#D-501 4/3/80

First Supplement to Memorandum 80-27

Subject: Study D-501 - Assembly Bill 2115 (Agreement for Entry of Paternity or Support Judgment)

Assembly Bill 2115 was introduced to effectuate the Commission's recommendation relating to agreements for the entry of paternity and support judgments.

When the bill was heard by the Assembly Judiciary Committee, only five members were willing to approve the bill in the form recommended by the Commission. Seven affirmative votes are required to report a bill out of the committee.

Committee approval of the bill was obtained only after a committee-suggested amendment was accepted by Assemblyman McAlister. As amended, the bill permits an agreement for entry of judgment in a paternity or support case only in two circumstances: (1) Where the alleged father is represented by legal counsel or (2) where the alleged father appears personally before the court and the court determines that the alleged father is making a valid waiver of his due process rights in agreeing to the entry of the judgment.

The bill as amended does not permit judgment to be entered in a support or paternity case where the agreement is accompanied by a statement signed by the alleged father setting forth the rights waived and consequences that may follow the entry of the judgment.

A copy of the bill as amended is attached as Exhibit 1. The district attorneys and the legal services attorneys may wish to make presentations at the meeting concerning possible additional amendments to the bill. The staff understands that the district attorneys would like to see a provision added to the bill to permit the proceeding to continue as an ordinary action if the alleged father fails to appear at the court hearing on the validity of the waiver of due process rights.

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT 1

AMENDED IN ASSEMBLY MARCH 12, 1980

CALIFORNIA LEGISLATURE—1979-80 REGULAR SESSION

ASSEMBLY BILL No. 2115

Introduced by Assemblyman McAlister

January 21, 1980

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 11476.1 of ~~, and to add Sections 11476.2 , 11476.3, and 11476.4 to,~~ the Welfare and Institutions Code, relating to judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2115, as amended, McAlister (Jud.). Judgments: paternity and support.

Existing statutory law authorizes the district attorney to enter into an agreement with a noncustodial parent for the entry of a judgment determining paternity, where applicable, and for periodic child support payments. An appellate court recently held such statute unconstitutional on the ground that it does not protect the due process rights to notice and hearing of the noncustodial parent nor does it address the issue of the manner in which such rights may be waived.

This bill would delineate various procedural requirements consistent with due process that must be complied with in order for such an agreement to be made and judgment entered. It would also specify that such an agreement may be made before the birth of the child.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11476.1 of the Welfare and Institutions Code is amended to read:

11476.1. (a) In any case where the district attorney has undertaken enforcement of support, the district attorney may enter into an agreement with the noncustodial parent, on behalf of a minor child or children, for the entry of a judgment without action determining paternity, if applicable, and for periodic child support payments based on the noncustodial parent's reasonable ability to pay. An agreement for entry of a judgment under this section may be executed prior to the birth of the child and may include a provision that the judgment is not to be entered until after the birth of the child.

(b) A judgment based on the agreement shall be entered only if one ~~or more~~ of the following requirements are satisfied:

(1) The noncustodial parent is represented by ~~counsel and both of the following requirements are met:~~

~~(A) The~~ legal counsel and the attorney signs a certificate stating: "I have examined the proposed judgment and have advised my client *concerning his or her rights in connection with this matter and the consequences of signing or not signing the agreement for* the entry of the judgment and my client ~~has executed the attached statement or statements in my presence.~~" , after being so advised, has agreed to the entry of the judgment.

~~(B) The certificate of the attorney is accompanied by a statement that satisfies the requirements of Section 11476.2 if the agreement is for the entry of judgment determining paternity and a statement that satisfies the~~

~~requirements of Section 11476.3 if the agreement is for the entry of judgment for periodic child support payments.~~

(2) A judge of the court in which the judgment is to be entered makes a finding that the noncustodial parent has appeared before the judge and the judge has determined that under the circumstances of the particular case the noncustodial parent has willingly, knowingly, and intelligently waived his or her due process rights in agreeing to ~~use the procedure provided by this section,~~ the entry of the judgment .

