigation in agency adoption), 8811 (investigation in independent adoption), 8908 (investigation in intercountry adoption). For other related provisions, see Sections 8715 (report of department or agency in agency adoption), 8807 (report of department or agency in independent adoption), 8914 (report of department or agency in intercountry adoption).

Interim Comment. Subdivision (a) of Section 9001 is amended to add references to the qualified court investigator to conform to amendments made in Civil Code Section 227.20, as amended by 1992 Cal. Stat. ch. 472, § 2.

Fam. Code § 9002 (technical amendment). Cost of investigation

SEC. ____ . Section 9002 of the Family Code is amended to read:

9002. In a stepparent adoption, the stepparent is liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 9001, up to a maximum of two hundred dollars (\$200). The probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

Comment. Section 9002 continues former Civil Code Section 227.30 [as amended by 1992 Cal. Stat. ch. 472, § 3] without substantive change. The first part of the first sentence has been revised to use the defined term "stepparent adoption" and to delete the phrase "stepparent adopting a child of his or her spouse." This is not a substantive change. See Section 8548 ("stepparent adoption" defined). Other language changes have been made for consistency with Sections 8716 and 8810. See also Section 8542 ("prospective adoptive parent" defined).

For related provisions, see Sections 8716 (fee for report in agency adoption), 8810 (fee for report in independent adoption).

Interim Comment. Section 9002 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 227.30, as amended by 1992 Cal. Stat. ch. 472, § 3.

Fam. Code § 9003 (technical amendment). Consent of birth parents to adoption

SEC. ____ . Section 9003 of the Family Code is amended to read:

9003. (a) In a stepparent adoption, the consent of either or both birth parents shall be signed in the presence of a county clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state. The county clerk, probation officer, qualified court investigator, or county welfare department staff member before whom the consent is signed shall immediately file the consent with the clerk of the court where the adoption

petition is filed. The clerk shall immediately notify the probation officer or, at the option of the board of supervisors, the county welfare department of that county.

(b) If the birth parent of a child to be adopted is outside this state at the time of signing the consent, the consent may be signed before a notary or other person authorized to perform notarial acts.

(c) The consent, when reciting that the person giving it is entitled to sole custody of the child and when acknowledged before the county clerk, probation officer, qualified court investigator, or county welfare department staff member, is prima facie evidence of the right of the person signing the consent to the sole custody of the child and that person's sole right to consent.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of the minority.

Comment. Section 9003 continues former Civil Code Section 227.40 [s amended by 1992 Cal. Stat. ch. 472, § 4] without substantive change. The first sentence of subdivision (a) has been revised to require consent of "birth parents" rather than "parents." This terminology is consistent with subdivision (d). The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The word "duly" formerly preceding "acknowledged" has been omitted as surplus. See also Sections 8512 ("birth parent" defined), 8548 ("stepparent adoption" defined).

For related provisions, see Sections 8700 (consent to agency adoption), 8809, 8814 (consent to independent adoption).

Interim Comment. Subdivisions (a) and (c) of Section 9003 are amended to add references to the qualified court investigator to conform to amendments made in Civil Code Section 227.40, as amended by 1992 Cal. Stat. ch. 472, § 4.

Fam. Code § 9005 (technical amendment). Motion or petition to withdraw consent

SEC. ____ Section 9005 of the Family Code is amended to read:

9005. (a) Consent of the birth parent to the adoption of the child by the stepparent may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the probation officer, qualified court investigator, or county welfare department, to the prospective adoptive parent, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The probation officer, qualified court investigator, or county welfare department shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent, the extent of bonding or the potential to bond with the birth parent, and the ability of the birth parent to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.

Comment. Section 9005 continues former Civil Code Section 227.46 [as amended by 1992 Cal. Stat. ch. 472, § 5] without substantive change. The introductory phrase "once given" in the former provision has been omitted as surplus. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (b), the phrase "persons to whose adoption of the child the consent was given" has been changed to "prospective adoptive parent." See also Section 8542 ("prospective adoptive parent" defined).

For a comparable provision, see Section 8815 (motion or petition to withdraw consent in independent adoption).

Interim Comment. Subdivisions (b) and (c) of Section 9005 are amended to add references to the qualified court investigator to conform to amendments made in Civil Code Section 227.46, as amended by 1992 Cal. Stat. ch. 472, § 5.

Fam. Code § 9006 (technical amendment). Notice of withdrawal or dismissal; dismissal where consent refused

SEC. ____. Section 9006 of the Family Code is amended to read:

9006. (a) If the petitioner moves to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the probation officer, qualified court investigator, or county welfare department of the action.

(b) If a birth parent has refused to give the required consent, the adoption petition shall be dismissed.

Comment. Section 9006 continues former Civil Code Section 227.50 [as amended by 1992 Cal. Stat. ch. 472, § 6] without substantive change. In subdivision (a), the former reference to the "clerk of the court in which the proceeding is pending" has been shortened to the "court clerk" to eliminate surplus language. See also Section 8512 ("birth parent" defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8804 (notice of withdrawal or dismissal in independent adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption).

Interim Comment. Subdivision (a) of Section 9006 is amended to add a reference to the qualified court investigator to conform to amendments made in Civil Code Section 227.50, as amended by 1992 Cal. Stat. ch. 472, § 6.

Appendix

Revised Comments

Staff Note. The following Comments need to be revised in connection with SB 370 changes. Revisions are shown in the same form as amendments.

§ 7806. No filing fee

Comment. Section 7806 continues without substantive change the second sentence of the first paragraph of former Civil Code Section 233(a) [as amended by 1992 Cal. Stat. ch. 472, § 7]. A reference to “proceeding” has been substituted for the former reference to “action.” This is not intended as a substantive change.

§ 7841. Right of interested person to file petition

Comment. Section 7841 restates without substantive change the first and last parts of the first sentence of the first paragraph of former Civil Code Section 233(a) [as amended by 1992 Cal. Stat. ch. 472, § 7]. The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). See also Section 7845 (venue).

§ 7845. Venue

Comment. Section 7845 restates without substantive change the first half of the first sentence of the first paragraph of former Civil Code Section 233(a) [as amended by 1992 Cal. Stat. ch. 472, § 7]. See also Section 200 (jurisdiction in superior court).

§ 7851. Report and recommendations to court

Comment. Section 7851 continues the last sentence of the first paragraph of subdivision (a) and the second paragraph, including numbered paragraphs (1)-(5), of former Civil Code Section 233 [as amended by 1992 Cal. Stat. ch. 472, § 7], ~~from the last sentence of the first paragraph to the end of the former section.~~ In subdivisions (a) and (b)(1), references to “proceeding” have been substituted for the former references to “action.” This is not intended as a substantive change. Throughout this section, references to “child” have been substituted for the former references to “minor.” This is not a substantive change. See Section 7802 Comment.