~~(3) The agreement is for the entry of judgment determining paternity and the agreement includes a statement that satisfies the requirements of Section 11476.2.~~

~~(4) The agreement is for the entry of judgment for periodic child support payments and the agreement includes a statement that satisfies the requirements of Section 11476.3.~~

(c) The clerk shall file the agreement, together with any certificate of the attorney or finding of the court, without the payment of any fees or charges. If the requirements of this section are satisfied, the court shall enter judgment thereon without action. The provisions of Civil Code Section 4702 shall apply to such judgment. A judgment for support so entered may be enforced by any means by which any other judgment for support may be enforced.

(d) Upon request of the district attorney in any case *under this section*, the clerk shall set the matter for hearing by the court. The hearing shall be held within 10 days after the clerk receives the request. The district attorney may require the person who signed the agreement for the entry of judgment to attend the hearing by process of subpoena in the same manner as the attendance of a witness in a civil action may be required. The presence of the person who signed the agreement for entry of judgment at the hearing shall constitute the presence of the person in court at the time the order is pronounced for the purposes of Section 1209.5 of the Code of Civil

Procedure if the court makes the findings required by paragraph (2) of subdivision (b).

(e) The district attorney shall cause the following to be served, in the manner specified in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, upon the person who signed the agreement for entry of the judgment and shall file proof of service thereof with the court:

(1) A copy of the judgment as entered.

(2) If the judgment includes an order for child support payments, a notice stating the substance of the following: "The court has continuing authority to make an order increasing or decreasing the amount of the child support payments.

You have the right to request that the court order the child support payments be decreased or eliminated entirely."

(f) An order for child support included in a judgment entered under this section may be modified or revoked as provided in Section 4700 of the Civil Code. The court may modify the order to make the support payments payable to a different person.

(g) For the purposes of this section, in making a determination of the noncustodial parent's reasonable ability to pay, ~~the court shall consider~~ any relevant circumstances set out in Section 246 of the Civil Code shall be considered .

(h) After arrest and before plea or trial, or after conviction or plea of guilty, under Section 270 of the Penal Code, if the defendant appears before the court in which the criminal action is pending and the requirements of paragraph (1) or (2) of subdivision (b) *have been* satisfied, the court may suspend proceedings or sentence in the criminal action, but this does not limit the later institution of a civil or criminal action or limit the use of any other procedures available to enforce the judgment entered pursuant to this section.

(i) Nothing in this section applies to a case where a civil action has been commenced.

~~(i) A judgment entered pursuant to this section does not prejudice or bar the rights of the person agreeing to the entry of the judgment to institute an action to set aside the judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to Section 473 of the Code of Civil Procedure.~~

~~SEC. 2. Section 11476.2 is added to the Welfare and Institutions Code, to read:~~

~~11476.2. A judgment determining paternity based on agreement may be entered under Section 11476.1 if the agreement for entry of the judgment includes a statement signed by the noncustodial parent in substantially the following form:~~

~~AGREEMENT FOR ENTRY OF JUDGMENT DETERMINING PATERNITY—STATEMENT ACKNOWLEDGING AND WAIVING RIGHTS~~

~~*YOU ARE NOT REQUIRED TO SIGN THIS AGREEMENT. YOU ARE NOT REQUIRED TO PARTICIPATE IN THIS PROCEDURE. YOU MAY REFUSE TO SPEAK WITH THE DISTRICT ATTORNEY AND MAY SEEK THE ASSISTANCE OF AN ATTORNEY. IF YOU HAVE ANY QUESTIONS OR DOUBT, DO NOT SIGN THIS AGREEMENT AND SEE AN ATTORNEY.*~~

~~I have been asked to sign an Agreement for Entry of Judgment Determining Paternity. I understand that by signing the agreement, I will be admitting I am the father of the child or children named in the agreement.~~

~~I understand that I have the following rights in connection with this matter:~~

~~1. The right to be represented by a lawyer.~~

~~I may hire the lawyer of my choice at my own expense. *If I cannot afford a lawyer, I can request the assistance of a lawyer from an organization that provides legal assistance to persons who cannot afford lawyers.* If I cannot afford a lawyer, I can ask the court to appoint a lawyer to represent me free of charge in any proceeding~~

~~brought to determine whether I am the father of the child or children. I understand that the district attorney does not represent me.~~

~~2. The right to have a trial by jury to determine if I am the father.~~

~~If I request, I may have a jury decide whether I am the father. Or, with my consent and the consent of the person bringing a proceeding to determine whether I am the father, a judge alone may decide whether I am the father.~~

~~3. The right to confront and cross-examine witnesses against me.~~

~~I understand that, in a trial, the person bringing the proceeding to determine whether I am the father must prove that I am the father. I may be present with a lawyer when that person's witnesses testify and ask them questions. I may also present evidence and witnesses in my own defense. Procedures are available prior to the trial that will permit me to determine what the witnesses against me claim are the facts concerning whether I am the father.~~

~~4. The right to remain silent *refuse to sign this agreement.*~~

~~I understand that I cannot be required~~ to ~~admit or deny that I am the father~~ *sign this agreement.* ~~If I refuse to sign the agreement, I cannot be prosecuted for refusing to sign. If I admit~~ *sign this agreement, my admission* ~~that I am the father~~ ; ~~my statement can be used as evidence against me if I am ever~~ *criminally* ~~prosecuted for failing to support the child or children.~~

~~5. The right to have blood tests.~~

~~I understand that if a trial is held to determine if I am the father, I will have the right to have the court order the mother, the child or children, and myself to submit to blood tests. Blood tests sometimes show that a person claimed to be the father of a child could not possibly be the father of the child. The court decides who pays for the blood tests. The court could order that I pay none, some or all of the cost of the tests, depending on whether I can afford to pay.~~

~~6. The right to have a judge decide the following matters if I am found to be the father:~~

~~(1) The amount of child support I must pay.~~

~~(2) How long I will have to pay child support.~~

~~I also understand the following:~~

~~1. If I sign this agreement, I will have the duty to contribute to the support of the child or children named in the agreement and this duty of support can continue until the child reaches the age of 18 *and may continue thereafter if the child is unable to support himself or herself.*~~

~~*2. Where any public assistance has been paid (before the time the judgment is entered as provided in this agreement) for the support of the child or children named in this agreement, if I sign this agreement:*~~

~~*(1) I may be required to repay some or all of this public assistance.*~~

~~*(2) A legal proceeding may be brought against me to enforce my obligation to make this repayment.*~~

~~2.~~

~~*3.* If I sign this agreement, the court can order that I make payments for the support of the child or children named in this agreement. If I fail to make the child support payments ordered by the court, the court order may be enforced by any of the following means *lawful means, including but not limited to the following:*~~

~~(i) The court may order my employer to withhold the support payments from my wages and pay them to the person named by the court.~~

~~(ii) The court may find me in contempt and order me to pay a fine or be jailed or both.~~

~~(iii) The court may authorize the seizure of my property (except exempt property) and order the property sold to pay the support payments.~~

~~(iv) The district attorney may bring a criminal prosecution against me. If convicted, I can be punished by a fine of not more than $1,000, or jailed for not more than one year and a day, or both.~~

~~3.~~

~~*4.* I understand that, if I sign this agreement, the child~~

~~or children named in this agreement may have the right to inherit my property when I die and may have other rights as my child or children.~~

~~4. Before I sign this agreement, I can have a lawyer I hire, or a court/appointed lawyer, look at the agreement and give me advice about what I should do.~~

~~*5. Before I sign this agreement, I can have a lawyer representing me look at the agreement and give me advice concerning my rights in connection with this matter and what can happen to me if I sign this agreement or refuse to sign it.*~~

~~I have read and understand each item printed above. I have initialed each item I have read. Having in mind all of the rights mentioned in this statement and the consequences of admitting I am the father of the child or children named in the agreement, I willingly, knowingly, and intelligently give up those rights. It is my choice to resolve this matter by signing the agreement.~~

~~I declare under penalty of perjury that the foregoing is true and correct.~~

~~Executed at /////, California, on /////.~~

~~STOP AND THINK. YOU ARE NOT REQUIRED TO SIGN THIS AGREEMENT. IF YOU HAVE ANY QUESTIONS OR DOUBT AS TO THIS MATTER, SEE AN ATTORNEY. IF YOU CANNOT AFFORD AN ATTORNEY, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY APPOINTED.~~

~~////////////////////~~
~~(Signature of person agreeing to entry of judgment)~~

~~SEC. 3. Section 11476.3 is added to the Welfare and Institutions Code, to read:~~

~~11476.3. A judgment for periodic child support payments based on agreement may be entered under Section 11476.1 if the following requirements are met:~~

~~(a) It has been determined by adjudication, agreement for entry of a judgment determining paternity, or conclusive presumption as provided in Section 621 of the Evidence Code, that the person agreeing to entry of the judgment for periodic child~~

~~support payments is a parent of the child.~~

~~(b) The agreement for entry of judgment includes a statement signed by the noncustodial parent in substantially the following form:~~

~~AGREEMENT FOR ENTRY OF JUDGMENT REQUIRING PERIODIC CHILD SUPPORT PAYMENTS—STATEMENT ACKNOWLEDGING AND WAIVING RIGHTS~~

~~YOU ARE NOT REQUIRED TO SIGN THIS AGREEMENT. YOU ARE NOT REQUIRED TO PARTICIPATE IN THIS PROCEDURE. YOU MAY REFUSE TO SPEAK WITH THE DISTRICT ATTORNEY AND MAY SEEK THE ASSISTANCE OF AN ATTORNEY. IF YOU HAVE ANY QUESTIONS OR DOUBT, DO NOT SIGN THIS AGREEMENT AND SEE AN ATTORNEY.~~

~~I have been asked to sign an Agreement for Entry of Judgment Requiring Periodic Child Support Payments. I understand that by signing this agreement, I am agreeing to make the child support payments for the child or children named in the agreement in the amount or amounts stated in the agreement.~~

~~I understand I have the following rights in connection with this matter:~~

~~1. The right to be represented by a lawyer.~~

~~I may hire a lawyer of my choice at my own expense. If I cannot afford a lawyer, I can request the assistance of a lawyer from an organization that provides legal assistance to persons who cannot afford lawyers. I understand that the district attorney does not represent me.~~

~~2. The right to have a judge decide the following matters:~~

~~(1) The amount of child support I must pay.~~

~~(2) How long I will have to pay child support.~~

~~I also understand the following:~~

~~1. If I refuse to sign the agreement, I cannot be prosecuted for refusing to sign.~~

~~2. If I sign this agreement, I will be required to support the child or children by the amount stated in this agreement, but the court has authority ; after a hearing of which notice has been given, to increase or decrease this amount. I understand that my duty to support the child or children by the amount stated in this agreement can continue until the child reaches the age of 18 or until such earlier *or later* time as is stated in this agreement.~~

~~3. If I sign this agreement and I fail to make the~~ payments required by this agreement, the duty to make the support payments will be enforced and may be enforced by any ~~one or more of the following means~~ ~~*lawful means, including but not limited to the following:*~~

~~(i) The court may order my employer to withhold the support payments from my wages and pay them to the person named by the court.~~

~~(ii) The court may find me in contempt and order me to pay a fine or be jailed or both.~~

~~(iii) The court may authorize the seizure of my property (except exempt property) and order the property sold to pay the support payments.~~

~~(iv) The district attorney may bring a criminal prosecution against me. If convicted, I can be punished by a fine of not more than $1,000, or jailed for not more than one year and a day, or both.~~

~~4. Before I sign the agreement, I can have a lawyer representing me look at the agreement and give me advice about what I should do *concerning my rights in connection with this matter and what can happen to me if I sign this agreement or refuse to sign it.*~~

~~I have read and understand each item printed above. I have initialed each item I have read. Having in mind all of the rights mentioned in this statement and the consequences of signing the agreement, I willingly, knowingly, and intelligently give up those rights. It is my choice to resolve this matter by signing the agreement.~~

~~I declare under penalty of perjury the foregoing is true and correct.~~

~~Executed at ////////, California, on ////////.~~

~~STOP AND THINK. YOU ARE NOT REQUIRED TO~~

1 ~~SIGN THIS AGREEMENT. IF YOU HAVE ANY~~
2 ~~QUESTIONS OR DOUBT AS TO THIS MATTER, SEE~~
3 ~~AN ATTORNEY.~~
4
5 ~~//////////////////////~~
6 ~~(Signature of person agreeing to~~
7 ~~entry of judgment)~~
8 ~~*SEC. 4. Section 11476.4 is added to the Welfare and*~~
9 ~~*Institutions Code, to read:*~~
10 ~~*11476.4. The statements provided for in Sections*~~
11 ~~*11476.2 and 11476.3 may be consolidated into one*~~
12 ~~*statement where the agreement is for entry of a*~~
13 ~~*judgment that both determines paternity and requires*~~
~~*periodic child support payments.*~~

O